

The Manasquan Planning Board held a regular meeting on Tuesday, September 11, 2012 at 7PM in the Borough Hall, 201 East Main Street, Manasquan, New Jersey. Geoff Cramer read the Open Public Meeting statement. Chairman John Burke called the meeting to order and asked everyone present to please stand and he asked for a moment of silence for those lost in the terror attacks of September 11, 2001. Next he asked everyone to please salute the Flag. He then asked the secretary to call the roll.

ROLL CALL – BOARD MEMBERS PRESENT:

John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Peter Ragan, Mark Apostolou

BOARD MEMBERS ABSENT:

Mayor George Dempsey – arrived at 7:48PM

Councilman Owen McCarthy, Michael Sinneck, Leonard Sullivan and Jay Price

PROFESSIONALS PRESENT:

Geoffrey S. Cramer – Planning Board Attorney

Albert D. Yodakis – T & M Engineering – Planning Board Engineer/Planner

APPLICATION #14-2012 – Fitzpatrick, James – 64 Second Avenue – Block: 166 – Lot: 9 – Zone: R-2 – Carried from August 7, 2012 – Keith Henderson is the attorney representing the applicant. Mr. Burke said he wanted it on record that three of the Board Members have listened to the tapes on this application and he had them state their names. John Muly listened to the tapes. Peter Ragan was present at the first meeting and listened to the tape of the second meeting. Mark Apostolou was present at the first meeting and listened to the tape of the second meeting and also read all the great notes prepared by Mary. Mary has signed affidavits that the three members have listened to the tapes. Mr. Henderson said he is aware the board has had two prior hearings on this matter, he read the minutes of the one and he is familiar with the testimony was from the other one. In order to try to bring this back to what he thinks the legal issues are. Mr. Cramer said Mr. Fitzpatrick, Frank Morris and Al Yodakis were already sworn in. Mr. Henderson had Mr. Fitzpatrick address the history of the property. He submitted an application to the Construction Official to repair the building after incurring over \$100,000 worth of damage after Hurricane Irene. Mr. Ratz responded to him stating he was to take the building out of the flood plane. He said if you have 50% or more damage that was the requirement. He obtained permits to raise the building and in order to get access to the building it was a requirement that he put in additional steps to the front. There is also a deck in the rear and that was also raised. That deck is attached to the house. He inquired what FEMA's position was on the raising the deck and he received an e-mail back from FEMA which Mr. Henderson passed around to the Board members, Mr. Cramer marked a letter from FEMA as Exhibit A-3. Mr. Henderson advised the Board to read the section on the first

