

BRIELLE PLANNING BOARD
TUESDAY, MARCH 12th, 2024

The Regular Meeting of the Brielle Planning Board was held on Tuesday, March 12th, 2024 at 7:00 p.m., in the Brielle Borough Hall, 601 Union Lane. Ms. Trainor read the OPMA compliance statement. After a moment of silent prayer and a Salute to the Flag, roll call was taken:

Present – James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola (arrived at 7:39), Daniel Turak, G. Kevin Callahan

Absent – Mayor Frank Garruzzo, Councilman Eliot Colon, Chris Siano

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer and Denise Murphy, Recording Secretary. There were 30 people in the audience.

SWEARING IN NEW MEMBER: G. Kevin Callahan, Alternate No. 2, through 12/31/26

Next on the agenda was approval of the January 9th, 2024, February 6th, 2024 and February 27th, 2024 minutes and this was done on a motion by James Stenson, seconded by Jay Jones and approved by the following roll call vote

Ayes: James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Daniel Turak,

Noes: None

Not eligible to vote: G. Kevin Callahan

OLD BUSINESS: Approval of Resolution for variance relief for Block 16.01, Lot 4, 617 Bradley Avenue, owned by Joseph & Colleen Accisano, to allow a deck in the rear yard setback.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY APPROVING THE APPLICATION FILED BY JOSEPH AND COLLEEN ACCISANO SEEKING VARIANCE RELIEF FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS ON THE PROPERTY LOCATED AT 617 BRADLEY AVENUE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 16.01, LOT 4

WHEREAS, Joseph and Colleen Accisano (collectively, the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief for certain improvements on the property owned by the Applicants located at 617 Bradley

Avenue and identified on the tax map of the Borough of Brielle as Block 16.01, Lot 4 (the “Property”); and

WHEREAS, the Property is located within the Borough’s R-3 Residential Zone (the “R-3 Zone”); and

WHEREAS, the Property is currently developed with a two-story dwelling, a shed and an asphalt driveway; and

WHEREAS, the Applicants are seeking variance relief to construct a rear deck along with other customary accessories (as described more fully within the application, the “Project”); and

WHEREAS, the existing and proposed uses and some of the proposed accessories are conforming for the zone, but the existing and proposed principal structures and the existing shed are not conforming for the zone; and

WHEREAS, the Property has the following pre-existing non-conformities:

- (a) Lot Size—7,500 square feet required; 4,758 square feet existing;
- (b) Lot Depth—100 feet required; 93.01 feet existing;
- (c) Lot Width—75 feet required; 50 feet existing;
- (c) Front Yard Setback (front porch)—30 feet required; 27.5 feet existing;
- (d) Side Yard Setback (shed)—5 feet required; 3 feet existing;
- (e) Rear Yard Setback (shed)—5 feet required; less than 1 foot existing;
- (f) Lot Coverage—20% allowed; 27.4% existing;
- (g) Driveway—Borough Code requires pavement to be 5 feet from property line; 2 feet existing; and

WHEREAS, the Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below):

(a) Side Yard Setback (principal structure)—10 feet required; 8.3 feet existing (to house); **9 feet proposed (to deck)**;

(b) Rear Yard Setback—35 feet required; 28 feet existing; **13 feet proposed**; and

WHEREAS, the Applicants submitted the following documents in support of this application:

(a) Plan of Survey of the Property prepared by Charles O'Malley, PLS, dated September 30, 2014 (not to scale);

(b) copy of the aforementioned survey showing the location of a new rear deck;

(c) sketch of the proposed rear deck; and

(d) an application package; and

WHEREAS, the Board was also provided with a letter dated December 21, 2023, which was then revised and reissued on January 18, 2024, prepared by the Board's Engineer and Planner Alan Hilla, P.E., P.P., C.M.E., of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Planning Board held a hearing on this application on February 6, 2024 and considered the following documents presented as exhibits at the hearing:

(a) Exhibit A-1 set of photographs of Property and surrounding area; and

WHEREAS, the Board considered the following testimony presented at the hearing in connection with this application:

Attorney Frank Accisano stated he was representing the Applicants and he called Colleen Accisano to testify. Ms. Accisano was sworn in by Mr. Clark. Ms. Accisano described to the Board the existing conditions at the Property and presented to the Board a set of photographs that were multiple sheets stapled together. Mr. Clark marked this set of photographs as Exhibit A-1. Ms. Accisano described the existing conditions depicted on each page to the Board.

Mr. Accisano asked Ms. Accisano to explain to the Board the existing issues and what the Applicants are proposing. Ms. Accisano spoke about the existing impervious pavers and how they

gather water, the existing steps that are steep and said that current conditions discourage the use of the back yard. She said that the main goal of the proposed improvements is to eliminate the flooding issue and to create a safer ingress and egress out of the back door by removing the pavers and placing stone in that area to improve drainage of the area. She said that the Applicants are seeking approval to construct a deck at floor level in the footprint of the paver patio so when exiting the backdoor it would not be a significant drop down which she said would increase the use of the backyard.

As Mr. Accisano had no more questions for this witness, Ms. Trainor turned to the Board for their questions and Mr. Siano asked how many steps were there now to which Ms. Accisano responded there were three steps. Ms. Brisben asked if the deck would be four feet high and if there would be any other ingress or egress off of the deck. Ms. Accisano said the deck would be four feet high, and when exiting the backdoor you would walk directly onto the deck. Ms. Accisano stated they proposed adding steps to the deck. Ms. Brisben stated the plans did not show steps. There was then a discussion where the Applicants wanted to place the steps and whether the placement could affect the variance and also if the height of the deck was truly four feet or not. Ms. Trainor asked if there was any other portion of the property that floods and asked if the Applicants knew who owned the property behind them. Ms. Accisano answered that there were no other areas that flood and said there used to be a house behind them that was torn down and said the owners of the property live to the south of that property. There were no other questions from the Board.

Ms. Trainor asked if there were public questions for Ms. Accisano. Hearing none, Ms. Trainor asked if there were any public comments in regard to the application. Alan Franke, 615 Bradley Avenue was sworn in by Mr. Clark. Mr. Franke said he was before the Board to show support for the application. He stated that the back yard does have some issues and thinks that a deck would be a great improvement to the property.

Mr. Accisano began his final comments by saying that there were issues on the Property that need to be addressed, said he felt the improvements would satisfy the positive criteria, said this would create a better situation and asked the Board to grant the variance.

Mr. Clark stated for the record that the lot is pretty severely undersized, both in lot size, minimum lot depth and lot width.

Ms. Trainor asked to hear comments from the Board regarding the application. Mayor Garruzzo said that he thought the application was fine, said that the Applicants would not be extending the deck, said that he thought the standing water was a detriment to everyone and said adding stone to the area where the pavers is a positive step. Mayor Garruzzo finished by saying he did not have any issues with the application. Mr. Stenson said he had no issues with the application and thought it was a good solution to the problem. Ms. Brisben stated that the Applicants had come before the Board in 2005 for variances to build their home which were granted, said that it was noted then that the lot was undersized and finished by saying she did not have any issues with the application. Mr. Jones stated he agreed with Mayor Garruzzo's comments. Mr. Turak stated he felt the application was a nice solution to their problem. Ms. Trainor stated that her comments echo

the undersized and irregular shape of the property and by virtue of that she felt that the Applicants qualified for the variance being sought under the criteria.

Ms. Trainor asked Mr. Clark to review the items that the Applicants had agreed to. Ms. Trainor then asked for a motion to approve the application with the stipulations Mr. Clark had listed.

WHEREAS, the Board after carefully considering the evidence presented by the Applicants at the hearing and of the adjoining property owners and general public, if any, makes the following factual findings and conclusions of law:

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicants are the record owners of the Property.
- c. The Property is located within the Borough's R-3 residential zone.
- d. The Property is currently developed with a two-story dwelling, a shed and an asphalt driveway.
- e. The Applicants are seeking variance relief to construct a rear deck along with other customary accessories (as described more fully within the application, the "Project") within the footprint of the existing paver patio (which will be removed and replaced by the deck) on the Property.
- f. The existing and proposed uses and some of the proposed accessories are conforming for the zone, but the existing and proposed principal structures and the existing shed are not conforming for the zone.
- g. The Property has the following pre-existing non-conformities: (i) Lot Size—7,500 square feet required; 4,758 square feet existing; (ii) Lot Depth—100 feet required; 93.01 feet existing; (iii) Lot Width—75 feet required; 50 feet existing; (iv) Front Yard Setback (front porch)—30 feet required; 27.5 feet existing; (v) Side Yard Setback (shed)—5 feet required; 3 feet existing; (vi) Rear Yard Setback (shed)—5 feet required; less than 1 foot existing; (vii) Lot Coverage—20% allowed; 27.4% existing; and (viii) Driveway—Borough Code requires pavement to be 5 feet from property line; 2 feet existing
- h. The Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Side Yard Setback (principal structure)—10 feet required; 8.3 feet existing (to house); **9 feet proposed (to deck)**; and (ii) Rear Yard Setback—35 feet required; 28 feet existing; **13 feet proposed**.

- i. The Board recognizes that the Property is undersized and irregularly shaped as the lot size is only 4,758 square feet where 7,500 square feet is the minimum lot size for the R-3 Zone, it has a lot depth of only 93.01 feet where 100 feet is the minimum lot depth required for the zone, and it has a lot width of 50 feet where 75 feet is the minimum lot width required for the zone. These conditions present a hardship to the Applicants in the use and development of their Property.
- j. The Project proposed by the Applicants will provide a public benefit due to the removal of the existing pavers in the patio area and their replacement with a raised back deck with stone underneath, thereby reducing the impervious lot coverage and reducing the stormwater runoff from this Property and improving its drainage.
- k. The Board finds that by reason of the size, shape, and topography of the Property, it would be a hardship to the Applicants to comply with the requirements of the Borough Code, and that the Project proposed by the Applicants is consistent with other development in the neighborhood. Additionally, the Board finds that the benefits of the variance sought outweigh any detriments and that the deviations from the requirements of the Borough Code proposed through this Project do not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. For these reasons, the Applicants meet the conditions for variance relief under N.J.S.A. 40:55D-70(c)(1).

WHEREAS, James Stenson moved to approve the application; this motion was seconded by Mayor Frank Garruzzo. At that time the application was approved by the following roll call vote:

Ayes: Mayor Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Not eligible to vote: Daniel Turak

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application is hereby approved and granted subject to the following conditions:

- a. The Applicants agree that the rear deck will be no greater than four (4) feet high and will be at a height that is even with the back door from the existing house on the Property.

- b. The Applicants shall replace the existing paver patio with stone that will be placed under the rear deck in order to improve drainage on the Property.
- c. The Applicants agree that the stairs from the rear deck to the back yard shall be placed on the westerly side of the rear deck and shall not extend into any setbacks. The Applicant has supplied a detail and survey sketch of the location of the steps to the Board Secretary and Board Engineer and will comply with any changes to the steps reasonably required by the Board Engineer.
- d. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- f. The Applicants shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application.
- g. All representations made under oath by the Applicants or their agents shall be deemed conditions of this approval, and misrepresentations or actions by the Applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above Resolution was made by James Stenson, seconded by Charlie Tice and then by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Daniel Turak

Noes: None

Absent: Mayor Frank Garruzzo, Councilman Eliot Colon, Chris Siano, Amber Fernicola (arrived at 7:39 pm)

Not eligible to vote: G. Kevin Callahan

OLD BUSINESS: Approval of Resolution for denial of a Minor Subdivision for Block 81.01, Lot 1, 409 Union Lane, owned by Daniel & Todd Burke, co-Executors.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY DENYING THE APPLICATION OF DANIEL J. BURKE, EXECUTOR OF THE ESTATE OF CHARLOTTE BURKE, SEEKING MINOR SUBDIVISION APPROVAL AND VARIANCE RELIEF FOR PROPERTY LOCATED AT 409 UNION LANE WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 82.01, LOT 1

WHEREAS, Daniel J. Burke, the Executor of the Estate of Charlotte Burke (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking minor subdivision approval and variance relief for the property located at 409 Union Lane in Brielle which is identified on the Borough tax map as Block 82.01, Lot 1 (the “Property”); and

WHEREAS, the Applicant is an Executor of the Estate of Charlotte Burke which is the owner of the Property; and

WHEREAS, the Property is located within the Borough’s R-3 Residential Zone (the “R-3 Zone”); and

WHEREAS, the Property is a 34,612.67 square foot lot which currently contains one (1) single family three-story residential dwelling; and

WHEREAS, the Applicant is proposing to subdivide the Property into two (2) residential lots which are identified within the application as proposed Lots 1.01 and 1.02 and to retain the existing three-story dwelling on proposed Lot 1.01; and

WHEREAS, the existing lot, proposed uses and the dimensions of proposed Lot 1.01 are conforming for the zone, but the existing structure and the dimensions of proposed Lot 1.02 are non-conforming for the zone; and

WHEREAS, the Property has the following non-conformities which are not being changed or altered by the application:

- (a) Maximum Building Height – 2-1/2 stories allowable, 3 stories existing; and

WHEREAS, the Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type):

- (a) Section 21-9.13 of the Borough Code requires, among other things, that “All front yards must face on a fifty-foot wide right-of-way for at least 40 feet along the right-of-way line,

except in the case of cul-de-sacs or dead-end turn-arounds in which case the lot must face on the right-of-way for at least 30 feet”. Proposed Lot 1.02 runs along Melrose Avenue for 40 feet so it may meet the frontage requirement (if this is considered frontage), but the 50 foot right-of-way width requirement is not met, and a **variance is required for lack of adequate right-of-way width (and, if the 40 feet of proposed Lot 1.02 abutting Melrose Avenue is not considered to be frontage, then a variance is also required for the lack of required frontage);**

(b) Minimum Lot Depth (Proposed Lot 1.02)—125 feet required; **86.63 feet proposed;**
and

WHEREAS, the Applicant is also seeking waivers from the requirements to include the requisite topographic information and information on water drainage on and surrounding the Property within its plans; and

WHEREAS, the Applicant submitted the following documents in support of its application:

(a) Survey of Property prepared by Robert H. Morris, P.L.S. dated February 29, 2000;
(b) a Minor Subdivision Plan prepared by Daniel J. Burke, P.E. dated April 23, 2023;
(c) a Parcel Area Topographic Map prepared by Daniel J. Burke, P.E. dated April 10, 2023;

(d) Application package signed by the Applicant with assorted documents; and

WHEREAS, the Board was also provided with a letter dated June 21, 2023 prepared by the Board’s Engineer and Planner Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Planning Board held hearings on this application on July 11, 2023, August 8, 2023, October 10, 2023, November 7, 2023, December 12, 2023 (no testimony; hearing

Tuesday, March 12, 2024

carried), January 9, 2024, and February 6, 2024, and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1 excerpt from tax map sheet 7;
- b. Exhibit A-2 minor subdivision plan of the Estate of Charlotte Burke, dated April 25th, 2023;
- c. Exhibit A-3 tax map with colored tabs;
- d. Exhibit A-4 high-resolution aerial view of the subject lot, Evergreen Avenue, Ashley Avenue and Union Lane, dated March 6th, 2023;
- e. Exhibit A-5 survey;
- f. Exhibit A-6 N.J.A.C. 13:40-7.4;
- g. Exhibit A-7 legal descriptions of proposed Lots 1.01 and 1.02 dated May 23, 2022;
- h. Exhibit A-8 site concept plan (2 alternative concepts) prepared by Donald Burke, P.E.;
- i. Exhibit A-9 e-mail from the Zoning Officer Elissa Commons to Donald Burke dated 12/4/23;
- j. Exhibit A-10 transcript of the December 14, 2021 hearing before the Brielle Planning Board on the 2021 Burke subdivision application;
- k. Exhibit A-11 plot plan for Lot 8;
- l. Exhibit A-12 e-mail from Brielle Tax Assessor to Donald Burke regarding easement precluding merger of Lots 8 and 9;
- m. Exhibit A-13 e-mail exchange between Donald Burke and the Brielle Tax Assessor on the lots being created;
- n. Exhibit A-14 Consent Agreement dated May 12, 2023 in the prior litigation consolidated under Docket No. MON-L-597-22;
- o. Exhibit O-1 tax map with Lots 8 and 9 marked in color;
- p. Exhibit O-2 deed for Lot 9 recorded on April 20th, 2021;
- q. Exhibit O-3 deed for Lot 8 recorded on April 29th, 2021;
- r. Exhibit O-4 review letter, dated December 13, 2021, from the Brielle Environmental Commission;
- s. Exhibit O-5 Site Analysis;
- t. Exhibit O-6 tax map;
- u. Exhibit O-7 photographs of neighborhood;
- v. Exhibit O-8 a series of photos of cars parked at the dead end;
- w. Exhibit O-9 N.J.A.C. 13:40-5.1;
- x. Exhibit O-10 map showing frontages of neighboring properties; and

WHEREAS, the Board considered the following testimony presented at the hearings in connection with this application:

July 11, 2023 hearing

Mr. Daniel Burke, applicant and Mr. Timothy Middleton, on behalf of Peter Donnelly, objector, were recognized by the Board.

Mr. Burke was sworn in by Mr. Clark. Mr. Burke began by saying he is a licensed engineer, professional planner and certified municipal engineer and then listed his credentials. Mr. Burke's credentials were recognized and he was qualified as such. Mr. Middleton had no objection.

Mr. Clark stated that Mr. Burke had asked him to inquire if there were any members of the Board that had a conflict that would prevent them from sitting for this application. Ms. Trainor asked Mr. Burke if he had a concern. Mr. Burke stated he thought it was important to ask as this application was being contested. Ms. Trainor stated she recognized the importance of this and wanted to make sure he had no concerns to be raised. Mr. Burke replied he was not aware of any conflicts. No Board members identified any conflicts that would prevent them from hearing this application.

Mr. Burke stated he was going to give some background information on the prior application he had submitted to the Board. He said that the Board heard the prior application during the months of November 2021, December 2021 and January 2022 meetings; the Board had approved the application in December and said that this approval was memorialized in a resolution adopted at that January meeting. Mr. Burke stated he was unable to perfect the subdivision filing within the statutory time frame and said that the Board denied his request for an extension. He said that his current application was filed in April of 2023.

Mr. Burke indicated that his application is similar to the one which the Board approved in 2021/2022, but now the shed has been removed and the frontage along Melrose Avenue is proposed at 40 feet.

Mr. Burke displayed a document he stated was an excerpt from the tax map, sheet 7. Mr. Clark marked this document Exhibit A-1. Mr. Burke referenced this Exhibit and began to describe the current conditions of the property and the adjoining properties. Mr. Burke stated that his records show that the existing structure is a seashore colonial which was built in 1910. Mr. Burke discussed the current utility services and said that water and sewer laterals are already in place for the proposed subdivided lot. Mr. Burke stated that a traffic issue was raised in the prior application. Mr. Burke spoke about traffic on Melrose Avenue and discussed the NJ Residential Site Improvement Standards and detailed how he felt this related to the application. Mr. Burke stated that between November 27th and December 5th he conducted a traffic count using a motion sensor camera which resulted in capturing 89 recorded events, less than one per daylight hour during that period. Mr. Burke stated that there are currently 10 residences along Melrose Avenue and said that if the subdivision is approved as filed and a new home is built, there would still only be 10 residences.

Mr. Burke displayed a document that he said was the minor subdivision plan of the Estate of Charlotte Burke, dated April 25th, 2023. Mr. Clark marked this document Exhibit A-2. Mr. Burke spoke of the disposition of trees on the property and stated his opinion of any future tree removal. Mr. Burke then clarified three points of nonconformity in Mr. Hilla's report, the 3-story structure on Lot 1.01, the lot depth, and the frontage on proposed Lot 1.02. Mr. Burke stated that

if the application was approved, the applicant plans to perfect it by filing a subdivision deed. Mr. Burke stated that he is seeking relief on two other issues regarding Lot 1.02 and said that, in his opinion, the C-1 hardship variance and the C-2 flexible variance criteria both support the variances sought through this application. Mr. Burke read N.J.S.A. 40:55D-70 to the Board and then explained to the Board the reasons he felt that a C-1 hardship variance and C-2 flexible variance would apply to this application.

Mr. Burke referenced Lot frontage and then read Borough Code Section 21-9.13. Mr. Burke stated that he felt that this code section could be interpreted in many different ways and explained those different ways. Mr. Burke stated that the applicant has offered up the full width of the right-of-way which he believed was 40.17 feet and said that this falls into a hardship condition because it cannot be cured by the applicant. Mr. Burke alluded to testimony in the prior application in regard to whether a variance relief of 40 feet was offered up. Mr. Burke stated he was not going to interpret the Code and was going to ask for a variance just out of the preponderance of caution. Mr. Burke stated that he inspected the Borough's tax maps and noted no fewer than 37 other right-of-way driveways that were less than 50 feet. Mr. Burke further stated that adjacent Lots 5,6,8 are nonconforming in lot frontage just like proposed Lot 1.02 would be.

Mr. Burke stated that Lot depth is defined in Chapter 20 of Land Use Codes, section 20.3 and then read the definition to the Board. Mr. Burke referred to Exhibit A-2 and discussed lot lines and street lines. Mr. Burke stated that every lot of Melrose Avenue is deficient in Lot depth saying that the bulk of them have 100 feet of Lot depth, one at 95.45 feet, and said that it is a common problem on Melrose Avenue. Mr. Burke testified that the requirement is 125 feet. Mr. Burke stated that the Lot depth variance being requested could be considered under the C-1 and C-2 variance as listed in Municipal Land Use Law.

Mr. Burke displayed a document he called a tax map with colored tabs and Mr. Clark marked this document Exhibit A-3. Mr. Burke described to the Board what the colored tabs referred to and also discussed aspects of the 29 parcels shown on this Exhibit.

Mr. Burke displayed a document that he characterized as a high-resolution aerial view of the subject lot, Evergreen Avenue, Ashley Avenue and Union Lane, dated March 6th, 2023. Mr. Clark marked this document as Exhibit A-4. Mr. Burke discussed this Exhibit and said it shows the development pattern and deficiencies in Lot area in the neighborhood around the subject property.

Mr. Burke stated that an applicant must prove or provide evidence to justify a variance and then listed the reasons why he felt relief should be granted. Mr. Burke read from the Borough of Brielle's Master Plan and stated that the Master Plan has 13 objectives and 5 principles and then began to enumerate the objections and principles that he said are satisfied by the application. Mr. Burke referenced the Municipal Land Use Law intent and read aloud reasons C, E, J, and M. Mr. Burke stated that this application provides the appropriate density, preservation of a historic building, is able to be serviced by existing utilities and roadways and is consistent with surrounding development patterns. Mr. Burke said the application would not negatively impact traffic or circulation and conforms with the objectives of the code, the Master Plan and the MLUL. Mr. Burke stated that it was his opinion that the positive criteria outweighs the negative criteria and

that the Board could grant the relief requested without substantial detriment to the public good. Mr. Burke stated that in the prior application, he tried to acquire property from the owners of Lots 2 and Lot 7 in order to offset the Lot depth issue but received a negative response. Mr. Burke said as to the frontage issue that it is a 40-foot right-of-way which cannot be cured. Mr. Burke then stated that he had completed the presentation of his direct testimony.

Ms. Trainor announced that 45 minutes had passed and said that the Board's rules limit applications to 45 minutes per meeting unless there is a motion from a member of the Board to hear the application for a longer period of time. Ms. Trainor asked if there was any Board member that wanted to make a motion to extend the 45-minute requirement and to hear this application for a longer period of time. Ms. Brisben answered that she would like to make a motion to hear more testimony until at least 8:30 pm. because she said the agenda for the next meeting was full. Mr. Jones seconded the motion followed by a roll call vote in which all Board members voted for this time extension.

Mr. Clark stated that he wanted to ask Mr. Burke a question for clarification. Mr. Clark then stated that during the prior application, one of the conditions that the Board placed on its prior approval was that all ingress and egress from Lot 1.01 would be on Union Lane only and that the only access on Melrose Avenue would be from Lot 1.02. Mr. Clark asked Mr. Burke if this is still what is still being proposed in the current application. Mr. Burke responded to Mr. Clark and when asked by Ms. Trainor if he was answering yes to Mr. Clark's question, Mr. Burke replied that was correct.

Mr. Middleton presented a document he said was a tax map with Lots 8 and s 9 marked in color. Mr. Clark marked this document Exhibit O-1.

Mr. Middleton asked Mr. Burke if he had prepared the application submitted. Mr. Burke responded that he had prepared the application. Mr. Middleton stated that in the application and the notice Mr. Burke had identified the Lot depth as 86.6 feet and said that at this meeting, Mr. Burke had said 95 feet. Mr. Middleton asked Mr. Burke if his application was incorrect. Mr. Burke answered that after filing his application, he had gone to the Zoning Officer for guidance, advice and her interpretation of the code and stated that the outcome was that his prior interpretation and apparently the Zoning Officer's interpretation was that the Lot depth was 86.6 feet which was different from what was in the application packet. Mr. Middleton asked if the Zoning Officer was present at this meeting or if she had provided Mr. Burke with a letter regarding this interpretation of the Borough Code. Mr. Burke replied that he had not asked for a letter from the Zoning Officer. Mr. Middleton asked Mr. Burke if Mr. Hilla's letter identified the Lot depth as 86.6 feet to which Mr. Burke replied he thought it did.

Mr. Middleton asked Mr. Burke if he could identify any lot on Melrose Avenue with a lot depth with 86.6 feet or less. Mr. Burke replied that there are no existing or proposed Lots on Melrose Avenue with a lot depth of 86 feet. Mr. Middleton asked if there are any lots with a lot frontage of 40 feet. Mr. Burke responded that there were lots with 50 feet, 69 feet, 72 feet, all nonconforming. Mr. Middleton asked which lots were 50 feet. Mr. Burke answered Lot 5 is 50 feet, Lot 6 is 72.7 feet, Lot 8 is 69.0 feet. Mr. Middleton asked Mr. Burke if he was aware that Lot 5 and 6 were owned by Mr. Donnelly and if he was familiar with the legal term known as the

“Merger Doctrine”. Mr. Burke stated he was familiar with the term but as for its legality issues, he said he did not know what Mr. Middleton meant. Mr. Middleton asked Mr. Burke as a planner of 20 or 30 years in the City of Jackson, in the City of New Brunswick, if he had come across the term merger as it applies to contiguous lots that are substandard in size. Mr. Burke replied that he is familiar with the doctrine of merger. Mr. Middleton and Mr. Burke then had a discussion in regard to the term merger and Lots 5 and 6.

Mr. Middleton asked Mr. Burke if there were any other Lots on Melrose Avenue that are located at the terminus of the dead end. Mr. Burke answered that it was obvious to a casual observer and said he had provided that testimony and would rely on the record he created.

Mr. Middleton stated that Mr. Burke had indicated that he had done a traffic study. Mr. Burke replied that he had used photographic motion sensitive equipment to detect traffic movement between the dates of November 27th through December 5th, 2021. There was then discussion regarding Lot 8 and Lot 9 and whether or not those lots were under construction at the time of the traffic study and if the traffic that would be generated now from these two homes on a normal day was not reflected in Mr. Burke’s traffic count. Mr. Burke stated that currently there is construction at Lot 8 and said that Lot 9 was under construction at the time of the count. Mr. Middleton asked if it wouldn’t be more accurate to reflect the actual traffic that would be generated at these two houses on a normal day. Mr. Burke answered that he felt that the traffic count generated was higher than what is likely to be the current conditions because the activity is less now. Mr. Burke stated that the car count he came up with was 89 events over an 8-day period and it was his estimate that during the daylight hours there was less than one trip per daylight hour including repeats. Mr. Middleton asked Mr. Burke how many vehicles of those counted were contractors and how many were homeowners. Mr. Burke replied that he did not make that breakdown. Mr. Burke stated that he did the traffic count at that time because Mr. Donnelly made comments at the November 2021 meeting during the prior application and he wanted to have traffic count numbers in order to respond to Mr. Donnelly’s concerns.

Mr. Middleton stated that Mr. Burke had testified that he would be utilizing the C-1 hardship for Lot depth and asked by creating a Lot, isn’t he creating the hardship. Mr. Burke responded that he was not because the lot is three times the size required by code and cannot be subdivided without a variance.

