**The Manasquan Planning Board held a Special Meeting on August 15, 2017 at 7PM in the Council Chambers of the Borough Hall, 201 East Main Street, Manasquan, New Jersey. Chairman Neil Hamilton asked everyone present to please stand and salute the Flag.**

**ROLL CALL:**

**Board Members Present:**

**John Muly, Robert Young, Greg Love, Mark Apostolou, Mark Larkin, Leonard Sullivan, Kevin Thompson, and Neil Hamilton**

**Board Members Absent:**

**Mayor Ed Donovan, Councilman James Walsh, Peter Ragan, John Burke, Barbara Ilaria**

**Professionals Present:**

**Al Yodakis – BORO Engineering, Planning Board Engineer/Planner**

**Geoffrey S. Cramer – Planning Board Attorney**

**Geoffrey Cramer read the Open Public Meetings Act Statement.**

**This is a continued application from July 25, 2017, Neil Hamilton explained that this meeting was carried and Mr. Thomas will give his testimony and we have interested parties in the audience who have been coming to all these meetings. He said he looked up his notes and this process started November 21, 2014. Here we are in August 2017. It’s been over two years we have been carrying this application. We want to hear from the folks in the audience. The other item is the Use Variance which is the crux of this application. Without approval of the Use we cannot move forward. Mr. Middleton’s testimony from his planner, we will go to the audience, we will come back to the Board. Neil told Mr. Middleton and Mr. Thomas they could sit at the table with Mary. Geoff Cramer swore in Andrew Thomas, Professional Licensed Planner, the Board accepted his credentials. He was retained in this matter to provide Planning testimony regarding the subject application. He described to the Board how he visited the site, reviewed the Zoning Ordinance, the Master Plan, the application, the Site Plan and the Subdivision maps that were provided by the applicant, and also the review letters. He also has some exhibits that he prepared, one is an aerial photograph of the site and surrounding area and this is an NJDEP Aerial from 2015 that highlights the area of the proposed 5-lot subdivision within the Atlantic View Cemetery. The existing zoning for the property is in the R-2 Zone, the surrounding uses as you see along Forest and Gardeners Lane are existing single-family residential uses. Forest Avenue dead ends and provides no turn-around area. There are three existing lots that access Forest Avenue at that location. The right-of-way of Forest Avenue is 40-feet; the pavement width is approximately 30-feet at that location. This is an undersized right-of-way. A typical right-of-way is 50-feet and the Manasquan Borough Code requires a 50-foot right-of-way. He will go into that in more detail as he gets into his testimony. He added the area of the proposed 5-lot subdivision in a yellow area; you can see the dividing line between the Borough of Manasquan and the Township of Wall which would be just northwest of the Mausoleum toward the top of the Map. The buffer area to be removed and that’s the area of the subdivision is heavily wooded along Forest Avenue and as you move toward the Mausoleum there is only a large handful of trees, the thickest part of the buffer is actually along Forest and then the result of this would be a clear cutting of that particular area to make way for the 5-lot subdivision, so there would be a clear view from the existing residential uses along Forest right across the Street toward the Mausoleum. He reviewed the Master Plan, the Land Use Plan designates this site as a PS area, that’s a public and semi-public area and that was from the December 1991 Land Use Plan element. Permitted uses in the PS designation include Municipal facilities, Volunteer Fire and First Aid facilities, Churches and Cemeteries, school and school related property and other similar Government or private uses. So, the proposal to carve out this portion of the Cemetery for residential uses would therefore not be consistent with the Master Plan designation. He doesn’t suspect it was ever contemplated by the Planning Board that this particular site would be developed for anything other than a cemetery use. Certainly not for residential use. From a Planning perspective he thinks that’s significant. This application requires a Use Variance, it’s a D-2 Use Variance, the applicant is seeking to expand in size or intensity a pre-existing non-conforming Use or structure and in this case the residential uses are permitted in the Zone but it’s the intensity of the use that’s being expanded with the removal of the portion of that part of the cemetery for another use, thereby eliminating the buffer to the proposed Mausoleum and also the office building that’s being expanded. Another D-1 Variance would be required because there would be two principal uses on the property, you would have the Mausoleum use and the second use would be the office with the grounds keeper’s residence. Under Section 35-11.2 the Ordinance requires only one principal building on the property. For a Use Variance under the positive criteria the applicant has to show special reasons for the Use Variance, if it’s inherently beneficial, which this is not, that the property would suffer undue hardship, he doesn’t think that’s a special reason. The third reason would be where the use would serve the general welfare because the proposed site is particularly suitable for the proposed use. He said under particular suitability the NJ Supreme Court held that a showing of the positive criteria is site specific. This means the applicant has to show that the proposed use is peculiarly fitted to the particular location for which the variance is sought. Tim Middleton said so that would refer to both the office with the groundskeeper residence and also apply for the five proposed homes. Is the area where the five homes are being proposed particularly suited for those five homes? Mr. Thomas said the Court requires that the applicant