page that addresses decks. Mr. Fitzpatrick had the letter from Sandy Ratz, Patrick stated the letter was written in order for Mr. Fitzpatrick to be reimbursed the monies for raising the elevation of the house. Sandy wrote this to confirm the 50% loss, the raising was done prior to that. The rear deck was always raised. Mr. Henderson had a photograph marked Exhibit A-5, it is a photo of Mr. Fitzpatrick's late mother sitting on the deck probably around 2002, it showed the deck raised two steps from ground level. The Fitzpatrick's purchased the house in 1998 and the deck was existing, it had three steps going up to the top but they put stone in the yard and the stone covered the bottom step. He is aware the neighbor to the north has objected to this deck, the reason being he can see down into her property. A photograph showing a tree which blocks the view of the neighbor's yard was marked Exhibit A-6. Mr. Cramer marked a photograph A-7 which is a poster board containing photographs of homes in the neighborhood with raised decks that are clearly in the rear setback. Keith then went over the T & M letter with the applicant. Board members asking questions or making comments were Mark Apostolou, and Patrick Callahan. Geoff in response to Mark Apostolou's concerns said Mr. Morris should answer Mark's question regarding materials used for the deck. Mr. Henderson said he would first finish with Mr. Fitzpatrick and then have Frank Morris testify. Next, Mr. Fitzpatrick identified pictures which were marked Exhibit A-8 which was a poster board with pictures of wide curb cuts in the neighborhood. The applicant said he has a net off-street parking of five cars. Mr. Henderson stated that the Resolution from 2003 was not acted on by its own terms, it was only good for nine months, it expired. What the applicant was willing to give and what the Board was willing to give no longer exists. John asked Patrick if it was determined that part of that work was done. Patrick said a garage that was going to be constructed was never constructed. Next, Mr. Henderson called the builder Mr. Frank Morris. Mr. Morris was sworn in at the last meeting. Mr. Henderson cross-examined him. Mr. Morris explained how a deck is build attached to a house, explaining the strapping procedure and girder system. He stated the deck was raised prior to his raising it to meet the height of the house. The current deck is attached to the house according to Flood Code. Mark Apostolou asked Frank Morris questions regarding the construction of the new deck and the previous deck. It was stated that the new deck is 46-inches to the top of the deck as stated by Patrick Callahan. Patrick said it is the requirement of the building department and the final elevation certificate for this deck puts the deck at one foot above BFE (Base Flood Elevation). The deck is a little bit lower than the house. Mr. Henderson requested to sum up his reasons for relief. He stated this is Land Use, too much has been made of this application, what's it about is whether this meets the standards set forth in the Municipal Land Use Act for Variance relief. In his opinion it does. He proceeded to state the criteria that have been met by this application. He said FEMA discourages break away decks and encourages attached decks. He said the higher you make a house to get out of the flood zone the more steps you need to get into the house, it's just common sense. The neighbor to the rear has the same thing with regards to the rear setback. With respect to the driveway there is no negative gain to be obtained in off-street parking and frequently that is the concern. You are not going to pick up any parking spaces here. What you are going to do is you are going to take potentially three cars and put them onto the Street with no more parking spaces. It doesn't make sense. Some houses in this area have curb cuts across the whole front of the property. First Avenue is one continuous driveway from North to South on the Beach side. Taking that away does not serve the public interest; it doesn't enhance

any purpose of the Zoning Ordinance and simply is just bad for the Town. Al Yodakis said for the matter of record, there was a question last time as to some of the numbers of lot and building coverage from the previous application with quite a bit of discussion. He went through those numbers several times, put them in his report, confident in those numbers, they almost exactly mirror the numbers Mr. Furey's report stated. Keith said the original Survey the measurements were all different than the new Survey and that's the inconsistency. Al said he is confident in the numbers in his report. Neil had a question for Al. For Community rating service and to reduce the Flood insurance rate for all the individuals of Manasquan certainly we encourage homes to be raised and to get them out of the repetitive loss area instead of the Federal Government to continue to pay for loss. When you do that obviously then like you said you have to raise your deck and your stairs. Your front stairs do not really show an impediment there because the entire structure and stairs are set back farther from the roadway than houses on either side as you look down the Street. Tech Review has made their visit there and we spent substantial time on site. As Mr. Henderson brings up the violation is not so much the elevation of the deck as it was elevated prior it's elevated again, but it's the rear setback that is of issue and the neighbor in the back has a deck that is elevated also. He has been down to the site numerous times to look at the parking area down the Street during the week time. If you look around onto the Glimmer Glass, properties that we have either approved either in the Glimmer Glass area, Stockton Lake Boulevard, Ocean Avenue, Beachfront and we have a prominent Architect in the audience tonight, people want outside decks and they are either elevated on the first floor or the second floor or the half-story. These decks allow people to be out there and enjoy the environment of the Beachfront on small properties. And what do you do, look down on your neighbor. This is probably a case of the neighbors being concerned someone can look over their fence, I don't know what the objective is to this property. We've been through this case, we have dragged this thing through the mud long enough, the applicant has spent substantial monies, TRC has met with the Zoning Officer and Code Enforcement over other properties that he is going to elevate and create the same situations. To bring Manasquan into compliance with the things we need to do to get these houses elevated and comply with flood we are going to have these issues. We all have to work together on these things; it's not a major catastrophe. What has generated all the big issue of this property? Maybe the whole file that was brought up the last time which is null and void should have put in for destruction and it wouldn't have been a fact of evidence at any point in time. This is a simple application that was just blown out of proportion and I would hope the Board would on this as a favorable condition as a substantial improvement. Mistakes were made but they were all rectified here before us. Mark asked about wind force and water building code that is adopted by FEMA. Al said he wouldn't expect Mr. Morris to know those, those are standards incorporated into the building code and as long as he is meeting the Building Codes for this area he is meeting all of those. The Construction Official and Building and Fire Official review that for compliance. Mr. Morris has complied with everything. Patrick Callahan made a motion to open the meeting to the public, the motion was seconded by Neil Hamilton, all in favor none opposed. John Burke asked the audience not to reiterate what had been said at prior meetings.