Mr. Middleton referenced Exhibit O-1 and asked Mr. Burke if Lot 8 and 9 were owned by the Estate. Mr. Burke replied that was correct. Mr. Middleton stated that there was uniformity in title between the subject lot and Lots 8 and 9 and asked if that was correct. Mr. Burke stated those lots were owned by his parents. Mr. Middleton asked Mr. Burke if it was accurate that the Estate sold Lot 8 in April of 2021 and sold Lot 9 in February of 2021. Mr. Burke said that the lots were under contract prior and that those could be the closing dates but said that he could not confirm the dates without looking at the closing documents.

Mr. Middleton presented two documents that he asked to be marked into the Record. The deed for Lot 9 recorded on April 20th, 2021 was marked as Exhibit O-2, and the deed for Lot 8 recorded on April 29th, 2021 was marked as Exhibit O-3. Mr. Middleton stated that his planner would be going into a great deal of detail on the merger issue. Mr. Middleton said the fact is that

Lots 8 and 9 were illegally subdivided, that the applicant should have appeared before the Board and/or got a certification from the Land Use officer that both Lots conformed to the Zoning requirements.

Mr. Middleton asked Mr. Burke if the Estate, prior to selling Lots 8 and 9, came before the Board to obtain a subdivision. Mr. Burke answered that prior to these sales, the sale documents were reviewed by both the Estate's and the buyer's attorneys and their title companies and said that the sale documents were approved by all who reviewed them. Mr. Burke said that the properties were separate tax lots at the time when they were sold and that they must have been previously subdivided because they were separate lots when his parents bought them as well as when they were sold. Mr. Middleton asked Mr. Burke if it was fair to say that the Estate did not go before the Board for a subdivision. Mr. Burke answered that it did not do so and that the lots were already subdivided into separate lots. Mr. Middleton asked Mr. Burke if it was fair to say that the applicant did not obtain a certification from the Zoning Officer that both Lots 8 and 9 conformed to the Zoning regulations. Mr. Burke replied they were not advised to do so by counsel. Mr. Middleton referenced a case entitled *Pasaro Builders v. Piscataway Township* which defined what is and isn't a subdivision and when a subdivision is required. Mr. Middleton stated that it is his client's position that the Estate should have come before the Board for a subdivision and said that both lots were substantially under sized, one lot being 6,700 square feet and the other 7,500 square feet, where 11,200 square feet is required. Mr. Middleton stated that in March of 2023 he had sent a letter to Borough Attorney Mr. Montenegro alerting him of this illegal subdivision. Mr. Middleton stated that the point he was trying to make was that the subdivision application which is now before the Board could not be looked at in isolation but must be looked at it and considered in light of what the applicant did in February and April of 2021 when he sold the other Lots.

Mr. Middleton stated that Mr. Burke had referenced the NJ Residential Site Improvement Standards and testified that the R.S.I.S. requires 28 feet in terms of road way. Mr. Burke responded that he had relative to the roadway classification and the 34-foot width as to its function under a residential access road. Mr. Middleton asked Mr. Burke if when he mentions the width he is referring to the pavement being 28 feet wide. Mr. Burke replied that was correct and said they had measured it out to be 30 but it varies because it is an uncurved right-of-way or uncurved cart way. Mr. Middleton asked Mr. Burke if it would surprise him that Mr. Donnelly and Mr. Angello, who lives on Lot 9, measured the cart way today and it was between 24 1/2 and 27 feet. Mr. Burke answered that nothing surprises him and said he measured it prior to the prior application in the vicinity not far off the dead end of the roadway. Mr. Middleton asked Mr. Burke if 28 feet is required and there is 24 feet, would that require a variance from the R.S.I.S. Mr. Burke answered no and said it was not his obligation to provide it nor does the R.S.I.S. stipulate that it has to be a 28-foot roadway. Mr. Burke then clarified he would have to check the R.S.I.S. and said he was not prepared to make that statement at this time.

Mr. Middleton asked Mr. Burke if it were correct that the front yard setback is 30 feet and the rear yard setback is 35 feet. Mr. Burke responded that was correct. Mr. Middleton said in Mr. Hilla's review letter, he pointed out that this would leave the buyer of the property with a 25-foot building envelope for width of the house. Mr. Burke disagreed and said he believed it was more around 32 feet. Mr. Middleton asked Mr. Burke what direction a house on the proposed subdivided Lot 1.02 would face. Mr. Burke replied that would be up to the developer and said it could be

oriented in many different ways. Mr. Middleton asked Mr. Burke if he thought he had an obligation to come before the Board with some sort of plan as to the orientation of a house on proposed subdivided Lot 1.02. Mr. Burke stated that he did not have an obligation to supply a site plan if that is what Mr. Middleton was saying and then said his obligation is to subdivide the property and that is what he is doing. Mr. Middleton asked Mr. Burke if it were true that he would not be presenting a proposed elevation and a proposed location of the house. Mr. Burke responded that it was not a requirement of the subdivision and said he was going to comply with the requirements for a subdivision. Mr. Middleton referenced Exhibit A-2 and discussed with Mr. Burke the building envelope depicted on this exhibit.

At that point, Ms. Trainor announced that the hearing had gone beyond the extended time period that the Board had granted for tonight's hearing and indicated that the application would be carried to next month's meeting and would continue then.

August 8, 2023 hearing

Councilman Garruzzo announced that it was necessary for him to recuse himself from this application. Ms. Trainor noted that Mr. Stenson had not had a chance to catch up on the prior testimony he missed yet, but that he will review the recording.

Mr. Clark stated that at the last meeting, Mr. Burke had finished his direct testimony and presentation and that Mr. Middleton had finished his cross examination. Mr. Clark said the application had not yet been opened to questions for Mr. Burke.

Kim Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio asked Mr. Burke if he lived on the property and if it was the estate's intent to sell the property whether it was subdivided or not. Mr. Burke answered he did not live on the property and said selling was up for discussion with the co-executor. Mr. Burke said there was interest from two different family members who are heirs to the property. Ms. Nuccio then asked if Mr. Burke was able to find any homes fronting on dead-ends that do not have a bulbous end. Mr. Burke responded that he thought he counted 27 dead-ends without bulbous ends or cul-de-sacs. Mr. Nuccio asked out of those 27 dead-ends without bulbous ends, is there development at the terminus like he is proposing on Melrose Avenue. Mr. Burke replied that there was but said he did not have that information handy.

Ms. Nuccio stated that Mr. Burke had testified that the mature trees on the property were in decline and asked if he had them professionally evaluated. Mr. Burke said he observed them himself and said he suspected that the Holly trees are over 80 years old. Ms. Nuccio stated that Mr. Burke testified that there were no environmental concerns and then referenced a review letter, dated December 13, 2021, from the Brielle Environmental Commission, which identified environmental concerns with the previous application. Mr. Burke asked Ms. Nuccio what the issues were and then said there was not a letter written for this application. Ms. Nuccio replied that that is true but that he had testified that this application was the same as the last one. Ms. Nuccio presented the letter and asked that it be marked for the Record. Mr. Clark marked the letter as Exhibit O-4.

Ms. Nuccio stated that Mr. Burke had testified that the proposed subdivision comports with the objectives of the Master Plan number 3 which she read as to provide light, air and open space and asked if the subdivision would actually do the exact opposite. Mr. Burke answered that he thought the lot exceeds the lot area required in the zone, it provides trees outside the buildable footprint and said he did not believe the function of the lot was to provide neighbors with open space.

Ms. Nuccio stated that Mr. Burke had testified that acquiring a portion of the adjacent properties was not practical and asked if he had approached her and the other property owners for this application. Mr. Burke responded that he had approached the adjacent property owners before the prior application was heard by the Board and that both parties said no. Mr. Burke said that even if they had agreed it would have caused variances on those properties which would have exacerbated the issue. Ms. Nuccio stated that the situation is very different now and asked Mr. Burke again if he approached the adjacent property owners in this application. Mr. Burke asked Ms. Nuccio if she would sell. Ms. Nuccio answered that she and her husband would have to discuss that. Ms. Nuccio said that she did not have any other questions for Mr. Burke.

Ms. Trainor asked if there were any questions from the public for Mr. Burke. Hearing none, Ms. Trainor asked to hear questions from the Board. Mr. Jones asked if the shed on one of the proposed lots in the subdivision had been removed. Mr. Burke answered that it was removed. Ms. Trainor asked Mr. Burke if he had said that the parcel was acquired in 1962 and asked who the purchase owner was at that time. Mr. Burke answered that it was his understanding that the subject parcel was purchased then and the owners were Edward and Charlotte Burke. Ms. Trainor asked if it were true that Edward and Charlotte Burke also owned Lot 8 and Lot 9. Mr. Burke replied that it was true and said he believed they acquired those lots around 1967. Ms. Trainor asked when Lots 8 and 9 were sold. Mr. Burke answered he thought they were sold in 2020 and 2021. Ms. Trainor asked if the parcels ever changed title from Edward and Charlotte Burke between 1967 and 2021. Mr. Burkes replied that he did not believe so. Ms. Trainor said that Mr. Burke had referenced a garage on Lot 9 and asked when it was removed. Mr. Burke answered that it was removed when the current owner went to build upon it. Mr. Burke said there were no improvements on Lot 8. Mr. Trainor asked if there were ever any improvements that spanned the boundary line. Mr. Burke said that the Borough had a drainage pipeline that ran right along the Lot line. Ms. Trainor referenced a driveway and Mr. Burke said when the property, Lot 1, was originally acquired, the driveway access was out to the dead-end of Melrose Avenue and after the other two Lots were acquired, the gravel driveway was removed and relocated.

Ms. Brisben asked Mr. Burke if because the Lot he is creating is so small and the other Lot is of a larger size, did he consider making the smaller Lot a little larger. Mr. Burke responded that the subdivided lots that they are seeking exceed the 11,250 square feet requirement and said it is their desire to sell the existing house with an appropriate piece of property and they think a good-sized backyard is part of that.

Mr. Middleton referenced the merger issue and read out loud Ordinance number 2156.2 and asked Mr. Burke if he had reviewed this Ordinance before tonight or before he sold Lots 8 and 9. Mr. Burke answered that he was not familiar with the Ordinance. Mr. Middleton asked if at the time they were sold, were these Lots undersized. Mr. Middleton asked if one Lot was 7500 square

feet and one Lot was slightly under 7000 square feet. Mr. Burke answered that was correct. Mr. Middleton stated he had no further questions for Mr. Burke. Mr. Burke then read Ordinance number 21-9.3 out loud to the Board.

Mr. Burke stated he did not have any other witnesses to present. Mr. Middleton stated he had other witnesses but said Ms. Nuccio would be giving her own testimony first. Ms. Nuccio stated she would also like to be her own expert witness, recited her degrees and said that she was a Landscape Architect, employed at Melillo, Bauer, Carman Landscape Architecture, Brielle. Ms. Nuccio stated she has appeared before this Board and other Planning Boards including Belmar, Spring Lake and Wall Township. Ms. Trainor stated the Board recognizes Ms. Nuccio's credentials as a Landscape Architect. Ms. Nuccio began by saying she is before the Board for her family and other members of the community and said she has five specific points to make. Ms. Nuccio stated the first point was hardship and said there is no hardship on an existing conforming Lot, creating a nonconforming Lot with such a narrow building envelope is certainly a self-created hardship which she said under the Municipal Land Use Law 29-2.9 is not permitted. The second point Ms. Nuccio said was frontage and said it has been argued by her and others that the Board's previous approval of frontage at the terminus at the dead-end was arbitrary and unlawful. Ms. Nuccio said there is no provision in Brielle's Ordinance that would allow frontage on a dead-end street that is not a cul-de-sac and said she would like to see proof of other homes that are developed at the terminus of a dead-end without a bulbous end. Ms. Nuccio discussed the trees and said she wanted to explain to the Board why they are so important. Ms. Nuccio said that mature vegetation defines the character of a neighborhood and said local ecology matters. Ms. Nuccio referenced black walnut trees that are present and said that these trees inhibit the growth of new trees. Ms. Nuccio said that to really understand what the impact of this application on the trees, a detailed site analysis would be necessary. Ms. Nuccio read out loud 29-2.8, "Negative Criteria", and read from the Zoning Ordinance 21-3, "Purpose". Ms. Nuccio said that a new house on the proposed lot would replace the vegetative buffer that the surrounding properties now enjoy, specifically the people swimming in her pool, cooking at her barbecue, sitting around her firepit, the people jumping on Mr. Donnelly's trampoline. Ms. Nuccio said they would no longer have the privacy of buffering afforded to them in the open space standards of Brielle's Zoning regulations, instead a new house would have views directly down into those recreational spaces. Ms. Nuccio said that the basic fabric of their existence would be disrupted, impacting the very things that not only contribute to their well-being but bring them joy and happiness. Ms. Nuccio said she would argue that this subdivision would impact that and be detrimental to the public that would be affected. Ms. Nuccio stated she is not a Planner but had spent some time reading the big yellow book and said she did not think that a variance was the right planning tool for this subdivision to go forward. She said that both Mr. Burke and Mr. Middleton stated that all of the lots, except one, on Melrose Avenue were 100 feet deep. Ms. Nuccio finished by saying that the application could go a number of ways and said that the Board had some discretion. She then pointed out that the MLUL provides guidance on that discretion and then referenced 29-2.6. Ms. Nuccio stated that one outcome would favor the estate and said that the people that live in the neighborhood would suffer and would bear that burden while the other outcome would favor the people that live in the neighborhood and would preserve the character of the neighborhood and would uphold principles set forth within the Zoning Law and the Master Plan.