demonstrate that. That the particular property developed for the proposed use serves the general welfare. So, the Board has to make findings that the subject property is distinguishable from the surrounding sites over in this case the actual area of the location within the cemetery. His opinion is that there is nothing that makes it appropriate for a portion of the site to be carved out for a five lot residential subdivision and the addition of an office building, which would be an increase from what is currently there. The area that is being carved out for the subdivision acts as a buffer area to the Mausoleum and also the office and also the proposed small parking area around those two uses. If you remove that buffer is problematic because the vegetation is very heavy along Forest Avenue, it’s providing a good buffer to those houses to the Commercial Use which is the Mausoleum. There is also a greater impact at the location because of the elevation change. At Forest Avenue, the elevation is approximately 25-feet and then the elevation rises as you go from Forest Avenue toward the Mausoleum. That’s an elevation of about 35-feet. The cemetery sits effectively on a small hill and the effect of that is that the Commercial building will be somewhat more impactful to the residential uses. He cited Razberry vs. Kingdom Township, which says a reduction in the size of the property occupied by a non-conforming use and in this case the cemetery, with a result in the decrease of the buffer is just as likely to increase the conflict between a non-conforming use and the surrounding conforming uses. That’s really what the case is here and this application. What we have here is both a small increase in the commercial office building and a decrease in the buffer area, both of which act to increase the non-conformity. There really is no turn-around currently on Forest Avenue. This would be a greater issue if additional residential uses are added to the area. The effect of adding additional residential lots is that it’s increasing the intensity of Forest Avenue; there are three lots there right now that access this. You would be increasing that by five more for a total of eight. I also mentioned this is a substandard Roadway as far as the right-of-way width, parking is provided along the Street, he has photographs to show what that looks like currently. He submitted a series of six (6) photographs on three (3) separate boards, Exhibit O-3 is the aerial map, 2015 NJ DEP prepared by his office on May 15, 2017. Exhibit O-4 taken by his office on 8/14/17 , two photos taken by his office yesterday that show is a view of the NE towards Forest Avenue. At the bottom of the page is a closer view looking at a number of cars parked within this particular area. This is very typical what it looks like out there as he has been there a few times in the past few months. O-5 is the next two sets of pictures, photo #3, #4 - #3 is the very end of Forest Avenue and it’s also the beginning of the driveway of lot 28, Block 6.01 which is 34 Forest Avenue. When you are at the end of Forest Avenue the driveway for that lot goes straight down. That is an issue when you are turning around and do a K-turn you are essentially backing down someone’s driveway. Photo #4 is looking northwesterly at the intersection of Forest and Gardner’s Lane, so if you are standing on Gardner’s Lane this is looking at the buffer area that will be taken down as part of the 5-lot subdivision. Photos #5 and #6 the top photo is looking north, you can see a number of grave stones at the edge of the proposed subdivision, the last photo #6 looks south easterly along Gardner’s Lane and this is what the existing neighborhood looks like. There are houses on both sides of the Street and sidewalks on either side of the Roadway. One of the provisions was that the applicant provide a 19.5 X 30-foot easement for a turn-around, the problem with that is that when you are doing that and you are backing out you back into the existing residential driveway that is going straight down. That creates a circulation conflict. The Police Chief provided a review letter, it was not dated. He had a number of concerns with that particular area, especially with First Aid calls; he said building five additional homes and the cars that would be associated with those homes would further congest that area. He also said at a minimum an adjustment would have to be made to either prohibit parking on one side of the roadway for the length of Forest Avenue or as an alternative or an addition then parking on one side and widening the roadway and adding a cul-de-sac at the end of the roadway. There is no cul-de-sac proposed at the end of the roadway, no widening of the Street is proposed. The applicant is providing a 10-foot road widening easement but is not offering to widen the road but looking to the Borough to widen the road if at all in the future. This easement will go along all five lots, but that’s only an easement so what that means is if the Borough exercised its right to use the right-of-way for either sidewalks which are again provided throughout the neighborhood on both sides or for a roadway expansion the effect would be that the residential lots would become a substandard lots. So right now they are 5,000-square feet, if the Town needs those extra 10-feet in front of each of those lots they would then become basically 4500-square foot lots. Instead of a building setback of 27-feet now you would be 17-feet where 25-feet is required. The maximum building coverage, lot coverage would be impacted. The other problem is there appears to be a drywell located within that easement; it’s about 8-feet from the proposed lot line right now. The applicant is not proposing sidewalks to his knowledge. Getting back to the Ordinance as far as the Streets are concerned. The right-of-way is 40-feet it should be 50-feet, it’s substandard under Section 32-16 of the Ordinance. He read the