Audience Members Coming Forward:

Daniel Carey – 52 Second Avenue – He asked Mr. Morris about the deck in the front and the deck in the rear. Mr. Carey had an exhibit he asked to be marked, Mr. Cramer

marked it Exhibit O-1. He also had other items marked O-2 and O-3. The consisted of pictures from the Tax Department of the house in question. He also had a list of permits that were taken out on the property for work on the property. It was concluded that the work that was done at the property did not require Variance relief and was therefore able to perform the minor work with the permits that were attained. He addressed the seven foot setback and the fact that the applicant should not have been allowed to encroach the setback. He also said the property is over built. Mr. Henderson is questioning Mr. Carey said the Survey he obtained from the Tax Office is not correct. Also, steps are allowed to encroach into the front setback as stated by Mr. Morris.

Fred Bostel – 48 Second Avenue – he lives four houses north of where Mr. Fitzpatrick lives, he is here with his wife Arlene to speak in support of this application. He was going to write a letter for a previous hearing on this but was informed it would not be admissible. He then proceeded to read the letter he wrote. His letter expressed his support of the application.

Neil Hamilton made a motion to close the public portion of the meeting, the motion was seconded by Patrick Callahan. Keith Henderson gave his closing statement.

Joan Harriman made a motion to approve the application, the motion was seconded by Neil Hamilton.

Board Members Voting Yes to Approve the Application:

John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Peter Ragan, and Mark Apostolou conditional as he would reduce the one curb cut.

APPLICATION APPROVED

Let the record show that Mayor George Dempsey has joined the Board – 8:10PM

APPLICATION #18-2012 – McKean, William and Maryann – 506 Brielle Road - Block: 175 – Lot: 6 – Zone: R-2 – Mr. Henderson is the attorney representing the applicants. Mr. Cramer found the file to be in good order and accepted jurisdiction. He swore in William McKean and also Al Yodakis. Mr. Henderson said this property is on notorious Brielle Road, this is another property that experienced damage during Hurricane Irene. Mr. McKean gave a description of the property which he has owned since 2007. It's a 1920's vintage Dutch Colonial two-story home. It had a one-story rear addition prior to his purchasing the property. They had damage from the hurricane and after exploring options how to address getting it out of the flood zone, they have existing non-conformities on the property being front, side setbacks and also building coverage. Accessory use variances required also. They want to add a rear story addition with a second floor and raise the house out of the flood zone. TRC recommended moving the house to the east to eliminate to eliminate the westerly side yard encroachment. Mr. McKeon said doing this they would not have access to the garage. Mayor Dempsey questioned measurements on the plans and the fact that they were very difficult to read as to the size of the print. He requested in the future the board members be given plans that are legible. George's issue was with the height of the building. Mr. Henderson addressed the Zoning Officer's denial letter. A front yard averaging was submitted as Exhibit A-1. Mr. Henderson gave his argument why this application should be approved. Mayor Dempsey made a motion to open the meeting to the public, motion seconded by Patrick Callahan, all in favor none opposed.

There were no audience members coming forward. Mark Apostolou made a motion to close the public portion of the hearing, Peter Ragan seconded the motion. Mayor Dempsey asked that in the future applicant's bringing larger plans so the members could read them. Mark Apostolou made a motion to approve the application as presented, Joan Harriman seconded the motion.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Peter Ragan, and Mark Apostolou

APPLICATION APPROVED

The Board called for a five-minute recess, all in favor none opposed.