When Ms. Nuccio completed her direct testimony, she was questioned by Mr. Burke. He

asked Ms. Nuccio how many trees she had taken down on her property in the last five years and did any of those trees border the common property line. Ms. Nuccio answered that she has taken down one or two. Mr. Burke asked what the distance was from the back of Ms. Nuccio's house to the common line to the proposed lot. Ms. Nuccio answered she did not have the measurement. Mr. Burke asked Ms. Nuccio to estimate it. Ms. Nuccio estimated 80 feet. Ms. Burke stated that Ms. Nuccio had taken down some trees along their common property line over the past several years and asked if she agreed. Ms. Nuccio said she did not agree and said they had taken one tree down because a portion of it had fallen and another one of Mr. Burke's trees that had fallen also and had destroyed her greenhouse. Ms. Nuccio stated her primary home is closer to Ashley Avenue but said her recreational space is a barbecue and then presented a document she prepared a Site Analysis, which was marked as Exhibit O-5. Ms. Nuccio said the important part of this exhibit shows their recreational space, their pool, barbecue, fire pit, and greenhouse, all close to the proposed subdivision. Mr. Burke asked Ms. Nuccio if it was her position that they should not be able to build a house because she has recreational spaces in the rear of her property. Ms. Nuccio answered that was not her position. Mr. Burke stated he had no other questions.

Mary Burke, 1013 Cedar Lane, came forward and was sworn in by Mr. Clark. Ms. Burke stated that the property has the potential to be divided into three separate lots and asked Ms. Nuccio how that would change things for her. Mr. Middleton objected to this question and said there is no plan before this Board showing three Lots. Ms. Trainor said there was no foundation for the question and said that the objection was sustained. Ms. Burke had no other questions.

Ms. Trainor asked if there was anyone else from the public that wanted to ask questions. Hearing none, Ms. Trainor announced it was time to hear questions from the Board. Ms. Brisben asked Ms. Nuccio if she had a buffer area in her rear yard. Ms. Nuccio answered that she had a garden that runs along the edge and some black walnut trees there as well. There were not any other questions from the Board.

Ms. Trainor announced that the Board hears testimony for applicants for 45 minutes and said that 50 minutes had passed on this application and said the Board would like to observe the 45-minute rule unless someone wanted to extend the time. Mr. Clark stated that due to a conflict that Mr. Middleton has in September this application would be carried to October 10, 2023 meeting.

October 10, 2023 hearing

Ms. Trainor stated that at the end of the last meeting, Mr. Middleton was about to present his case. Mr. Middleton began by calling Peter Donnelly, 409 Melrose Avenue, to testify. Mr. Donnelly was sworn in by Mr. Clark. Mr. Middleton displayed a document described as a tax map which was marked as Exhibit O-6 by Mr. Clark. Mr. Middleton asked Mr. Donnelly to identify his house on the tax map and asked him how many houses were on the north and south side of the street. Mr. Donnelly pointed to his house and said there were 5 houses on the north and 4 houses on the south.

Mr. Middleton asked Mr. Donnelly how long he had lived in his home, when he had purchased it and then asked him to describe his home. Mr. Donnelly replied that he had lived in the home for 11 years, purchased it in 2011 and described the home as a 4-bedroom house on a dead-end street with a 2-car garage. Mr. Middleton asked Mr. Donnelly what attracted him to living at the end of a dead-end street. He answered a better quality of life for his family, no through traffic, safety and more privacy. Mr. Middleton stated that the right of way from Melrose Avenue is 40 feet and asked Mr. Donnelly if he had the opportunity to measure the width of the pavement in front of his house towards the dead end. He answered that he had measured it multiple times and said that in front of his house was 26-26 ½ feet.

Mr. Middleton displayed a document described as photographs which was marked as Exhibit O-7 by Mr. Clark. Mr. Donnelly said that one of the photos in the Exhibit depicted a layout of Mr. Angelo's house and a different house that was under construction and stated that both of the houses were sold by the Burkes. Mr. Middleton asked when the photo was taken to which Mr. Donnelly replied that it may have been taken the day before. Mr. Donnelly stated that he believed construction had started on the house 18 months prior and said he had not seen a worker there, two days in a row in over a year. Mr. Middleton referenced a photo of Lot 8 and asked if the garage and driveway were located closer to the Burke property would they have to enter and exit closer to the end of the dead end. Mr. Donnelly answered that was correct. He said he felt that adding a third new house at the end of the dead end would impact the quality of his life and said that when multiple vehicles are parked on Melrose Avenue, no other vehicles could fit down the street. Mr. Donnelly said that he worried about emergency vehicles being able to fit down the road and described one instance when a fire truck had to pull in backwards. He said it has been a major inconvenience and has been going on for multiple years.

Mr. Middleton displayed a document described as a series of photos of cars parked at the dead end which were marked as Exhibit O-8 by Mr. Clark. Mr. Donnelly described the location where the photos were taken and described his concern while referencing the vehicles in each photo. Mr. Middleton asked Mr. Donnelly if he thought there would be a conflict between entering and exiting the proposed lot and the other house at end. He answered he absolutely thought there would be a conflict. He said he wanted to let the Board know that Mr. Angelo's home has two curb cuts which has impacted the on-street parking resulting in more people and less parking spots. He stated there would be a total of 5 curb cuts at the dead end and said that he was very concerned about that and said it defeats the purpose of even living on a dead end. Mr. Middleton asked Mr. Donnelly if it concerned him that Mr. Burke did not provide any testimony regarding where the proposed house would be located, the size of the proposed house, which way the house would face, or where his driveway would be. Mr. Donnelly replied it was very concerning to him. Mr. Middleton asked if all of the houses on Melrose face Melrose Avenue in a north-south direction. Mr. Donnelly answered that was correct and said that any which way the proposed house faced would affect the quality of his life but especially if the front of the house faced his. Mr. Middleton asked Mr. Donnelly if he felt the creation of Lot 1.01 would be out of character with the other homes. Mr. Donnelly answered that he did feel that it would be out of character with the other homes.

Mr. Middleton asked Mr. Donnelly if he reached out to Mr. Burke when he received notice of the subdivision application filed by Mr. Burke. Mr. Donnelly stated that he had approached

Charlotte Burke and told her if she ever considered selling to let him know because he said he was trying to protect the quality of his life. He said when it came to Mr. Burke selling off the lots, he offered him \$350,000 cash. He stated that Mr. Burke did not accept his offer and said that it was worth \$550,000 and said he never made a counter offer. He finished by saying he wanted the Board to know that the reason he was before the Board was because he loves Brielle, his family loves Brielle, said he moved onto this street because it was a dead end and said if the application was approved it would absolutely diminish his value of the home he lives in and would make it so he would not want to live on there anymore based on the dead end becoming a through street. Mr. Middleton stated he did not any other questions for Mr. Donnelly.

Ms. Trainor asked Mr. Burke if he had any questions for Mr. Donnelly. Mr. Burke asked Mr. Donnelly to explain his comment about the street becoming a through street. Mr. Donnelly replied that if a driveway were put where the dead-end sign is, it would no longer be a dead end. Mr. Burke referenced the Exhibit and asked Mr. Donnelly if there were any lots that had less than two off-street parking spaces. Mr. Donnelly responded that he had not measured them. Mr. Burke referenced two vehicles in Exhibit O-8 and asked whose vehicles they were. Mr. Donnelly answered that they were his vehicles. Mr. Burke asked Mr. Donnelly if he thought he had sufficient room to park two vehicles in the roadway in front of his house. Mr. Donnelly answered, no. Mr. Burke said that Mr. Donnelly stated that he made an offer and never received a counter offer but also said that a counter was made of \$550,000. Mr. Donnelly replied that is was not a counter offer and said that the house was never listed and said the house was not even approved to sell. Mr. Burke stated that he did not have any other questions.

Ms. Trainor asked if there were any questions for Mr. Donnelly from Ms. Nuccio or the public. Hearing none, Ms. Trainor announced it was time to hear questions for Mr. Donnelly from the Board. Ms. Trainor asked if he was the one who took the pictures in Exhibit O-8. Mr. Donnelly replied he took one or two of them and a neighbor took one or two of them as well. Ms. Trainor asked if the cars were moved between taking the pictures. Mr. Donnelly responded that the pictures were taken in the same location at a different angle. Ms. Trainor asked Mr. Donnelly if he took the pictures in Exhibit O-7. Mr. Donnelly responded that he had taken them. There were no other questions from the Board.

Mr. Middleton called Richard DiFolco, JKR Engineering and Planner Service, Freehold, NJ, to testify. Mr. DiFolco was sworn in by Mr. Clark. Mr. DiFolco stated he was a Licensed Engineer since 1977 and was a Licensed Planner since 1981 and had over 50 years of experience in the Civil Engineer/ Planner field. Mr. DiFolco stated he had appeared before various Planning Boards in Monmouth County and Ocean County and had been certified as an expert over 100 times. Ms. Trainor stated the Mr. DiFolco was accepted as an expert in Engineering and Planning.

Mr. DiFolco said he had looked at the application, plans and photos of the property and he had a concern with the signed plans submitted, they are supposed to be done and signed by a Professional Licensed Land Surveyor and they were prepared by Mr. Burke with no Land Surveyor signature and seal. He presented a copy of New Jersey Administrative Code, Section 13:40-5.1, which was marked as Exhibit O-9. He stated that N.J.A.C. 13:40-5.1, subsection M, states that "subdivision plats, whether major or minor, shall be prepared by a professional licensed land surveyor". He also said the plans are to be drawn from an up-to-date survey, but the survey

submitted with the plan is 20 years old and the Board should have received a topographic survey; these items jumped out at him as not being in accordance with the Statute.

He also received what was a Monmouth County aerial of the property but there was no topographic survey and there was one submitted for the property across the street which showed a 3-inch change in grade at the corner, a change to a lower grade to the Burke home about 100 feet away which can cause a drainage issue. He felt this may show a need for underground piping but did not see any on the plan. Mr. Middleton asked him about a proposed driveway and Mr. DiFolco said none was shown on the subdivision plan and he felt this is a problem as there is no turn around planned here, this driveway comes right off the dead end of Melrose Avenue. He felt that there are questions on how a person will come out of that driveway, back out and then do a K-turn on Melrose Avenue or back into someone's driveway. He was also concerned that the plan does not show where the proposed home will front, it appears it will front on the stub end of Melrose Avenue and is really not a frontage, it is the end of the right-of-way; a frontage has to run along a street. Mr. Middleton referred to the tax map shown as he and Mr. DiFolco explained that the homes on Melrose Avenue all front on a street and this new lot will not have any frontage on a street.

Mr. Middleton then read from the Zoning Ordinance Section 21-9.13 "all front yards must face a 50-foot-wide right-of-way or at least 40 feet of the right-of-way line." Mr. DiFolco commented that none of the typical Borough standards apply here due to this lot's location and configuration, there is no right-of-way line. He added to what Mr. Middleton had read from Section 21 that "if there is a cul-de-sac or dead end turn-around, the front must be at least 30 feet along the line that has been improved". The end of Melrose Avenue is a dead end and not a dead-end turn-around and Mr. DiFolco said the words "turn-around" were left out of the commentary by Mr. Burke. Mr. Middleton mentioned the word "hammerhead" for a turnaround situation and Mr. DiFolco said this term only applies to multi-family dwellings or commercial and it takes up a lot of room.

At this point, Ms. Trainor noted that more than 50 minutes have gone by and Mr. Middleton and Mr. DiFolco said there is more to be testified to and they will be back for the November meeting to continue. Ms. Brisben then told Mr. Middleton there will be some changes to the Board come January, as Boards do their reorganization then, and she hoped this application can be finished by December; Mr. Middleton felt that the November meeting should finish their testimony.

November 7, 2023 hearing

Mr. Clark stated that in the last meeting, Mr. Middleton was in the midst of his direct examination of Mr. DiFolco. Mr. Middleton then began to question Mr. DiFolco. He asked Mr. DiFolco if it were true that at the last meeting he had testified that the lot had 40 feet of frontage where 75 feet was required and if his testimony was based upon an Ordinance. Mr. DiFolco answered that it was correct, based upon the Ordinance and the application. Mr. Middleton referenced Section 20-3 of that Ordinance and asked Mr. DiFolco to read it to the Board. Mr. Middleton asked Mr. DiFolco if this lot was a corner lot. Mr. DiFolco answered that it was not. Mr. Middleton asked if because this was not a corner lot, the requirement would be that the

frontage would equal the width. Mr. DiFolco replied that was correct., 75 feet. Mr. Middleton handed Mr. DiFolco the schedule of area requirements and asked him to read the R-3 Zone requirements. Mr. DiFolco read 75 feet for width. Mr. Middleton asked Mr. DiFolco if it was his opinion that the lot frontage of 40 feet out of character with the other lots in the neighborhood. Mr. DiFolco responded that it was his opinion that it was grossly out of character and said it was undersized for the neighborhood and the zone.

Mr. Middleton displayed a document which was marked as Exhibit O-10 by Mr. Clark. Mr. Middleton stated that the Exhibit identified the lots on the street on the left and identifies the frontages on the right, the subdivided lots that had been previously discussed and the proposed lot. Mr. DiFolco said that when looking at the Exhibit, one could see that the lots have frontages of higher than 40 feet and said that in terms of character, from a planning perspective, this was out of character with the neighborhood.

Mr. DiFolco stated that the driveway would be 90 degrees to the other driveways on the street which would create a conflict, said backing out of the driveway would require a U-turn, a K-turn or two K-turns to get around and said there is no place to do a turnaround movement at the end of a dead-end driveway. He said that 20 feet of the 26 foot at the end of the street would have to be part of the driveway and parking on either side of the street would obstruct the 20-foot driveway. Mr. DiFolco said he had referenced Ordinance 21-31.10 for the width of the driveway.

Mr. Middleton asked Mr. DiFolco if he had a chance to review the merger of Lots 8 and 9. He answered that he had, said the Borough has a standard, 21-56.2, called "Substandard Sized Lot", and then read it aloud to the Board. He said both of the lots were substandard so both of the lots would have merged under the Merger Doctrine and the Borough's Ordinance. Mr. Middleton said that Lot 9 was 7500 feet and Lot 8 was about 6500 feet, where the minimum area 11, 250 square feet was required. Mr. DiFolco said that this was important because it introduced another driveway into the end of the road with additional vehicles moving in and out.