Ordinance out loud. He then quoted from Section 32-16.1a3e. Mr. Starkey interrupted stating he thought the Board wanted to hear Use Variance and then Site Plan. Neil Hamilton said he didn’t know what Mr. Thomas was going to come in with. He asked Mr. Thomas to wind his statements up. Mr. Cramer said we will finish with Mr. Thomas, Mr. Starkey can cross-examine and then we will open to the public. Mr. Starkey said the problem is we are getting into Site Plan which we have not yet had an opportunity to address. You are hearing testimony now from the Objector on the Site Plan aspect of this application. Mr. Cramer said the Objector’s testimony addresses special reasons that the applicant is required to demonstrate that this Board should consider a Use Variance. Mr. Starkey said in talking about sidewalks turn-around and such is Site Plan. This is evidence, information that he intends to get into in our testimony, but the Board said you don’t want to get into that yet. And you let the Objector get into it. Mr. Cramer asked Mr. Starkey if he was going to re-call Mr. Carpenter to provide special reasons and Mr. Starkey said he did testify to the special reasons at the last meeting. Mr. Middleton said he would like to finish in all due respect. Mr. Starkey said the Board has set a sequence here so we are trying to abide by the sequence the Board has set. Mr. Middleton said he disagrees, he doesn’t know how you can discuss this matter without at least overall looking at the site. Mr. Hamilton said he would like to see Mr. Thomas finish up, we have heard so much about this for two years, we have all seen the site, we all understand the issues out there. So, do your best to get to the point of this so we can digest that information. Mr. Thomas said let me get to the special reasons the positive and then the negative criteria. There is just one other thing in the Ordinance and that is the Affordable Housing Regulations, 35-38.a2 requires that all developments of five or more units shall provide an affordable housing unit. To his knowledge this has not been provided or addressed by the applicant. Mr. Starkey said he addressed that at the last meeting, Affordable Housing is not within the jurisdiction of this Board. We have complied with whatever State Law is. It is Mr. Thomas’ opinion there are no special reasons where granting of these variances would reasonably serve the general welfare. In his opinion the development would not meet applicable purposes of the MLUL, he proceeded to name the sections and why he feels this way. He believes the neighborhood would be negatively affected by the application. The proposal only enhances the interest of the developer. He addressed the negative criteria. He then summarized his testimony. He stated he doesn’t believe the Board should grant approval for this application as the positive and negative criteria have been proven and he doesn’t believe that has been done. Mr. Starkey cross examined Mr. Thomas. Mr. Starkey asked if Mr. Thomas was present at the last meeting where Mr. Nikola one of the principals of the cemetery gave testimony. Mr. Thomas said he was not present at that meeting. He asked if Mr. Thomas is aware of the NJ State Cemetery Act in regulations allow for graves to be constructed or internments to be done without the Cemetery seeking Municipal approval for those graves. Mr. Thomas said yes. Mr. Starkey said so you are aware that those trees, the buffer at some point could be removed by the Cemetery for purposes of putting in graves. Mr. Thomas said he guesses it’s possible for that to happen, he is not so sure it’s practical, but it’s a possibility. Mr. Starkey asked if Mr. Thomas was aware that the applicant has proposed a 10-foot conservation easement in fact a buffer around the edges of the proposed subdivision. Mr. Thomas said yes except that that’s where the drainage is going to be taking place. Mr. Thomas said he is not familiar if vegetation could be placed over the drainage area. Mr. Starkey pointed out photo O-5 the bottom photo and the view, he said he believes Mr. Thomas’ testimony was on the other side of Forest the existing homes, if that vegetation was removed will then have to look at the graves or the Mausoleum that was there, correct? Mr. Thomas said yes. Mr. Starkey said are you also aware that there are five two-story homes that are proposed to be constructed in that area. Mr. Thomas said yes. Mr. Starkey said so then the view they would have wouldn’t be of the Mausoleum, it would be of the homes across the Street. Mr. Thomas said the view would not be vegetation anymore, it would be homes and he would imagine you would be able to see through those houses because the vegetation has been clear cut, not only in the area of the proposed subdivision but also behind that as well. Mr. Starkey asked who told him that vegetation would be clear cut. Mr. Thomas said he would imagine that you would have to in order to install the drainage that you are proposing. Mr. Starkey said would you imagine that even it were removed vegetation could be placed behind there as well. Mr. Thomas said 20-feet behind the subdivision that may occur. You also talked about a D-2 Variance that the Cemetery Use would be intensified. Mr. Thomas said yes. Mr. Starkey asked if Mr. Thomas was aware that Mr. Nikola testified that approximately 500 graves could be placed within the area where the subdivision is proposed should it not be approved. Mr. Thomas said he wasn’t here, but he heard that he had said that. Mr. Starkey said it’s also a possibility that a Mausoleum could be constructed in that same area. Mr. Thomas said he is not sure about that. Mr. Starkey said the jurisdiction over Mausoleums applies with the Cemetery Board. Mr. Starkey said you testified that in your opinion this property you did not believe particularly suited for residential use. The Governing Body of Manasquan has adopted its Zoning Ordinance that designates that property