ROLL CALL FOLLOWING RECESS:

Board Members Present:

Mayor George Dempsey, John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Peter Ragan, and Mark Apostolou

APPLICATION #16-2012 – Attardo, Anthony and Tracy – 390 E Virginia Avenue – Block: 137 – Lot: 3.01 – Zone: R-2 – Chick Gilligan is the Engineer attending with the applicant to give testimony. Mr. Cramer swore in Anthony Attardo, Dominick DeJoia/Construction Company representative, Charles Gilligan/Engineer and Al Yodakis/Board Engineer. Mr. Gilligan was the first to give testimony. He said the clause in the Manasquan Ordinance that says pools have to be one-foot above seasonal high water and this pool is about 2.1-feet into the seasonal high water. Mr. Yodakis has also pointed out that there is an additional Variance regarding the driveway width, 20-feet max, 22-feet exists. That's an existing condition, moving that driveway would be a hardship for the Attardo's. The pool is 14 X 28 in ground pool, approximately 4 to 4.6-feet deep, it will be surrounded by brick pavers set in a sand base, which as far as Manasquan is concerned is considered a pervious surface. In addition to that will be a small conforming storage shed in the upper North West corner of the site, that has 3-foot setbacks from both the rear and side property and is less than 100-square feet. In addition to that there will be some modifications to the decks as you walk up from the house, you will go onto a landing and then go down a set of stairs to the brick paver area. We are proposing an 8-inch perforated pipe surrounded in clean stone and a filter fabric. His rationale for the design of that is as follows: he took the area of the pool which is 14 X 28-feet, through the borings they found there is about a 16-inch layer of sand that actually had water in it. He took that water said ok I'm going to make that up in storage in the pipe, in addition to that he allowed for a 1-inch runoff of all the brick that surrounds the pool. So the volume of the 1-inch runoff was the volume that we're displacing with the pool, he has created enough volume in the pipe and the stone to match or counteract what we're losing by putting this pool in the ground. In addition to that, the pool actually itself acts like a replendementation basin it probably has 6 to 8-inches above the water level to the coping, again that water is now taken out of the equation as to what came off the site pre-development, it will stay in the pool. He next addressed the T & M report. The letter outlines the two Variances they are asking for regarding the drainage and also the driveway width in the Residential Zone. Item 2 which is miscellaneous, he suggests that the applicant discuss the groundwater impacts installing the

pool within the water table. Chick feels he has explained how he mitigated that using the drainage system around the site. This system has an overflow, it completely circles around the pervious pavers and there will be a discharge that takes you out to East Virginia Avenue, so if that water ever builds up to a point it will relieve itself out near Virginia Avenue would flow under Virginia Avenue in a northerly direction about 75-feet away is a catch basin at Jackson and E Virginia. That is only in the case where that system would over flow. There were questions regarding constructing the pool, there will be dewatering of the pool area to construct the pool. The applicant has also talked to the neighbor to the rear about access to the site to get in with equipment and whatever materials have to be brought in to construct the pool and verbally they have come to an agreement to have access from that property to the rear. Chick said they are trying to keep the pipe as shallow as possible and keeping it above that level of the impervious clay layer, it will be in a sand layer so there will be the ability for that water to move laterally within that sand layer. The water will drain from the pool in a radial direction, all directions which means it will go toward the house. He discussed with the contractor and what they will do is pull that drain about 4-feet off the house to match the landings so the continuous drain will be about 4-feet off the house so the house will pitch 4-feet to that drain and the pool will also pitch. We will make that revision to show that slotted pipe to be about 4-feet from the house. Chick argued this is a C-1 and C-2 Variance. He pointed out there are pools on both properties next to the applicant. John Burke asked Al Yodakis to go over what Chick said. Al said his concerns here and probably the Board's because they have taken a pretty hard look at pools. There have been some problems in the Borough in the past where pools have been put in and it has affected adjacent property owners, where we've had flooding in the basements in the past. He asked what are your opinions of groundwater in this area and groundwater flow. The second part of that, you mentioned there are two in ground pools adjacent to this, do you know the depth of those and if there have been any impacts from those pools? Chick said he did the one immediately adjacent to this site and it is a little shallower, it might be 3-foot, 6-inches. We did that about two years ago, he has talked to that owner he said he has seen water come out of his emergency flow off once, so the system does work. It does overflow to his front lawn and then goes into E Virginia Avenue and Chick feels it is successful. As far as basements are concerned, he would be surprised if anybody has a basement in this area with water being at 2-feet. One of the choices here would be an above ground pool which kind of flies in the face of the NJ Flood Hazard Act. They really don't want above ground storage taken away. This area would flood potentially to a couple of feet of actually above grade. An above ground pool would take away from that storage area. Al asked if he recalled what the boring showed on the lot next door to this property. Chick said he did a boring and also Jonas Henderson did a boring. They are identical soils, from about 2 to 3-feet you have like topsoil, sandy material, and then you have down to 6-feet is a really black, dense silky clay, that really acts like a liner to where the water can't get down. He has done borings down the Street on Pine almost all the way down to the railroad tracks and compared the true elevations and that's where the water is. Al said that's what he would expect in soil types as well. He doesn't recall but he thought they did a pool in this area that was slightly raised out of the ground, it was an in ground pool but we raised it up about a foot. Chick said this is raised up about .4-feet so we've got about 5-inches this is raised up above grade; they would like to keep it like that. Al asked if it is necessary to be at 4.6. Chick said that's not really that