Mr. DiFolco referenced Lot 8 and said that the proposed driveway is within 5 or 6 feet from the end of the pavement on Melrose Avenue which coincides with the driveway being about 5 feet from the property line. He said that if someone were backing out of Lot 8 and out of the proposed lot at the same time, they would be in conflict and added if there were a car parked on the street, it would be more difficult, if not impossible, to back out because there would not be enough room. Mr. DiFolco said he felt it would create a dangerous situation and a safety concern. He said another issue would be snow removal. When plowed, he said, the truck would plow the snow at the end of the road and this would block the driveway to the proposed lot and perhaps even Lot 8, unless the snow is pushed onto the property. He said this application creates a snow problem, a backup problem, a turnaround problem, and also the orientation of the house problem because everyone is parallel to the street and this house would be contrary to that standard neighborhood scheme. Mr. Middleton stated he did not have any other questions for Mr. DiFolco.

Mr. Burke stated that in Mr. DiFolco's testimony in the meeting he expressed concerns with the topographic map submitted with the application and asked if he had any facts that support that it did not meet the requirements of the Borough Code. Mr. DiFolco responded that he reviewed the plan and said the degree of accuracy of the map did not provide any suitable engineering basis

for a determination. Mr. Burke asked if the contour intervals on the map meet the code. Mr. DiFolco replied that he took issue with the content of the map and the information provided on the plot plan really did not explain anything. Mr. Burke then asked if the professionals that reviewed this had any problems with it and the answer was no. Then Mr. Burke and Mr. DiFolco went over the requirements for submission of a subdivision and survey. Mr. Burke had his next exhibit marked as Exhibit A-5, a survey of the property which shows a license and seal of the surveyor and he asked Mr. DiFolco if this was proper and Mr. DiFolco noted the survey is from 1999. Mr. Burke asked if there have been any changes to this survey and Mr. Middleton objected to this, Mr. DiFolco is an Engineer, not a surveyor, and a survey for this plan should have been a more up to date. Ms. Trainor asked Mr. DiFolco if he could answer Mr. Burke's question and the answer was no. Mr. Burke then questioned who could prepare a subdivision map and noted it could be done by an Engineer, he then asked that his reference to this, which he read, be marked as Exhibit A-6, a quote from NJAC 30:40-7.4. Mr. DiFolco had questioned his ability to do this subdivision plan.

Mr. Burke referenced Exhibit A-2, the Minor Subdivision plan, and asked Mr. DiFolco if it referenced the survey that was included with the application and the answer was yes. Mr. Burke then asked about the metes and bounds description from May 2022 that were included with his first submission for this subdivision and Mr. DiFolco was not familiar with them so they were produced and marked as Exhibit A-7; Mr. Burke noted they were prepared by a licensed surveyor. He then started to go on but Mr. Middleton objected at this time that Mr. Burke had not asked a question but produced Exhibit A-7. Mr. Burke then asked Mr. DiFolco if he had listened to the tape of the July 2023 meeting and he had not.

Mr. Burke then asked Mr. DiFolco if the full lot for this application fronts on two streets, Union Lane and Melrose Avenue and Mr. DiFolco had a problem with Mr. Burke's definition of "frontage". There was a brief discussion on rights-of-way, linear path as well as streets and Mr. Burke asked Mr. DiFolco to produce references; Mr. DiFolco explained this does not have the frontage required and they discussed the travel way on Melrose Avenue. Mr. Burke asked if the end of Melrose Avenue is considered a right-of-way line and Mr. DiFolco said no, it is the dead end of Melrose Avenue. Mr. Burke then asked how was he able to come up with the numbers he has on his subdivision map and Mr. DiFolco said he did not agree with it; Mr. Burke said the Zoning Officer did agree with it when he originally went in with his plans. Mr. DiFolco again said this is a dead end without a cul-de-sac. Mr. Burke asked Mr. DiFolco how many dead ends are there in the Borough and Mr. DiFolco did not know, Mr. Burke said there are dozens. Mr. Burke then asked about cul-de-sacs and felt, based on what Mr. DiFolco said, they do not have proper frontage and asked Mr. DiFolco if he agreed with this and the answer was no, they have a radius on a curve, a pie shape and there is no cul-de-sac for this application; Mr. Burke did not agree with this and there was another brief discussion on the linear path definitions.

Mr. Burke noted in previous testimony it was stated that any home built on new Lot 1.02 would be 10 feet from Mr. Donnelly's home and asked Mr. DiFolco about this, his answer was the building envelope was 60 feet long, it would be a long and narrow home and he asked Mr. Burke if he was asking if the layout was correct? Mr. Burke said he was asking him if a home can be built inside this building envelope that will not impact the Donnelly home and Mr. Middleton had an objection to this, this is conjecture of where the home will be built. Mr. DiFolco was willing to answer and felt the home may or may not impact Mr. Donnelly's home, there is a 60 foot long

envelope. Mr. Burke then produced Exhibit A-8, a conceptual sketch addressing the concerns of the location of the home and not have it looking at the Donnelly residence, he had two plans of where the home could be. He asked Mr. DiFolco if they looked conforming and Mr. DiFolco questioned the setback lines, he did not agree. Mr. Burke then asked if a hammerhead parking area could be put in so a car could turn around on the property to leave facing forward on Melrose Avenue and Mr. DiFolco agreed a hammerhead could be put in but there needs to be 20 feet to do this. At this time Mr. Middleton raised an objection as Mr. Burke's testimony was to subdivide the property and sell the lot as is for the new owner to build a home, Mr. Burke was not building a home here and now he is asking about hypothetical homes, none of this was on the original application. Ms. Trainor asked Mr. Burke when he submitted Exhibit A-8 to the Secretary and he said he did not, he brought it tonight in response to last month's testimony. As Mr. DiFolco said he felt he could answer questions on Exhibit A-8, Ms. Trainor overruled Mr. Middleton's objection and asked Mr. Burke to continue on with his questions.

Mr. Burke then referenced other subdivisions in the area and noted the building envelopes for them and felt they could fit in the proposed lot and asked Mr. DiFolco if that were correct and Mr. DiFolco made a comment on the light shield but his answer was inaudible on the recording. Mr. Burke then asked about the Objector's Exhibits 0-7 and 0-8 showing cars on either side of Melrose Avenue at the dead end and asked Mr. DiFolco if this is represented correctly and Mr. DiFolco said yes, this is to demonstrate the road width available. Mr. Burke said the home on Lot 8 at the end of Melrose Avenue is not fully built and the driveway would block part of this so a car could not park on that side of Melrose Avenue in that location and he felt the exhibit was not accurate.

Mr. Burke then spoke of snow plowing and said that there would be enough room on the right side of the dead end to allow snow to be piled up there, Mr. DiFolco agreed. Mr. Burke asked about testimony Mr. Donnelly had made but Mr. DiFolco could not answer and Ms. Trainor asked Mr. Burke to continue with another question. He asked if there are any other dead ends in town that have driveways and Mr. DiFolco said he saw several of them and they had ample room to turn around. Mr. Burke then asked about Mr. Donnelly's property and the proposed lot, do they have about the same square footage and Mr. DiFolco felt Mr. Donnelly's may be a little more; Mr. Burke noted they are both around 12,000+ square feet.

Mr. Burke commented that Mr. Donnelly had stated he would be subject to 5 years of construction and lots 8 and 9 were sold in 2001. Lot 9 has been occupied so is not in construction and he asked if that was correct and Mr. DiFolco agreed. Lot 8 had been sitting for some time but is now under construction and the building is framed, Mr. DiFolco agreed. Mr. Burke said a house on Lot 4 was taken down and reconstructed with a modular and is currently occupied. Mr. Burke asked Mr. DiFolco how long it takes to build a stick house and Ms. Trainor asked Mr. DiFolco if he was qualified to answer this and he was not so Mr. Burke was told to move on and finish his question as he was over time allotted. Mr. Burke said Mr. Donnelly's home is approximately 100 feet deep and asked Mr. DiFolco how this compares with proposed lot 1.02. Mr. DiFolco said the question made no sense to him. Mr. Burke referenced Objector's Exhibit 0-1 and asked the minimal distance from the right-of-way to the rear property line; Mr. DiFolco answered 98 feet and change.

Ms. Trainor told all that they were over time allowed for this evening and the hearing will have to be continued next month.

December 12, 2023 hearing

The application was carried, without the need for the issuance of further notice, due to the illness and unavailability of the objector Peter Donnelly's expert witness Richard DiFolco.

January 9, 2024 hearing

At the conclusion of the meeting in November, Mr. Burke had not yet finished his questioning of Mr. DiFolco and, as Mr. DiFolco was here this evening, this is where the hearing continued and Mr. Clark noted that Mr. DiFolco was still sworn in. Mr. Burke stated that Mr. Donnelly, in his statement, said that this subdivision will result in a through street and Mr. DiFolco felt Mr. Donnelly meant that people will drive past his lot. Mr. Burke then asked if this subdivision will impact deliveries and Mr. DiFolco said there is no place to park as this is a dead-end street and each home has street frontage and this subdivision does not have street frontage, there is parking on Melrose Avenue and Mr. Burke asked for confirmation that each property has two off-street parking areas, Mr. DiFolco agreed. Mr. Burke asked if lots 8 and 9 were part of this application and Mr. DiFolco said not directly but they are on the Melrose Avenue. Mr. Burke then asked how many lots on Melrose Avenue conform and Mr. DiFolco said each property is 100 feet deep where 125 is needed so they do not conform, some do not conform as to width either. Mr. Burke asked if those two items are on his variance application and the answer was yes.

Mr. Burke stated that, during the October testimony, Mr. DiFolco testified that the line at the end of the street delineates the end of the right-of-way and said the beginning of proposed lot 1.01 was not a right-of-way line and asked if that was correct and Mr. DiFolco said yes. Mr. Burke then referred to Mr. DiFolco's testimony at the November meeting where Mr. Burke asked him if lot 1 constitutes a through lot as it had frontage on two streets and Mr. DiFolco said it did; Mr. DiFolco said he did not say that. Mr. Burke said that, on that same night of testimony, Mr. Middleton asked Mr. DiFolco about the Block frontage requirement and the answer was 75 feet but the lot frontage was only 40 feet and Mr. Burke saw a discrepancy here and asked Mr. DiFolco to address this as being a through lot with right-of-way frontage of 40 feet or not. Mr. DiFolco did not agree and said he has always said it is not right-of-way frontage, it is the end of a street, a right-of-way has street frontage.

Mr. Burke said the Zoning Officer told him there is 40 feet of lot frontage and Mr. Middleton objected as this is hearsay; Mr. Burke said he had an email from Elissa Commins, the Zoning Officer and Ms. Trainor said the Zoning Officer is not here to confirm this. Mr. Burke then told Mr. DiFolco he testified that the lot frontage required is 75 feet but there is a section of the Code that narrows it down to 30 feet and Mr. DiFolco said he was familiar with this. Mr. Burke then read that part of the Ordinance, 21-9.13, and said he felt the end of Melrose is a right-of-way and a turnaround. At this point Ms. Trainor spoke and said this has all been gone over before and it can be addressed in the time for rebuttal.

As Mr. Burke was done with his questions to Mr. DiFolco and Mr. Middleton had no redirect the hearing was opened to the Board for questions; no Board member had any questions except for Ms. Trainor. She asked about the frontage of homes on Melrose Avenue and are any of them conforming, Mr. DiFolco then went to Exhibit 0-10 and said lot 1 conforms and lot 9, 10, 11 conform. Across the street, on Evergreen and Melrose, 8 out of 9 lots conform, lot 8 does not. She then said Mr. Burke's testimony referenced certain parts of the MLUL (Municipal Land Use Law) that he believed supported positive criteria for a C2 variance and that his application gives adequate air, light and open space. Mr. DiFolco said this may be true but it is not enhancing the zoning, Mr. Burke is picking what complies and is ignoring what doesn't. Ms. Trainor asked about subsection E, density and environment. Mr. DiFolco said the density proposed does not meet the needed setbacks in shape or frontage and the home is not in line with the community and it would have to be put in sideways and not in line with the other homes on Melrose Avenue. She then asked about the natural resources in paragraph J and Mr. DiFolco did not see where that applies here.

Ms. Trainor then asked about paragraph M which references the efficient use of land. Mr. DiFolco said extending services on a lot with no street frontage is not a benefit, but a detriment, he was not referring to utility services but access and safety of vehicles and the safety and welfare of the people, he felt there is substantial detriment to the public good. Ms. Trainor then noted Mr. Middleton had cross examined Mr. Burke on the RSIS (Residential Site Improvement Standards) and asked Mr. DiFolco his opinion on that. Mr. DiFolco said his experience with the RSIS is that all homes front on a road and, if not, then a cul-de-sac needs to be created to provide frontage and turn around capabilities for emergency vehicles. Ms. Trainor asked about RSIS testimony given about the width of the roadway and Mr. DiFolco said 26-27 feet.

Ms. Trainor then asked about the testimony about lot 8 and prior ownership by Ed and Charlotte Burke as well as lot 1 and a lot merger issue brought up by Mr. Middleton. She asked that, just because lot 8 was owned by them together with lot 1 would that change the analysis of proposed lot 1.01 to a self-created hardship? Lot 8 is nonconforming for frontage and the Brielle Ordinance said it can be built on if the owner does not own adjacent property. Mr. DiFolco said the required depth of 125 feet is not met on proposed lot 1.01 but it is on lot 1. Ms. Trainor said if the merger does apply, then lot 1 would include lot 8 and be an "L" shaped lot and she felt this supports Mr. Middleton's comments on the merger doctrine. Mr. DiFolco thought this was an interesting point as the frontage now would be 109 feet; Ms. Trainor said Mr. Burke is asking for two variances for the new lot, a depth variance and a frontage variance and she wanted to know Mr. DiFolco's opinion on all this. Mr. DiFolco again said he had a problem with calling it frontage at the end of Melrose Avenue, if lot 8 and 1 were connected perhaps they can be called a frontage and there could be a cul-de-sac created. Mr. Middleton told Ms. Trainor he thought her questions were good and he was appreciative of them. Mr. Burke then spoke and said he didn't remember this being brought up during the past hearings and Ms. Trainor said it was during the beginning of the application testimony, Mr. Middleton provided case law on this. Mr. Middleton reiterated the case law he had spoken of at that time of testimony and he had handed out paperwork on the Ordinance and gave a copy to Mr. Burke who said he was not familiar with it. Ms. Trainor reminded Mr. Burke that Mr. Middleton's testimony was for this subdivision, not the previous one as he had not taken part in the first one. Mr. Burke then asked if there was any discussion "behind the scenes" in regards to these case laws and Ms. Trainor said there was none with her.