as permitted for residential uses. Mr. Thomas said it’s a permitted use. Mr. Starkey said you talked about the cars which is really a Site Plan issue but since you brought it up, addressing picture O-4 you said there are three cars parked on the Street I think you also said that the Police Chief was concerned about cars parked on the Street. Were you here for the testimony from the applicant that the homes to be constructed would have space available for two cars in every driveway along this roadway? Mr. Thomas said he saw it from the Site Plan. Mr. Starkey asked if he was here when the applicant testified that he would support no parking on either the east side, the west side or both sides at the option of the governing body to address that concern. Mr. Thomas said he wasn’t here for that. Mr. Starkey said you said a K-turn at the end of the Street would create a circulation conflict. Would a dead end be better? Mr. Thomas said the problem is the dead end is going into somebody’s driveway at the end of the road which goes straight down. Mr. Starkey asked if he was aware that the applicant testified that he would agree to K-turn toward a small portion for a turnaround or to leave it as is at the option of the Board whatever the Board would deem appropriate. Mr. Thomas said he thinks either option is not appropriate. Mr. Starkey said you testified about sidewalks, the applicant is not proposing them; you said they were common in the neighborhood. They are not common along the westerly side of Forest Avenue are they? Mr. Thomas said no, that’s right, but there are no houses along that area. Mr. Middleton asked Mr. Thomas why he didn’t think it was practical for graves to be placed in the buffer area, can you explain? Mr. Thomas said the cemetery is 125 years to use that portion of the cemetery, they have elected not to do so. The newest grave stones that he has seen are actually on the Wall Township side of the site. The proposed location in that corner doesn’t really appear to be a logical place for the expansion of the cemetery. It seems to him that because of the circulation that would be needed to get into that corner would be difficult. He says that because the Mausoleum and the office sort of act as a wall or blocking area to the existing internal circulation of the driveway. The only way to get there would be to go around those two uses and it appears to him that the gravestones actually get close enough to those uses where it would be difficult to actually have an internal roadway go into that particular corner. Also, you have the issue of the elevation change as well. I think that the Mausoleum was placed in his sense for a reason because it was out of the way, it was in that particular corner, and there was that large buffer area, away from the homes, up against the bike path. Mr. Middleton said from a Planning perspectives opt between the graves being placed there or the five homes what would you think is preferable. Mr. Thomas said it seems to him that the cemetery is less of an impact than the single family houses at that location. Primarily due to the circulation issues. Mr. Starkey asked Mr. Thomas if he has ever owned or operated a cemetery. Mr. Thomas said no. Mr. Starkey said you testified that it’s not practical to put graves in that area because you can’t get an access roadway there. Are you aware of cemeteries and their operations and that roadways are not required to access graves, graves are frequently placed in locations that are some distance. Mr. Middleton objected. Mr. Cramer asked Mr. Starkey if his client would agree or consent to the elimination of any access to the cemetery off Forest Avenue. Mr. Starkey said he believes there is already a roadway that goes from Forest Avenue into the cemetery. No sir, that is necessary for the operation of the cemetery. Mr. Starkey said we are not here for an addition to the Mausoleum. Mr. Starkey told Geoff Cramer you call it intensification, we call it a reduction, there is the possibility for 500 graves that are not going to be there anymore, they could be there they have the potential to be there presently, there is the possibility to construct a Mausoleum. The Cemetery Use is typically two things, graves and Mausoleums. If we reduce the number of graves and reduce the Mausoleum that is a reduction not intensification. Mr. Middleton objected. Mark Apostolou said Mr. Cramer has to issue a ruling as to Mr. Middleton’s objection. Mr. Middleton withdrew the objection, I’m just trying to move it on. Mr. Starkey question to Mr. Thomas is are you aware that cemeteries often put graves without an access road? Mr. Thomas said the way this cemetery is laid out right now is if you look at it as an overall view there are a number of access roads throughout the cemetery. It would be inconsistent with what’s there right now. Mr. Starkey asked would it be consistent with the cemeteries business goals of maximizing the number of graves that they can put on site. Mr. Middleton objected cause of speculation. Mr. Starkey said he doesn’t have to answer that, I request that I be permitted to call the cemetery owner there who is very familiar with the construction, operations of cemeteries, to testify as to the practicality of using that area for the construction of graves if that is going to be an issue, because it will be used for graves. Mr. Starkey said the Governing Body of this Town has adopted an Ordinance and zoned this property as residential, correct. Mr. Thomas answered yes, it’s a pre-existing, non-conforming use though. Mr. Starkey said no the cemetery is a pre-existing, non-conforming use and what the zoning law tried to accomplish is for the elimination or reduction of pre-existing, non-conforming uses in favor of permitted uses, correct? Mr. Thomas answered yes. Mr. Starkey said that’s all. Mark Apostolou made a motion to open the meeting to the public, seconded by Kevin Thompson, all in favor none opposed.**