deep of a pool, he asked the applicant to address that. Mr. Attardo said if it's a point of contention it's not necessary to be 4.6-feet. Al said he would like to hear Pat and Neil's input as well, they are more familiar with the houses in this area than he is. Pat said the adjacent property was two years ago, it was raised up around a foot above grade. Chick actually had that plan. Neil said he wasn't on the Board when they approved the one to the East. He was part of the development of the Ordinance that we put together for having in ground pools at a foot above base flood elevation certainly in that area for impact. You bring up a good point; well the houses here don't have basements. By approving these applications, is this Board setting a precedent, even though you are coming up with an elaborate exterior drainage system of some sort. If you did have basement within the perimeter of another location on Pine or wherever, in my estimation not being an Engineer and Al can bear me out, we've been through this, it's going to push water into those that have basements. This is what started this whole idea, when Council put this Ordinance together to eliminate this problem. He disagreed with Mr. Gilligan regarding above ground pools drawing water. An in ground pool has a 6-inch lip to draw water when it rains. He would think an above ground pool would have a 6-inch lip that would draw water when it rains as well. Chick said he is talking purely from stealing flood storage, an above ground pool takes 100% volume, and the water is not sharing the spaces between sand and garrulous. I'm talking about a serious flood, to where the water is actually a foot, two feet above grade. You are taking away that storage with an above ground pool. In a flood zone you have a crawl space with relief vents so that the water can get in and actually doesn't take away from that storage, because the water goes into the crawl space and is temporarily stored. An above ground takes away. It's kind of a different problem. Neil said he is thinking we put this in place for a specific reason and if we're going to start to circumvent it through elaborate engineering devices, whatever the Board does with this application tonight, this Board better sit down again with the Council Committee and hash this out with Al and say do we want any more of these? Make it clear to those that buy homes in these areas that pools are not going to be permitted in ground. George Dempsey said he is thinking about the Pine Avenue problem. Neil said a lady who lived there forever and had a dry basement and she had three pools that went in her adjacent properties, she was on a corner and now she's got two sump pumps running 24/7 we can't correct the problem there. We ended up down there doing road work and paving to try to drainage that Street which we did to move water. George said we ended up piping it. Neil said not to take issue with this applicant because he may have bought this property saying ok there are two pools here, I can have a pool too. But whatever this Board decides to do tonight we need to go back to the drawing board and maybe nip this in the bud. Chick said this isn't really an elaborate design, it takes care of a couple of problems, these lots are very flat, there is drainage in the rear and also the additional storage that we're losing from this swimming pool going in. Looking at the adjacent one it was 6-inches above grade, it wasn't raised a foot above the existing grade. Al asked how far down into the water table was it? George said they would be 3.3 in the ground if they are 6 out. Chick said that's about right. Chick said they are about a foot higher than we are; they are still in the water table, about 9-inches to a foot. The pipe system was similar; they had room to do a larger volume pipe to the rear and then a smaller pipe. He took this and made it an 8-inch pipe and used it everywhere so we've got volume. The percolation is happening at multiple points rather than really concentrated at one location. Chick said the neighbor came for the same