Going back to Mr. DiFolco, Ms. Trainor noted that Mr. Burke said there is a hardship here because the lot to be subdivided is so big and she asked Mr. DiFolco if he was familiar with subdividing a lot because it is too large for the neighborhood and the answer was no, he had never heard that. Ms. Trainor then asked about what Mr. DiFolco said about the width of a driveway and it would need to be 20 feet and she asked what his opinion was about that. Mr. DiFolco said the end of Melrose was the only area where a driveway could be and the Ordinance calls for a 10 foot driveway and two 5-foot returns, this would leave 7 feet on each side of the end of Melrose. Ms. Trainor asked if there needed to be a driveway and Mr. DiFolco said yes, he believed so, if there was no driveway parking would have to be on Melrose Avenue in front of other homes. Ms. Trainor asked him if he knew if there has been any more construction on lot 8 which is having a home built and Mr. DiFolco did not know.

At this time all Board questions were done and the hearing was opened to the public for questions to Mr. DiFolco. Ms. Kim Nuccio, who had been previously sworn in, came forward and had questions on the MLUL. The first question was about Chapter 21-3 entitled Purpose. She asked Mr. DiFolco to read the part of the chapter she had highlighted, “to encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight.” She asked Mr. DiFolco if, in his opinion, would access to this site promote the free flow of traffic and he said it did not, it would result in congestion so it would not comply.

Ms. Nuccio continued on and asked Mr. DiFolco to read more in the same chapter and he did, “the zoning chapter is adopted in order to provide adequate light, air and open space to promote the establishment of appropriate concentrations of density that will contribute to the well-being of persons, neighborhoods, communities and preservation of the environment, to provide sufficient space in appropriate locations, office space, both private and public in order to meet the needs of the citizens.” Ms. Nuccio said, considering the impacts to the neighboring property owners, and more specifically the clearing of that critically important vegetative buffer between lot 7 where she lives and where the Donnellys live, would a ruling in favor of the subdivision contribute to the wellbeing of the people that live there. Mr. DiFolco said the development, the congestion and the access would not contribute to the benefit of the neighborhood and would be contrary to the Ordinance.

Ms. Nuccio’s next question was regarding lot depth and the variance that Mr. Burke is seeking, is it correct to be at 125 feet and Mr. DiFolco said yes. Ms. Nuccio confirmed that the depth of the new lot is shorter than 125 feet and asked Mr. DiFolco if relief given to grant this subdivision would impair the intent of the Zoning Ordinance and Mr. DiFolco said yes, there is a lack of depth. Ms. Nuccio then turned to the MLUL Chapter 29:2.8 and asked Mr. DiFolco to read the following: “The Definition of Negative Criteria. Relief can never be granted unless it can be granted without substantial detriment to the public good and unless it will not substantially impair the intent and purpose of the Zone plan and the Zoning Ordinance.” Ms. Nuccio asked if relief would impair the intent and purpose and Mr. DiFolco believed it would, it would be a long and narrow footprint for a house and the lot shape is not ideal for this property; Mr. DiFolco felt that a builder may want to come back to the Board for relief in building.

Ms. Nuccio said the MLUL also talks about interpreting negative criteria, Chapter 36:2.1. She once again asked him to read the highlighted portion: “a Board cannot determine whether there is negative criteria without referencing the positive criteria. The negative criteria always involves the balancing of the benefits and detriments, the positive and negative effects.” She asked him if he agreed that one outcome would favor the estate and one outcome would favor the neighborhood, his answer was yes. Ms. Nuccio asked if the property is subdivided and subsequently sold, did Mr. DiFolco agree the estate would benefit from the sale of the front house and the subdivided back lot and Mr. DiFolco said yes, they would benefit. She then asked if the neighboring properties would bear the burden of this, the overcrowding of this street, the buffers, etc. Mr. DiFolco believed that when the rule talks about the benefit and detriment, it is talking about the municipality and he did not see the benefits outweighing the negatives here, he felt the scale was in favor of the applicant. She asked if the benefit is monetary to the estate and if there is any other benefit and Mr. DiFolco did not see any. She asked if the detriment to the neighborhood was largely about safety and buffers that are in place today and Mr. DiFolco saw a diminishing of buffers and access and even the aesthetics and will cause detriment to the neighborhood, the scale is tipped to the detriment side in his opinion.

Ms. Nuccio asked Mr. DiFolco, in his opinion, which of the two outcomes will serve the Zoning Ordinance and Municipal Land Use Law and Mr. DiFolco said the decision not to approve the application. Ms. Nuccio had one last question, she said Mr. DiFolco testified that not many, if any, of the lots on Melrose Avenue have the needed depth requirement and, if that if the case, is a variance for depth the correct planning tool? Mr. DiFolco said that, in an older subdivision, where historically the depths have been 100 feet, the depth orientation of the proposed lot is turned sideways and there is depth along a street and one at the end of a street, definitions are getting twisted; if the depth was measured from Melrose Avenue back it would not be different than the neighbors but because the proposed lot is turned and deficient, it is substandard for the neighborhood and not as deep as the rest of the neighborhood. To change the zoning for this area is a different process.

Ms. Trainor asked if there was anyone else from the audience with questions and there was no response, she then asked Mr. Middleton if he has any more witnesses and he did not so Ms. Trainor asked Mr. Burke to come forward for a rebuttal. He said he had taken the issue of no lot frontage up with the Zoning Officer and he looked at the Engineer’s report and the definition in the Code. The Zoning Officer’s interpretation was that – at this point Mr. Middleton interrupted and said this is hearsay; Mr. Burke said he had an email from the Zoning Officer. Ms. Trainor asked Mr. Clark for an opinion and he said this is up to the Board, the rules can be relaxed in a Board hearing, but typically a third-party witness normally has to come in and testify; if the email is from the town the Board can hear if it would like to. Mr. Trainor asked Mr. Burke to show it to Mr. Middleton and Mr. Burke said the Board accepted the Environmental Commission report in the same manner and Ms. Trainor said it wasn’t for this hearing but it was submitted. She wanted to hear what Mr. Middleton had to say on this and he said it was okay to submit so it was marked as Exhibit A-9, an email from the Zoning Officer Elissa Commons dated 12/4/23, it was a response to Mr. Burke’s email to her. He had asked her if the property at 409 Union Lane has frontage on Melrose Avenue and she said yes, according to the tax maps there is 40 feet of right-of-way; Mr. Burke said this agrees with the Brielle Land Use Codes and he read from Zoning Ordinance 20-3 on right-of-ways and street lines and felt that lot 1 and proposed lot 1.01 have right-of-way

frontage, Brielle Zoning says a right-of-way and street line are synonymous. He also said he asked her about section 21-9.13, Frontage on Right-of-Way and read the section which says “All front yards must face on a 50-foot right-of-way for at least 40 feet along the right-of-way line except in the case of cul-de-sacs or dead-end turn-arounds in which case the lot must face on the right-of-way for at least 30 feet.” He said that what is proposed is a right-of-way line, it is not a cul-de-sac. A dead-end turn-around is not defined in the definitions and the Zoning Officer could not find one either.

Mr. Burke then went back to his prior case before this Board and Mr. Middleton objected; Ms. Trainor asked Mr. Burke to keep his comments related to this hearing and not the previous one which is closed. Mr. Burke said the Board previously established that 30 feet of frontage would be conforming to this code section and Ms. Trainor asked if he had any reference on this he could submit and Mr. Burke said this is in the Minutes of the first hearing, he said it was an exchange between Ms. Trainor and the Board Professionals, on pages 24, 25 and 26 on a transcript obtained from Mr. Middleton. This is a transcript of the Planning Board meeting of December 2021 on the prior subdivision application. Mr. Clark felt Mr. Burke was saying that, after the first application, there was a lawsuit and there were transcripts in regards to litigation filed by Mr. Donnelly. Mr. Burke said that Mr. Clark would have a copy of this as well as the Borough. Ms. Trainor, at this time, asked Mr. Burke that he move along with this as it was getting late and Mr. Middleton asked if he has a copy that he could review and Mr. Burke did not but said he could provide it. Mrs. Brisben asked that Mr. Burke forward the information to her through email and she would send it to Mr. Middleton. Mr. Clark said this would be submitted as Exhibit A-10, a transcript of the Planning Board hearing on December 14, 2021, Ms. Trainor looked at Mr. Burke’s copy and noted it is 75 pages and Mr. Burke referenced pages 24, 25 and 26. Ms. Trainor then read silently what those pages said and then told the Board it was a discussion between herself, Mr. Clark and Mr. Hilla about different positions people took for the 2021 hearing about the Code section and Mr. Burke said this is about what is being contemplated now. Mr. Middleton asked exactly what code section was discussed and was told Brielle Ordinance 21-9.13.

Mr. Burke then turned to the discussion that was had on the merger of lots 8 and 9 and said this has nothing to do with this application, this application is for lot 1 and it stands alone. Even if lots 8 and 9 were merged it would not have an impact on the application before the Board and the matter is moot. Lot 9 has a house on it and has been occupied for two years, lot 8 has a house being built on it, both properties received zoning approvals for building. Mr. Burke said he has spoken to the Assessor, Mr. Middleton objected but Ms. Trainor let Mr. Burke speak, he said he had an email on it and, with the exceptions in the Borough Code, it is the Assessor’s opinion that they could not be merged, they were separate lots for over 50 years and the Borough never took action on merging these lots. These lots were acquired by Mr. Burke’s parents in 1965 after lot 1 was purchased and the Doctrine of Merger came into being in the late 1960’s, after these lots were acquired. One of the exceptions is that continuous lots, created under subdivision approval, do not merge, merger is unwarranted. Ms. Trainor asked what he was reading from and he said it was from research he had done, he did not have a citation, it was an opinion from a law firm. Another exception to the Doctrine of Merger applied to creating an L-shaped lot.

Mr. Burke then addressed the Brielle Code 21:9-3 and read “any legally established existing use of a building or structure, lot or land, or part thereof, at the time of adoption of this

Chapter, which use constitutes a nonconforming use under the provisions of this Chapter may be continued,” so Mr. Burke felt they are grandfathered in as they were from an original subdivision of 5 lots. There also is an easement between lots 8 and 9 for a catch basin. Mr. Middleton has shown a plot plan map of lot 8 in his testimony with Mr. DiFolco and it shows a pipeline that exists on the line between lots 8 and 9 and proceeds towards the rear lot line. This was marked as Exhibit A-11, a plot plan for lot 8 which shows the pipeline from the right-of-way to the Borough’s catch basin on the property. It was asked what significance this has and Mr. Burke said it shows the pipeline easement so the properties cannot be merged. Mr. Burke submitted an email from the Assessor, marked as Exhibit A-12, that confirms that his records have record of an easement here which would preclude the merger of lots 8 and 9.

Mr. Burke said there is also an easement between Lot 8 and Lot 1, a utility easement that predates ownership by the Burke family. He felt there were a “whole handful” of issues here that show a merger cannot be done between lots 8 and 9 and also lot 1, there is a lot of case law out there on this and again said merger is not warranted. As to a hardship question that was brought up, he said there would have to have been an action with the applicant or the prior owner and Mr. Burke said he is bringing all this up as a rebuttal to Mr. Middleton’s testimony on the merger.

At this point Ms. Trainor asked how much more time did he need and Mr. Burke said another 15-20 minutes; as it was 9:55 p.m. Ms. Trainor then announced that this hearing was again being carried for another month and will continue at the Tuesday, February 6th meeting of the Board.

February 6, 2024 hearing

Mr. Burke wanted to continue his rebuttal testimony and he started with the topic of the lot merger. He showed on the map where the driveways of the lots were located and said that this was established in the prior application he had filed and gave a brief history of the two lots by the Burke home that were the topic of the lot merger question. He said there were always driveways here on these lots as there was a storage garage at that location back before the Burke family had purchased the lots. He also spoke of a drainage easement between lot 8 and lot 9 and indicated that, as per his conversations with the Tax Assessor (as set forth in the e-mails that Mr. Burke submitted to the Board), the lots could not be merged due to this easement. There also is a utility easement from Jersey Central Power & Light here. Mr. Middleton objected to this as Mr. Burke is not an attorney and cannot give legal statements but Ms. Trainor wanted to hear Mr. Burke’s testimony; Mr. Middleton said that Mr. Burke’s statements were absurd about a utility easement not allowing a merger. Ms. Trainor felt that Mr. Burke should be able to continue even though he is not an attorney and that the Board will give the testimony whatever weight it deems appropriate. Mr. Burke said that lots 8 and 9 were originally merged from 5 lots to 2 and Mr. Clark referenced Exhibit A-5 on this, a survey from 1999. Mr. Burke then went through some exceptions in the merger law and again referred to the Tax Assessor agreeing with him and had paperwork on this which was marked as Exhibit A-13, an email exchange between himself and the Tax Assessor on the lots being created.

Mr. Burke then quoted Borough Code 21-9.3 which speaks of grandfathering legally established lots that pre-date the current code. These lots were established in 1971 (Mr. Burke felt

it may have been earlier) and the Borough Code was adopted in 1972, so Mr. Burke contends that the lots pre-date the code and are grandfathered. He said the Burke family had owned these lots for 5 decades and, if the Borough felt that a merger should have been done, it should have been done before this subdivision application; He said that the responsibility to merge lots lies with the municipality.

Mr. Burke then spoke of the lawsuit that Mr. Middleton had filed against him regarding Mr. Burke's previous subdivision application. The resolution of that lawsuit resulted in a consent agreement, dated May 12, 2023, that stipulates that all complaints are dismissed along with the requirement of a lot merger and this consent agreement was marked as Exhibit A-14. He did not have copies to distribute and Mrs. Brisben asked that he please email this exhibit to her for the file and Mr. Burke said he would do so. He said the lot merger matter is moot as there are now two homes on these lots.