**Audience Members Coming Forward:**

**Patrick Accisano – 18 Gardners Lane:**

**He had some questions of the Planner. Neil told him he has to make his statement to this Board. He said the parking photographs that are shown there, he suspects were taken during the day; it’s not representative of either Gardners Lane or Forest Avenue of what happens. He knows that the Ordinance has provided for two cars, no one on Gardners Lane, no one on Forest Avenue has two cars, we have kids, and we have visitors in the summer. I have a 17 year old who has a car. He had a photograph that showed what it typically looks like. Mr. Hamilton said the Board understands that, we all live in Town. We see houses where the garages are not used, the driveways are not used, and there are narrow Streets in Town. Mr. Accisano said this narrow roadway is here, it’s already what’s not shown is that the applicant said they are agreeing to restrict the parking on both sides of the road. You know, you live in Manasquan you need Street parking. By them so graciously offering to restrict the street parking, they are taking away numerous neighbors parking; we all use those Streets, because we have to. I know it was called site considerations but bring the graves on, graves are good, dead people have less intense uses, than single-family homes. This is a circulation nightmare and we hope that you listen to us. Thank you.**

**Stacy Coder – 119 Church Street:**

**She lives at the end of Forest Avenue looking over. It was actually her grandmother’s house. The hedges were very not very high when she was alive there. This is a traffic nightmare down that Street. She would like to know if the infra structure, sewers, water mains all of that stuff is up to date and current in that area because her husband is a volunteer firefighter, now Commissioner. Has all that been taken into consideration. She understands what the Planner is saying; by the way she thinks he did a great job because she really doesn’t think that any homes belong in there. She has been living there her whole life in Manasquan. She doesn’t think it’s a good idea at all. The traffic is bad; you can’t even get two cars down that road at the same time, now you want to put five extra houses there. Two car driveways, I’d like to see how those houses could even fit two-car driveways. Down the end there is no turn around, it’s just not feasible. Gardners Lane in itself is not an actual regular roadway, there is a section of it that is narrower; fire trucks could not come in from that perspective. I hope you take all that into consideration because Manasquan is a great Town and it’s not just all about building.**

**Brian Wicks – 6 Gardners Lane:**

**Thanks for hearing us tonight; Stacy’s point there the end of Gardners Lane, already once there was a consideration in making a small Street even smaller. With the impact of these five proposed houses that portion of the roadway is going to be even more impacted. You can already get only one car down that portion of the Street coming out into traffic onto Central Avenue. Increasing that traffic he thinks would be very dangerous. He thinks it’s mandatory to require that cul-de-sac at the end of Forest Avenue. The residents that already live on Forest Avenue with their K-turns and turning around there, it’s already an issue. A cul-de-sac would probably help out if it was even reduced to the three homes or whatever that makes that possible, he thinks that’s a requirement. He would like to hear about the emergency services, the fire, First Aid in Town. He welcomes the 500 graves as opposed to the five houses.**