Variance. Al looked at the design of the pool that was approved two years ago. Al feels this pipe size should work better. Board members asking questions were Mark Apostolou and Joan Harriman. If the water fills up that entire system, water is going to reach the lowest point and come out and that lowest point is in their front yard. George said the curb line that was put in on E Virginia was done because the area is so flat we couldn't hold to grade just black topping it but when they put that L shaped curve in that gives us a slight pitch so water would go to the storm drain. Chick said if there is water in the pipe hydrostatic pressure is going to push it up and out. Al said he wouldn't feel comfortable if we were in an area that had basements, dealing with this type of situation. He would not recommend that to the Board, the only reason he thinks this has a potential to work is that we don't have basements in this area and we have an example of a pool that's working next door that has worked and we are making accommodations for the system. John Muly made a motion to open the meeting to the public, the motion was seconded by Patrick Callahan, all in favor none opposed.

There was no audience participation.

Patrick Callahan made a motion to close the public portion of the meeting, the motion was seconded by John Muly, all in favor none opposed.

George Dempsey made a motion to approve the application as long as it's 6-inches out of the ground with Chick's drainage system and a total depth of the pool including the outer ground 4-feet. The motion was seconded by Mark Apostolou.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Patrick Callahan, Joan Harriman, John Burke, Peter Ragan and Mark Apostolou

Board Members Voting No:

Neil Hamilton

APPLICATION APPROVED

Chick added at the end that George had mentioned that the other pool was a 4-foot total to the top of the coping, the water depth and then the coping is probably going to run 6-inches, so the adjacent pools water depth was 3.9-feet and then you typically add the entire depth is a little bit below the coping, he doesn't want that to be confused because he thinks we are agreeing to a 4-foot water depth and we are coming out of the ground an additional 6-inches, so we are kind of changing our overall grade by about a foot.

APPLICATION #16-2012 – Coffey, Kevin – 574 Marlin Avenue – Block: 182.02 – Lot: 9 – Zone: R-3 – Geoff Cramer swore in Kevin Coffey – owner/applicant, Tom Peterson – architect for the applicant and Al Yodakis T & M Engineering – Planning Board Engineer/Planner. Mr. Coffey gave some history of the property and explained what he intends to do. Tom Peterson had pictures to pass out, Geoff marked the two sheets as Exhibit A-1 – they consisted of four separate pictures, two of the existing house, and the second page pictures of a house next door and one two doors away with a covered front porch and page three was an aerial view of the house. He explained the applicants want to demo the house that is there and re-build the house which is at the corner of Marlin and Timber Lane. The property is conforming and they plan to build a two and one-half story conforming structure in every respect. The covered portion of that porch in the front would not conform. The other porch is further into the front yard setback than what we are requesting. That has a 16-foot setback off of the front property line; we are proposing

to be 19-feet. The other house is Block: 182.02, Lot: 13 for the record. The front porch is just a part of the flavor of Manasquan and shore homes in general. He considers this a C-2 Variance. This will be a new structure all in compliance with Building Codes and Flood Zone requirements. He addressed the TRC report which Neil Hamilton commented on. They asked the porch not be enclosed. They also asked the shower could be brought closer to the rear door. They were ok with the parking but asked that it be stoned and marked out to meet the status of the Borough Ordinance and not replace the curb which would create a tripping hazard. Tom said they agree with all of this, the porch will only extend out to the covered porch which would be at the 19-feet. They just don't want the shower door to swing out and hit the door on the house, but they will comply with that and move it over 4-feet. The mechanicals will be outside of the 5-foot setback. Board members asking questions were Mark Apostolou. Mark made a motion to open the meeting to the public, the motion was seconded by John Muly, all in favor none opposed. There was no public participation. A motion to close the public portion of the meeting was made by Mayor Dempsey; the motion was seconded by Mark Apostolou, all in favor none opposed. Neil Hamilton made a motion to approve the application with the stipulations submitted by the Technical Review Committee, the motion was seconded by John Muly.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Peter Ragan and Mark Apostolou

APPLICATION APPROVED

RESOLUTION #11-2012 – ARJHAN, LLC – Baghari, Kaz – 530 Brielle Road – Block: 176 – Lot: 8 – Zone: R-2 – Mark Apostolou made a statement that there were so many hearings and so many dates, he feels the concluding paragraph should state a date of the revised Site Plan be included in the Resolution, as there were about four or five Site Plans submitted. The final one that incorporated all those changes that the Board liked should be noted. Mr. Cramer will make the correction to the Resolution. Neil Hamilton made a motion to memorialize the Resolution with the change, Joan Harriman seconded the motion.