The next matter that Mr. Burke addressed was the Environmental Commission letter entered into evidence as Objector Exhibit A-4. Ms. Trainor said the Environmental Commission representative is not here so this is a hearsay document event though it was accepted as an Exhibit for the original application and she reminded all that the Covid rules relaxing the requirements for personal appearances at Planning Board hearings have been suspended. Ms. Brisben spoke and said this document is from 2021 and Mr. Burke agreed it is from the first application. Mr. Burke said he had asked Mr. Clark if a representative could be here and was told it can be addressed through his rebuttal which is why he is bringing it up. Mr. Clark thought he had told Mr. Burke if he wanted to subpoena the Chairman of the Environmental Commission he could do so if he felt that his testimony would be needed, that was his recollection but he did say Mr. Burke could address the facts if he wanted to in his rebuttal and Mr. Burke said that is what he wants to do. He says the letter states the application is incomplete as a topographic map was not submitted; that was true of the prior application but the current application does have one. Mr. Burke said the size of the proposed lot mentioned in the report is inaccurate and it says the parcel would be landlocked if subdivided and that, too, is inaccurate. He went on to say that Ms. Nuccio, the objector, had submitted this exhibit and her husband was on the Environmental Commission when this was written, as well as being a property owner within 200 feet, and he felt this was a conflict and an ethical violation and taints anything Ms. Nuccio puts in front of the Board to date or in the future.

He then moved on to the objector's expert witness Mr. DiFolco and referred to the lot frontage issue and Mr. Burke spoke of Section 21-9.13 which speaks of cul-de-sacs and dead-end turnarounds which need a lot to face 30 feet of frontage. He said his proposed lot provides for 40 feet of frontage right-of-way on Melrose Avenue. He felt the lot frontage requirement has been met and spoke of Exhibit 10 from the 2021 original hearing. He then talked about the driveway development for the new lot and that it was stated by the objector's expert witness it would be a dangerous condition, but Mr. Burke explained vehicles would be able to exit "nose out." He felt it was speculative to state one would have to back out and that this would be dangerous. He also commented that some homes on Melrose have to back out of their driveways to get to the street, this is true of other roads in town such as Riverview Drive which is a busy road.

Mr. Burke indicated that he was done with his rebuttal so Mr. Middleton began to question Mr. Burke on his rebuttal testimony. Mr. Middleton came forward and spoke of page 536,

paragraph 2, volume 2020 of the Cox book which speaks of lot mergers and asked if Mr. Burke agreed with what it said, Mr. Burke did not. He and Mr. Burke then had a discussion on what a subdivision is and who can grant it, this in regards to lot 8 and 9 and consolidation of lots. Mr. Middleton asked Mr. Burke if he had any case law on lots not being merged due to a drainage easement and Mr. Burke said he did not look that up.

Mr. Middleton then turned to his traffic expert's testimony, Mr. DiFolco, and asked Mr. Burke if he recalled Mr. DiFolco saying that backing out of the proposed lot to Melrose Avenue could be dangerous and Mr. Burke did. He said he did submit a schematic that showed a car can come out nose first, but said this is a subdivision and not a site plan and he is not developing this lot. Mr. Middleton said this shows that there is no guarantee that a developer would design this lot so that cars would have to back out onto Melrose Avenue. Mr. Burke said he did present two concept drawings and Mr. Middleton objected to them. Mr. Burke objected to this questioning but Mr. Middleton said he was questioning the driveway issue and what has been said.

Mr. Middleton indicated that he was done at this point with his questioning and would summarize when it is time. Mr. Burke then went over his lot merger points again and felt that issue was done and what was done was consistent with the law and that was all he had to say at this point.

Ms. Trainor then asked if anyone from the public had any questions based upon the rebuttal testimony from Mr. Burke and there was no response so she went to the Board and no one had any questions. Ms. Trainor then asked for closing remarks from both Mr. Burke and Mr. Middleton. Mr. Burke came forward and said he is seeking variance relief for a proposed lot for fronting on a right-of-way less than 50 feet on Melrose Avenue, also for lot depth. He referenced that the other lots on Melrose Avenue are deficient on lot depth. He quoted the Borough Code on the purpose of the R-3 Zone which is to provide for smaller lot sizes and he felt his application does this. He commented on other subdivisions on Tamarack Drive and Donnelly Place that, he felt, were on smaller right-of-ways so his application is consistent. He stated again that the original lot 1 is large enough to support 3 lots and will be compliant as to lot size and he is looking for a 2-lot subdivision as he wants to keep the historic structure that is there now, if they went for 3 lots the structure would have to come down. He said proposed Lot 1.02 is larger in square footage than the other lots on Melrose Avenue and he did not feel there is a traffic problem with this proposed lot. He felt there is a hardship here and this meets the C1 variance criteria as well as the C2 criteria, this was all discussed during previous testimonies. Mr. Burke wanted to read comments from Mr. Clark when the first application was heard in Freehold for the lawsuit and Mr. Middleton objected and it was sustained by Ms. Trainor, that litigation was dismissed. Mr. Burke did not go into detail but said Mr. Clark made arguments for the subdivision when it was before the judge. Mr. Burke finished by stating that, in his opinion, relief can be granted without substantial detriment to the public good and it will not substantially impair the zoning and he requested the Board to approve this which is identical to the original application which was approved in December 2021.

Mr. Middleton then came forward to give his closing remarks, he represents Mr. Donnelly who lives adjacent to the proposed lot. He said this application needs variance relief for lot depth and lot frontage. The applicant had to prove his case and he testified as a Planner and Engineer and had to prove both the positive and negative criteria. Usually the applicant's experts are to be

impartial but, in this case, the expert is the applicant who will have significant financial gain which can interfere with judgement. He said Mr. Burke is declaring a hardship, which would have to do with the size of the property, the shape, so on; however, the key to a “hardship” is that it cannot be self-created and Mr. DiFolco stated, in his testimony, that the hardship is being created by the proposed subdivision. He referenced the application for the Centrella subdivision on Crescent Drive where the Board granted a subdivision for 3 lots, one of the lots was deficient and the neighbors took this to court and won and the Centrellas came back to the Board and were granted a 2-lot subdivision, the judge said the 3 lots were a self-created hardship. He also mentioned two other case laws on this and all this shows there is no hardship in this application.

Mr. Middleton then reminded the Board that Mr. Donnelly was so concerned with the proposed subdivision, he went to Mr. Burke in July, 2021 and offered him \$350,000 to purchase the back portion of the lot; Mr. Burke rejected it and said he wanted \$550,000 and nothing moved forward from there. Mr. Middleton said that lot 8 on the other side of the street right by the Burke home was sold for \$380,000 so the \$350,000 was an appropriate amount and the offer would have taken away any hardship.

Mr. Middleton then addressed the C2 criteria, the applicant has to prove that granting the variances promotes the zoning and the community will benefit. He also has to prove that the benefits he creates substantially outweigh any detriments which is a formidable hurdle and the C2 criteria does not apply to many cases. He then went into the zoning and what Mr. Burke said he was promoting but Mr. Middleton said he never went into the details of the benefits and Mr. Middleton had a reader board showing some of the zoning requirements and referred to them. He used the one part of proving light, air and open space and said this proposed lot doesn’t do it, it eliminates open space by putting in a home where trees are now. He used the example of taking down a hotel and putting up a home, this would give more light, air and open space to the neighborhood.

Mr. Burke stated the lot is oversized and should be allowed to be subdivided and Mr. Middleton read about appropriate population densities in the MLUL that says it has to be for the wellbeing of the neighbors, communities and preservation of the environment, he did not think this proposal does this as the mature holly and oak trees would be removed. Mr. Middleton then spoke briefly on the lot merger issue again. He then commented on the wording of “historic structure” Mr. Burke used in describing the home on the lot, 409 Union Lane, and Mr. Middleton said the home does not meet the requirements to be considered historic.

Mr. Middleton could not find any benefit to this subdivision and, even if there was one, does it outweigh the detriment and there is substantial detriment here. He then showed again the photos of Melrose Avenue and the cars on the street which Mr. DiFolco referenced and said was a safety issue, as well as the 4 driveways at that end of Melrose Avenue with one of them right by the dead end. Most of the lots on Melrose have a 100-foot frontage and the proposed lot would have 40 feet which makes it out of character with the neighborhood. He then spoke of the proposed building envelope and said it does not match what is existing on the street, it is long and narrow. After a few more comments on the size of the existing homes on Melrose Avenue, Mr. Middleton was done. Mr. Burke wanted to comment on some of Mr. Middleton’s statements but Ms. Trainor felt that he should have objected when they were stated and now it was time for public comment.

Mary Burke, 1013 Cedar Lane, came forward to speak and was sworn in. She commented on the hardship issue and said if the subdivision is not approved the applicant may subdivide the lot into 3 lots, they are trying to work with the town; she said Mr. Donnelly made an offer for a strange cut of the property, an angled piece and she asked the Board to approve the subdivision as they did the first time it was presented.

As there were no further comments that portion of the hearing was closed and the Board addressed this matter. Mr. Stenson had no comments, Mrs. Brisben commented on Mr. Burke's earlier statement of subdivisions on Tamarack Drive and Crescent Drive and she said those properties had conforming lots and this one does not, it is undersized. She could not see how this can be divided into 3 lots without creating a flag lot which would have to be approved by this Board. She felt Mr. DiFolco gave excellent testimony concerning traffic and the impact on neighbors; she had also suggested to Mr. Burke back in the beginning that he make that lot larger for room for a turn-around and he did not want to do that so he has an oversized front lot and an undersized back lot, she agreed with Mr. Middleton this is a self-created hardship. She thought that Mr. Donnelly's offer of \$350,000 would have solved this, she did vote to approve a subdivision of this property the first time but, after all the new testimony she did not think it would benefit the community and would not be for approval. Mrs. Frith had no comments, Mr. Jones had no comments, Mr. Tice also agreed the hardship is created by the subdivision, he did not think the benefits outweigh the detriments, seeing the pattern of the two smaller lots at the end of the street plus this one and the driveways there are a concern, he saw more parking problems and was concerned about the small frontage and the safety element, concerns on where the snow would be plowed to and emergency vehicle access, he would not be in favor. Ms. Fernicola agreed with what has been said and Mr. Turak was not going to comment as he is the new member of the Board and has not heard the months of testimony. Ms. Trainor commented on Mr. Hilla's report that two variances were needed, frontage on a right-of-way was her first to comment on and the C1 criteria. She felt this is a self-imposed hardship as it could have been planned differently and a cul-de-sac or dead-end turnaround could have been created. She referenced the point that the lot next door, lot 8, had a part used for a driveway for the Burkes and, rather than use that lot to help with the subdivision, it was sold. As far as the C2 criteria, she felt Mr. Burke used part of the MLUL to say this subdivision should be approved and she did not think that the positive criteria is satisfied. She was concerned about the impact of the frontage in regards to safety. She then spoke about Section 21-9.3 about uses and she did not think this is a use issue, it is a residential use and will continue to be the same use. The second variance is for lot depth and, by virtue of the way the lot is positioned, that is also a self-created hardship; even if it isn't the C1 criteria does not apply due to the way the lot is measured. She went over the reason for not finding the C2 criteria after hearing from the neighbors, the benefits do not outweigh the detriments.

At this time Mr. Clark gave a recommendation to ask for a motion to approve the application and, if there is not a motion or a second to a motion, the Board can consider a resolution of denial. Mr. Clark went over the conditions of the subdivision if approved: it would be perfected by deed and meet the time requirement, and there would be no variance relief asked for by a developer at time of building, no one can ask for hardship relief due to the size of the lot. He then asked that a motion be made and there was no response. Ms. Trainor then asked for a motion to deny the application and this was done by Mr. Tice, seconded by Mrs. Brisben.

WHEREAS, the Board after carefully considering the evidence presented by the Applicant at the hearing and of the adjoining property owners and general public, if any, makes the following factual findings and conclusions of law:

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicant is an Executor of the Estate of Charlotte Burke which is the owner of the Property.
- c. The Property is located within the Borough's R-3 Residential Zone.
- d. The Property is a 34,612.67 square foot lot which currently contains one (1) single family three-story residential dwelling.
- e. The Applicant is proposing to subdivide the Property into two (2) residential lots which are identified within the application as proposed Lots 1.01 and 1.02 and to retain the existing three-story dwelling on proposed Lot 1.01.
- f. The existing lot, proposed uses and the dimensions of proposed Lot 1.01 are conforming for the zone, but the existing structure and the dimensions of proposed Lot 1.02 are non-conforming for the zone.
- g. The Property has the following non-conformities which are not being changed or altered by the application: (i) Maximum Building Height – 2-1/2 stories allowable, 3 stories existing.
- h. The Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type): (i) Section 21-9.13 of the Borough Code requires, among other things, that "All front yards must face on a fifty-foot wide right-of-way for at least 40 feet along the right-of-way line, except in the case of cul-de-sacs or dead-end turn-arounds in which case the lot must face on the right-of-way for at least 30 feet". Proposed Lot 1.02 runs along Melrose Avenue for 40 feet so it may meet the frontage requirement (if this is considered frontage), but the 50 foot right-of-way width requirement is not met, and a **variance is required for lack of adequate right-of-way width (and, if the 40 feet of proposed Lot 1.02 abutting Melrose Avenue is not considered to be frontage, then a variance is also required for the lack of required frontage)**; and (ii) Minimum Lot Depth (Proposed Lot 1.02)—125 feet required; **86.63 feet proposed**.
- i. The Applicant presented testimony through Daniel Burke, the executor of the Estate of Charlotte Burke, who is a licensed engineer and planner. Mr. Burke

presented both factual testimony and expert planning and engineering testimony in support of the application. Mr. Burke's testimony included an analysis of why he believes that this application qualifies for variance relief under both the N.J.S.A. 40:55D-70(c)(1) hardship variance and the N.J.S.A. 40:55D-70(c)(2) flexible variance.