**James Long – 11 Gardners Lane:**

**To reiterate the fact of the parking issues. Most of it has been Forest Avenue but he would like to address Gardners Lane. Of the nine houses that have frontage on Gardners Lane we have between nineteen and twenty-one cars on that Street at any given afternoon when everyone comes home from work. The proposal of not having parking on one side of Forest Avenue is going to increase the parking of the overflow of the two car driveway limit onto Gardners Lane. One other thing Mr. Hamilton regarding the Parker Lane comment, I have driven through all Streets in Manasquan in the past couple of days including Morris Avenue, all those Streets have the same ingress and egress, we do not. Many times I have backed up on my Street and Central causing traffic jams to let someone out of Gardners Lane. Now, to increase the flow of traffic in our neighborhood is detrimental to our quality of life on Garners Lane and Forest Avenue. If you want to put the graves in that would be wonderful, I’ll be glad to visit and look at them but this is way too much for our neighborhood. It’s going to totally ruin our neighborhood.**

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

**Neil said the next order is to clear up this Use, decide what the Board wants to do so we can move on, because the Use is what the subdivision hinges on. Mark Apostolou raised one issue based on Mr. Thomas’ comments. He has been working under the premise from Al that the 40-foot was authorized under the Zoning, now we have an expert that is testifying that 50-feet is required for right-of-way. He would like to hear from the Board’s expert as to what his opinion is. Al said if there is a difference between what the Manasquan Code says and Residential Site Improvement Standard for the State of New Jersey, he is not sure from the top of his head what RSIS would indicate, he believes 40-feet is acceptable with them. Al said it’s somewhat of a gray area, RSIS really speaks to new Streets that are being constructed. Would 50-feet be ideal yes absolutely. This is an existing road. Al said we are getting away from the Use and delving into the Site Plan and subdivision. We wanted to address the Use first. This is something that when we get to Site Plan and subdivision this will be addressed, there is a concern with parking and the size of the roadway and the size of the right-of-way. We can consider this as it is going to affect traffic, parking on the roadway. Mark Apostolou said he is just trying to balance this all out looking at the positive and negative criteria looking at the Planners statements knowing that is a guideline my decision for a Use Variance. Neil said he went back in his notes and the issues up there, he was on the Board at the time the Mausoleum was granted permission to be constructed. This entire existing buffer was in there, all this land and there was no mention of removal of any of that, I was never aware of that and if he were he may have denied the Mausoleum. Kevin Thompson said he agrees, he was on the Board at the same time. Kevin said also as a Class II member he would require that they have a minimum of 45-50 but he would really want the 50-feet and he would want the cul-de-sac down there, I have a hard time with this project the way it is. John Muly said he agrees, the south end of Forest Avenue looks better with a cemetery as opposed to five homes. Neil said he is trying to look at this in a positive way to benefit Manasquan, he doesn’t think it benefits the neighbors, he doesn’t think it benefits Manasquan, it benefits the cemetery it benefits the developer it impacts I don’t know how many homes in that area. The drainage still seems to be an open issue and there is a question as to who will maintain that down the road. He can’t buy this as a positive project. Kevin Thompson agrees with Neil. Kevin Starkey said you are not just talking about the Use Variance, you are talking about the Site Plan. We started this last month, the Chairman asked us to address the Use Variance not the Site Plan, what has happened during this hearing is you allowed the objector to address not just the Use Variance but the Site Plan issues. All this discussion frankly is adverse to my client, primarily on the Site Plan aspects, parking, curbing, drainage, positive and negative aspects, infra structure, cars in the driveway. You have not let my client put on one iota of evidence and you are sitting here making a determination to turn down the Use Variance which you all know will probably end the application. We paid for it, we noticed for it, we’ve been here for almost three years and I’m still not getting a fair hearing in front of this Board. I’m going to ask you if you are going to make a decision on this application you will be put on my evidence of Site Plan application and if you are not going to do that I’d ask that you tell me that you are not going to do that because I think we all know where this could end up. Mark Apostolou said he doesn’t disagree with what Mr. Starkey is saying, if we are looking at the Use Variance I’m just going to give my opinion, I think we have a positive criteria in a sense that we’re removing a trailer, we are removing other things by building this storage unit. I would be opposed to a residential site in there. I do agree that the Town has adopted its Master Plan, the proper use of that property is residential, and I think it’s too large a project but I can understand Mr. Starkey’s point. If we are just dealing with the Use I would be opposed to residential in that storage area, and I do hope that at least subject to site plan approval it is an appropriate application for conforming use. Mr. Starkey said we put in an application for a Use Variance and Site Plan, we noticed for both, we are here for