Board Members Voting Yes:

Patrick Callahan, Joan Harriman, Neil Hamilton and John Burke

RESOLUTION MEMORIALIZED

Minutes of Tuesday, July 10, 2012 – Regular Meeting – Peter Ragan made a motion to accept the minutes, motion seconded by Joan Harriman, all in favor none opposed.

MINUTES APPROVED

Minutes of Tuesday, August 7, 2012 – Regular Meeting – Neil Hamilton moved to approve the minutes, motion seconded by Joan Harriman, all in favor none opposed.

MINUTES APPROVED

Mayor Dempsey made a motion to approve the vouchers; the motion was seconded by Peter Ragan, all in favor none opposed.

PAYMENT OF VOUCHERS APPROVED

Next Mr. Furey came forward to give a presentation regarding a situation regarding FEMA and the fact that they are giving grant money to raise homes to applicant's who have sustained substantial damage to their property due to flooding. He told the Board they have at least three possibly four cases coming forward in the very near future to raise their houses. Two of the three houses have pre-existing conditions, they either encroach into the front yard setback, or the rear or side yard setbacks. He asked for direction from the Board if these applications could be handled administratively. The worse case would be to present it to TRC and have Tech make a recommendation. The Fitzpatrick case was a unique application in that there were some work was done there without necessarily getting a prior approval. Had they approached us several months ago, we would have had this discussion six or seven months ago. Board members asking Dick questions were John Burke, Mayor Dempsey, Mark Apostolou, Peter Ragan, and Joan Harriman. Dick said Federal Law supersedes BOCA Law, when the application comes in even though there is a pre-existing setback violation for the house, they permit the house to be raised. The situation we are encountering now is we are going to have multiple violations, front, side, rear yard and possibly a height issue too. An existing house that might be close to the 35-foot maximum building height now which is below the base flood elevation, if that house is going to be raised it might have to be raised two or three feet to get it above the base flood elevation which brings us up awfully close to that maximum height of 38-feet before you have to go for a Use Variance. Dick said what we want to do so we can expedite these cases is find out what we can approve administratively. George asked if Dick was sure about the Federal Law supersedes BOCA. Dick said yes, Sandy and he talked about that years ago. John asked Dick if any of those he is looking at any that have a height issue and Dick said no. John said what if anything that has any kind of an issue goes to Tech Review. Dick said we could do that but we'd like to be able to do it in an expeditious manner, rather than wait for a regular Tech meeting if when we get an application get Tech together, go down and do a site inspection and make a recommendation. John Burke said he doesn't see any problem with that. Dick said Tech could make a determination to approve it administratively. George said so you're saying if a house has 50% building coverage, 60% lot coverage and he has to raise it up, he doesn't need a Variance. Dick said correct. Dick said so many properties have rear decks also, can we be permitted to raise that rear deck above the BFE without having to come before the Board, providing they don't expand it in any way, shape or form. John Burke said if this is approved administratively and there is a height issue with say the deck, there is no recourse for the next door neighbor to offer a complaint that these people are going to be looking right into my backyard. Dick said if there is not a pre-existing zoning violation they can raise that deck. John said but what if there is. Dick said that's one of the reasons why I'm here. There was discussion amongst the Board members regarding due process, height, variances. Al said it sounds like you are allowed to raise the house even if it has Variances, as long as we don't go above 38.5-feet, but in most cases people are not going to be raising the deck, they are probably going to be building a new deck, it's pretty hard to jack a deck like you would a house, so I would think that most of the Variances are only going to apply to new decks that people are going to be building. In essence if somebody is going to be raising a house, even if it has Variances you have the authority to approve it unless they have a deck issue or unless it's above the height. Dick said if a house is raised above the BFE, it's going to go up to approximately 4-feet above grade, which means that they have to raise the front stoop or

porch, and if they have a deck in the rear they have to raise that too. Because, like with the Fitzpatrick application it's not really safe issue to have somebody to come out and have to take steps down onto the deck, we would rather just have them walk right out onto the deck. The question is if there is a pre-existing violation on the existing deck can we have them remove that deck, there was discussion amongst the board and Dick couldn't be heard. There was a lot of discussion among the Board members regarding pre-existing Variances granted by the Board, steps encroaching into setbacks. Geoff said every case is going to be different, he thinks the Board should proceed very cautiously. John Burke said but how we're going to look at them is what we're talking about. Geoff said he understands, Dick is looking for an opportunity to administratively handle some of these situations, that perhaps shouldn't come to the Board. George said he thinks kind of scary and Geoff agreed with him. He said you have to act very carefully because the Board has a certain quantum jurisdiction and if you surround the jurisdiction without an Ordinance in place to justify it you have a problem. Mark said and what he sees is the due process. Al said or we need to have an Ordinance that sets the standard. Mark said the problem with developing an Ordinance is you are going to be bound by Judge Lawson. It's going to be an issue. George said we have to talk more about this or have a special meeting for it where you can spend some time on it. Mark said we should continue with the status quo until such time as the Board can ponder any changes. John Burke asked if we want to officially ponder it on October 23rd at the Special Meeting, that's our last Special meeting until January. We don't have one in November or December. George said trying to do it at the tail end of a meeting you're rushing; you're not going to give it enough time. Dick said between now and when we have the formal meeting Tech could look at it with Al and/or Geoff and hash it around and try to come up with a policy and then formally submit it to the Board. John Burke said do we want to have a Planning Meeting on October 23rd. George said he doesn't want just two or three guys making decisions like this. John Burke said they can make a recommendation to us and we can hash it out, the whole Board. Neil said he doesn't see this happening, our thought was on this, individuals are getting some FEMA money, up to \$30,000 to raise a house. Just to get a bungalow up in the air runs around \$45,000, so to encourage an applicant to take that money and get that house elevated, certainly it helps Manasquan and it's CRS rating, but then if you are going to say to the guy now you are going to need another \$2500 minimum just to get to the Planning Board so you take your decks with you. He may if he's on a limited budget and he does live there say what my incentive is, just let the government bail me out every time I get flooded. That was our thinking to bring this to light, but not to create a hardship but maybe find a way around it, but frankly I don't think there is a way around it. Mark said maybe we could charge a lower fee and throw that incentive to him. Neil said but to bring the neighbor's into play he still has to notice and then he is going to still have to pay Al to look at it, Geoff's got to be paid for a Resolution, so the cost is going to go up anyway. John Burke said with all the things brought up tonight, he doesn't see any way around that. The idea is right Dick if we could take care of it administratively but with all the things brought up tonight I don't see how we can do that and feel safe. Patrick asked Al if he has run across this in any other Towns and Al said he hasn't but he will ask some of the guys in the other Shore Communities. John Burke said instead of scheduling a meeting in October why don't we address this at the end of the first meeting in October and if it looks like we

need a big discussion on it then we will schedule it into a Special. George said they would have a month by the end of October so it was decided to keep it on for the Special Meeting.

John Muly made a motion to recommend Ordinance #2119-12 be passed back to the Council for adoption, Joan Harriman seconded the motion.

Board Members Voting Yes:

Mayor George Dempsey, John Muly, Patrick Callahan, Joan Harriman, Neil Hamilton, John Burke, Peter Ragan and Mark Apostolou

Geoff Cramer will put something in writing to submit to the Clerk for the Council.

BOARD APPROVED UNANIMOUSLY THE ADOPTION OF ORDINANCE #2119-12

Mark Apostolou made a motion to open the meeting to the public, the motion was seconded by Joan Harriman, all in favor none opposed.

There was no public participation.

Motion to close the public portion of the meeting was made by Mayor George Dempsey, seconded by Joan Harriman, all in favor none opposed.

John Muly made a motion to adjourn the meeting, the motion was seconded by Peter Ragan. All in favor none opposed.

MEETING ADJOURNED AT 10:23PM

Respectfully Submitted,

Mary C. Salerno
Planning Board Secretary