both, and this is not a bi-furcated application. I am not going to have these applicants go to Superior Court and come back here for a Site Plan application after we noticed for both. Neil said we needed to get through the Use approval to move forward with the subdivision. Mr. Starkey said and we did what you asked us to do and now Mr. Cramer is saying that we agreed to a bi-furcated application, we did not. We are here on both the Use and Site Plan applications. Ultimately I am going to ask for a vote on both; I have a fully conforming Site Plan application. There is no basis to turn it down. I have a Use Variance application; I’m not going to back off on that. Mr. Middleton said it is clearly within the Board’s discretion to take a vote on the Use Variance before moving forward with the Site Plan, you announced that last month, I never heard an objection from Mr. Starkey at all at that point in time. It is clearly within your discretion to take a Use Variance vote now, if you vote to approve it we move on to the nitty gritty of the Site Plan and move forward. To now complain at the 11th hour so to speak that he is being treated unfairly I just think it’s not supported by the facts of record. Mr. Starkey said if the Use Variance is denied he is still going to ask to present evidence on a Site Plan application. If Mr. Middleton right if you want to deny that I have my right to do that, I’m going to ask you to vote on that denial because frankly I want a vote on a full application, because this is going to go to Superior Court and frankly I’d like a full record to be up there. I don’t really want to come back here. Al Yodakis said what part of the Site Plan do you feel is conforming. Anything you have on that site requires a Use Variance. Mr. Starkey disagreed. He said this site is a vacant lot, it is zoned for residential use, and I have five fully conforming lots that I am proposing. Al said you are talking about Site Plan, not a cemetery, you also have a major subdivision. The major subdivision is the other portion of that, the Use Variance is carving out this black box which is going to be something; in this case it happens to be a major subdivision. But, you also have a Site Plan on the cemetery which is the new office and the Site Plan. Mr. Starkey said you have a fair point let me clarify. You have two applications here, you have an application by the cemetery for a Site Plan for the office building and you are correct, that requires a Use Variance. I then have an application by OCLAR Properties for a fully conforming subdivision. Al said he doesn’t see how the subdivision can exist without the Use Variance where you are carving out this black box. Neil Hamilton said he has asked this, he has had this in the back of his head. If we get the office shrunk down, we feel that’s too big and we can approve that, then we say ok you can take these five lots and bring them out and now they are conforming, permitted uses. Once you get approval for the Use Variance in the cemetery and you meet all the criteria and I’ve had that conversation with both Al and Geoff and the answer from both of them was we need to get through the Use. If we deny the Use Variance then you have a problem. The whole project hinges on the Use. Mr. Starkey said you wanted it set up this way, I haven’t presented evidence on my fully conforming subdivision application. There are things such as the water lines, infra structure, curbing, what about a turn-a-round, all of these are aspects of the residential subdivision that I have not been permitted to put on, even though I noticed for that, I paid the fee for that and I expected to present testimony on that, you are now telling me I can’t do that. In effect you are denying me the subdivision, site plan application and frankly at this point I understand what you are saying but I’d like a clean record. Neil said Geoff you have to tell this Board what to do. Geoff said as far as he is concerned as far as the Site Plan we can’t get to the subdivision without getting through the Use Variance. Mark Apostolou asked about the PS and residential Zones. It is stipulated this is residential. Geoff said this is an R-2 Zone, you can’t expand or intensify the cemetery use. You need the Use Variance first before you can vote on the subdivision. Neil said if we deny the Use Variance then we cannot move forward with the subdivision. Mark Apostolou said he is getting mixed signals here, Al is saying for him to consider positive/negative I have to consider roadway and the like, I can’t make an intelligent decision until I hear a presentation by the applicant. Al said in this case we are not considering the subdivision as part of this, we are considering that we are going to be carving out a black box in this case it’s a subdivision and we are going to be making this property smaller, which is an intensification of the cemetery use, which is an existing non-conforming use. They are also now going to have two principal buildings, the Mausoleum and the office/grounds keepers’ residence on that cemetery use. That is what we are considering here with the Use Variance. My opinion and I disagree with Mr. Starkey if we vote no on the Use Variance we don’t carve out that black box, there is no conforming subdivision because there is no place to put it. Mark Apostolou said shouldn’t we hear testimony about this or efforts to carve out a cul-de-sac. Al Yodakis said no because that’s dealing with the conditions of the subdivision, if you approve the Use Variance now we have to carve out this black box and we say we are ok with the intensification of the use on the cemetery. This black box could be whatever it is if they would like to come back and go for eight lots there they would have the right to do that and ask you for variances. All the other issues we were going to ask them for, new sewer lines, water lines, cul-de-sac, lighting, all those other things relate to the conforming subdivision application. Greg Love asked if the strip down at the end would be a flag lot. Al said no because that lot has frontage all the way down the rest of Forest Avenue. Neil said it’s his understanding from the get go that if we disapprove the use you can’t sell that land off. Mr. Starkey said we have been here for almost three years, your attorney said don’t send out notices separate, send them out together, this is one joint package. I said I want them separate. Now you are kind of hamstringing me saying we have the evidence, we are not going to hear your other application. I understand why you want to go ahead Judge; I hope you understand why that’s unfair to me and my client. Al said in an undeveloped site they want to put something where it isn’t permitted, the first thing they would do is go to the Zoning Board in Wall Township or any other Town and get a Use Variance, if you don’t get a Use Variance nobody’s going to hear a Site Plan. Neil said the Board is not speaking, they are sitting here idle. We have to go back and take a look at the site issues at the cemetery, the size of the garage, the caretaker’s residence, in my mind I think it’s oversized, it needs to be something smaller. We need to get that out of the way, this drainage issue doesn’t seem to want to go away. If the drainage issue is hooked on the cemetery we can’t go through this again here, it’s got to be resolved, the objector, Al and your guys so when you come in here all three parties are ready to go. You better shrink down that garage, not have living quarters. We need that issue out of the way, now we just have to deal with the five lot subdivision and try to get the service that you need on that Street up there. Mr. Starkey said we presented our testimony on the issues about that office building on the cemetery site and the caretakers cottage, we don’t have more. The drainage issue, you say it’s unresolved; we have presented our testimony on the drainage issue. We can’t reach a consensus with the objector; we presented everything to your professional. As far as we’re concerned the drainage issue is completed, the evidence is in. We think we have complied with the Board Professional. Neil said once Al tells this Board he is happy with what Ray has submitted if the objector doesn’t like it, so be it. Tim Middleton said I’ve sat here and not said much but last month Mr. Carpenter testified and I wanted to cross examine him on drainage and lo and behold Mr. Starkey got up and said no, this is not related to the Use Variance, blah blah blah. I have about two hours of cross tonight, I don’t believe the drainage has been satisfied, Al is it correct that you don’t believe the drainage has been satisfied. Al said that is correct. Mr. Middleton said I came here tonight with the understanding that my two hours of cross examination I put down because I was told we were going to do the Use Variance. Now, Mr. Starkey after the Board went into caucus and it appears it may not be smooth sailing, now wants to open the matter up again. We went through what it was all about, the caretaker’s office and everything else at the last hearing. Neil said we never asked the Board, we never voted on it. Now Mr. Middleton has another point, what you have before the Board tonight is what was submitted by the applicant, the public has been here for a year and one-half, I’ve come to meeting after meeting, we need some finality here. I don’t know where we’re going. I’ve got drainage coming out of my ears. I’m ready to rock and roll; let’s open it up to some Use Variance. Mr. Yodakis said most of the drainage relates to the subdivision, in essence the Use Variance that we are talking about is carving out that black box, we are also talking about an office building. It’s not much greater than a normal dwelling that we see in Manasquan. Mr. Middleton said he has problems with the lost Mausoleum drainage system that can’t be found. Two units, 40-feet X 13-feet can’t be found, that’s a big issue. It hasn’t been located, it hasn’t been maintained. The second big issue is with that 250-feet long pipe system, actually 500 linear feet, 36-inch pipe, that’s a huge issue. I have the DEP management program documents with me and I can go through chapter and verse of what issues have not been complied with by the application, including sizing of that pipe, access way for monitoring and maintaining it, I have issues with 15 dry wells that are going to be on these five residential lots, they have to be maintained annually by the homeowner. They have to be tested. The pervious pavers system has to be analyzed and monitored on at least two or three different occasions by the homeowner. This is a nightmare for drainage. But, I thought we were here for a Use Variance tonight. Mr. Cramer said he would ask the Board members for a motion on the Use Variance. Bob Young made a motion to deny the Use for the application as per wording given by Board attorney Geoff Cramer, Kevin Thompson seconded the motion.**

**Board Members Voting to Deny the Use Variance:**

**John Muly, Robert Young, Greg Love, Mark Apostolou, Mark Larkin, Leonard Sullivan,**

**Kevin Thompson, and Neil Hamilton.**

**Neil said the Use Variance for the cemetery is denied. Mr. Starkey asked for a vote on the application of OCLAR Properties for the subdivision. It was stated that being the Use is denied the application for the subdivision cannot be heard.**

**Kevin Thompson made a motion to close the meeting, seconded by Greg Love, all in favor none opposed.**

**MEETING CLOSED AT 8:54pm**

**Respectfully Submitted,**

**Mary C. Salerno**

**Planning Board Secretary**

**Approved:**