- j. When Mr. Burke concluded the presentation of his testimony in support of the application, Kim Nuccio, the owner of a property within 200 feet of the Property located at 711 Ashley Avenue, presented testimony opposing the application. Ms. Nuccio testified that she is a licensed Landscape Architect and she was qualified as an expert in landscape architecture. She provided both factual and expert testimony in opposition to the application.
- k. When Ms. Nuccio completed the presentation of her testimony, another objector to the application, Peter Donnelly, the owner of a property within 200 feet of the Property located at 409 Melrose Avenue, presented his case. Mr. Donnelly was represented by attorney Timothy Middleton, Esq. Mr. Donnelly presented factual testimony opposing the application. He also presented testimony from Richard DiFolco, a professional planner and engineer, who provided expert planning and engineering testimony in opposition to the application.
- l. When all of the objectors completed the presentation of their cases, Mr. Burke was provided with the opportunity to present rebuttal testimony in response to the objectors' testimony. He did so through his own testimony.
- m. The Applicant is proposing a subdivision which is not "as of right" because it requires variance relief. Specifically, proposed Lot 1.02 does not meet the minimum lot depth requirements for the R-3 Zone because it has only 86.63 feet of lot depth at its narrowest point where a minimum of 125 feet of lot depth is required. Additionally, proposed Lot 1.02 does not have the 50 foot right of way width required under Section 21-9.13 of the Borough Code. Thus, the Applicant is seeking two variances from the Board due to is creation of this non-conforming lot.
- n. There is also the possibility that this application may require a third variance. While the applicant argued during his testimony that proposed Lot 1.02 abuts Melrose Avenue for 40 feet and that it therefore satisfies the requirements of Section 21-9.13 of the Borough Code that all lots include 40 feet of street frontage, Mr. DiFolco provided testimony on behalf of objector Peter Donnelly that this should not be considered street frontage because it is really the side of proposed Lot 1.02 rather than the front and that there cannot be frontage on the end of a street as frontage should be interpreted to only be along the sides of the street. Although the Board recognizes these contradictory positions, it has decided not to rule upon them as such a ruling is not necessary. Regardless of

whether a third variance is or is not needed, it is undisputed that the proposed subdivision has created a non-conforming proposed lot (Lot 1.02) that requires at least the two variances listed in subsection (m) above.

- o. The Applicant argues that it is entitled to relief under the hardship variance criteria of N.J.S.A. 40:55D-70(c)(1). This statute authorizes variance relief if (i) by reason of the size, shape, and topography of the Property, it would be a hardship to an applicant to comply with zoning requirements of the Borough Code, and (ii) if the benefits of the proposed improvements outweigh any detriments and the deviations from the requirements of the zoning that are proposed by an applicant do not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
- p. The Board finds based upon the testimony that the Applicant has failed to satisfy its burden of proof to demonstrate that it is entitled to a hardship variance under N.J.S.A. 40:55D-70(c)(1). First, and perhaps foremost, the hardship that the Applicant is claiming exists herein is a self-created hardship. The Property currently consists of one large lot with street frontage on Union Lane that is either conforming to the requirements of the zone or is grandfathered due to its long-time existence. The hardship that the Applicant argues exists is that if it subdivides the current lot into two lots, the back lot (i.e. Lot 1.02) cannot meet the code requirements delineated herein. The Applicant is creating this alleged hardship by trying to subdivide its current lot into two lots (even though it cannot create conforming lots by doing so). This self-created hardship does not provide an adequate basis for relief under N.J.S.A. 40:55D-70(c)(1).
- q. In addition to failing to satisfy the positive criteria, the Applicant has also failed to satisfy the negative criteria for variance relief under N.J.S.A. 40:55D-70(c)(1). Under the negative criteria, an applicant is only entitled to variance relief if the benefits of the proposed improvements outweigh any detriments and the deviations from the requirements of the zoning that are proposed by an applicant do not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. This application does not satisfy the negative criteria.
- r. First, the proposed subdivision is inconsistent with the character of the neighboring properties around Melrose Avenue. All of the other houses along Melrose Avenue are oriented so that they face the sides of Melrose Avenue. Due to its size and shape, the back lot proposed by the Applicant (proposed Lot 1.02) will have to be oriented with a house that is perpendicular to all of the other houses on the street. Additionally, any house that is developed on proposed Lot 1.02 will either be undersized and oddly shaped or would have to seek future variance relief due to setback and other zoning requirements. Proposed Lot 1.02 is therefore inconsistent with the character of the neighborhood.

- s. Additionally, the only way that proposed Lot 1.02 would have street access would be if the driveway from proposed Lot 1.02 was located directly at the end of the dead-end street. Given the configuration of the existing houses on Melrose Street and the locations of their driveways, the Board finds that locating the driveway on proposed Lot 1.02 at the end of Melrose Avenue would create a dangerous and hazardous condition both to the occupants of any residence on proposed Lot 1.02, to the neighboring properties on Melrose Avenue, and to any members of the public using Melrose Avenue. The objectors argued, and the Board finds, that approving this subdivision allowing for the creation of proposed Lot 1.02 and granting the variance relief sought will cause problems with traffic flow on Melrose Avenue and problems with snow plowing, and may also create problems for the ingress and egress of emergency vehicles on Melrose Avenue to the homes along the dead end. Moreover, approving this subdivision and granting the variance relief sought will impede the street parking which currently exists on Melrose Avenue and therefore also negatively impact the flow of traffic in that area.
- t. The only benefits that the Board sees to this requested relief are pecuniary benefits to the Applicant and there are not any benefits to the public at large. For that reason, the Board finds that the detriments of the proposed subdivision outweigh any benefits that it may have.
- u. The Board also finds that granting the relief sought herein by the Applicant would substantially impair the intent and purpose of the zone plan and zoning ordinance. The R-3 Zone requires that all residential lots meet certain criteria. While existing undeveloped non-conforming lots may be able to seek hardship relief under N.J.S.A. 40:55D-70(c)(1), here the Applicant is seeking a subdivision and is purposefully creating a non-conforming lot. This self-created hardship is not a proper basis for variance relief and it frustrates the purposes that underly the developmental restrictions imposed upon all properties within the R-3 zone.
- v. The Applicant also argued that it is entitled to variance relief under N.J.S.A. 40:55D-70(c)(2). This statute allows a planning board to grant variance relief without a showing of undue hardship where the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of such deviation would substantially outweigh any detriment and the variance will not substantially impair the intent of the zone plan and zoning ordinance. For the following reasons, the Board finds that the Applicant has not met its burden to show that it is entitled to variance relief under the C(2) criteria.
- w. First, although Mr. Burke provided testimony identifying a number of purposes of the Municipal Land Use Law (the “MLUL”) that he contended would be advanced by allowing these deviations from the zoning ordinance requirements,

his testimony merely recited the MLUL purposes without providing any analysis as to why they were advanced by allowing these deviations. Mr. DiFolco, on the other hand, provided testimony rebutting these arguments along with analysis as to why allowing these deviations would not advance the purposes of the MLUL. The Board finds that Mr. DiFolco's testimony on these issues is more credible than Mr. Burke's testimony (both because Mr. Burke is not an impartial expert witness as he is also the Applicant and because Mr. DiFolco provided a more convincing analysis as to why allowing these deviations does not advance the purposes of the MLUL).

- x. Additionally, an applicant seeking C(2) variance relief must also demonstrate that there is some public purpose served by allowing the deviations from the zoning requirements and that the benefits of such deviations would substantially outweigh any detriments and the variances will not substantially impair the intent of the zone plan and zoning ordinance. For the reasons set forth in the findings above, the Board has already concluded that there is no public benefit in allowing these deviations and that the detriments to the public of allowing these deviations outweigh any benefits.

WHEREAS, the Board Attorney directed the Board Chair to first ask the Board members if they wanted to make a motion to approve the application with the conditions that (i) the subdivision would have to be timely perfected by deed, and (ii) that a deed restriction would be placed upon proposed Lot 1.02 providing that the Applicant or any subsequent purchaser of Lot 1.02 could not seek a hardship variance due to the size of the lot and then, if nobody moved to approve the application, the Board could consider making a motion to deny the application; and

WHEREAS, the Board Chair asked the Board members if anyone wanted to move to approve the application with the conditions listed by the Board Attorney and no members of the Board made that motion; and

WHEREAS, the Board Chair then asked for a motion to deny the application; and

WHEREAS, Mr. Tice moved to deny the application; this motion was seconded by Ms. Brisben. At that time the application was denied by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Karen Brisben, Stephanie Frith,
Jay Jones, Charlie Tice, Amber Fernicola

Tuesday, March 12, 2024

Noes: None

Not Eligible to Vote: Daniel Turak

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applicant's application is hereby **DENIED**.

A motion to approve the above Resolution was made by James Stenson, seconded by Charlie Tice and then by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice

Noes: None

Absent: Amber Fernicola (arrived at 7:39 pm)

Not eligible to vote: Daniel Turak, G. Kevin Callahan

OLD BUSINESS: Approval of Resolution providing recommendations to Council regarding Block 66.01, Lots 1 & 2, 628 & 630-634 Higgins Avenue for investigation of a possible designation as a non-condemnation redevelopment area.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY PROVIDING THE PLANNING BOARD'S RECOMMENDATIONS TO THE BOROUGH COUNCIL REGARDING THE PRELIMINARY INVESTIGATION INTO WHETHER ONE OR BOTH OF THE PROPERTIES LOCATED AT 628 AND 630-634 HIGGINS AVENUE WHICH ARE IDENTIFIED ON THE BOROUGH TAX MAP AS BLOCK 66.01, LOTS 1 AND 2 SHOULD BE DESIGNATED AS A NON-CONDEMNATION REDEVELOPMENT AREA

WHEREAS, the Brielle Borough Council adopted Resolution 2023-105-G on December 18, 2023 directing the Brielle Planning Board (the "Board") to conduct a preliminary investigation to determine whether one or more of the properties located within a proposed study area consisting of the properties located at 628 and 630-634 Higgins Avenue which are identified on the Borough tax map as Block 66.01, Lots 1 and 2 (collectively, the "Study Area") is a Non-Condemnation Redevelopment Area under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et. seq. (the "LHRL"); and

WHEREAS, the Board scheduled a special meeting at 7:00 p.m. on Tuesday, February 27, 2024 for the public hearing on the preliminary investigation of the Study Area; and

WHEREAS, prior to the date scheduled for the public hearing on the preliminary investigation of the Study Area, a Preliminary Investigation Report of the Study Area prepared by the Borough's planning consultants Kendra Lelie, P.P., A.I.C.P., L.L.A. and Brett L. Harris, P.P., A.I.C.P. was placed on file in Borough Hall and was made available for public review; and

WHEREAS, that Preliminary Investigation Report included, among other things, a map showing the boundaries of the Study Area and the location of the properties within it, along with findings from these planning consultants as to whether the properties in the Study Area contain conditions which would warrant their designation as a Non-Condensation Redevelopment Area under the LRHL; and

WHEREAS, as required under the LRHL, the Board prepared a legal notice to inform the public of the scheduling of the February 27, 2024 public hearing on the preliminary investigation of the Study Area and to provide the public with the date, time and location for the public hearing and notify them that a copy of the Preliminary Investigation Report of the Study Area, which included a map showing the boundaries of the Study Area and the location of the properties within it, along with the basis for study; and

WHEREAS, this legal notice was published in the Asbury Park Press and in the Coast Star for two consecutive weeks, with the last publication being at least ten (10) days before the scheduled public hearing date; and

WHEREAS, this legal notice was also mailed to the owners of the properties located within the Study Area more than ten (10) days before the scheduled public hearing date; and

WHEREAS, copies of these legal notices and affidavits of publication and mailing are on file with the Planning Board Secretary; and

WHEREAS, a public hearing was held on February 27, 2024 on the preliminary investigation of the Study Area and, at that hearing, the Board heard the following testimony:

Mr. Clark stated he would like to give the Board a little background history. He said the Borough Council had directed the Planning Board to do this study and that according to law, the Planning Board had to issue certain notices of this public hearing. He said that a notice was published in a newspaper for two consecutive weeks, with the last notice at least 10 days before this hearing date, that notices were also sent to the owners of all properties within the proposed redevelopment area, and that copies of these notices are on file with the Planning Board Secretary. Mr. Clark stated for the public that there is a report from Kendra Lelie, Professional Planner, that is also on file and available for public review and said that Ms. Lelie is present to testify and answer any questions the Board or public may have regarding this report.

Ms. Lelie was sworn in by Mr. Clark. Ms. Lelie began by saying she was hired by the Borough as an Affordable Housing Planner but was also asked to take a look at this particular property and area in need of a redevelopment study. She stated that her background is as a Licensed Professional Planner in the New Jersey and said she has worked on redevelopment plans for the past 15 years. She said she is very familiar with the redevelopment process as well as what is needed in a review of parcels as it relates to criteria.

Ms. Lelie then began to explain that the redevelopment process is basically a 2-part process. She said that this meeting is the first part and said that tonight the Planning Board will listen to an objective study that looks at a piece of the property as it relates to criteria that are found in the redevelopment law. She said the second part is if this area is found in need of redevelopment then the Planning Board first would indicate that yes, that it meets at least one of the criteria, then she said it would go to the Borough Council and be deemed an area in need of redevelopment which would allow for a redevelopment plan to be created. She said that a redevelopment plan is a Zoning plan for one particular piece of property.

Ms. Lelie referenced the document called, "Preliminary Investigation for Block 66.01, Lots 1&2". She stated that there is a study area map on page 4 that shows the two lots and said that the study area is 1.75 acres and is triangular in shape and then described to the Board the surrounding properties. She said Lot 2 is a privately-owned parcel that is 1.33 acres in size that includes an existing vacant building dating back to the 1960's which has had various commercial uses within the building. She said Lot 2 also has various accessory buildings and structures throughout the property and currently has an open area that has been used as storage of building materials and vehicles. Lot 1, she said, is owned by the Borough, is .42 acres, is undisturbed, and is mostly trees and brush. She said that Lot 1 was received from NJDOT ten years ago and was really for the purpose of storm water management from Route 35. She said that the current Zoning for the two lots is what is known as the Gateway Zone which is described as an overlay zone and said that the goal is to create a "Main Street feel." Ms. Lelie referenced the Borough's 2023 Housing Element

and Fair Share Plan and said that the plan specifically looks at Lot 2 as a site to address the Borough's Affordable Housing obligation.

Ms. Lelie then reviewed pages 5,6,7, titled "Planning and Zoning Context" saying there were also some County Master Plan and State Redevelopment and Development goals and objectives, and said these pretty much support the idea of redevelopment and that this makes sense for this area. She then referenced page 13 and said this page discusses the existing conditions and said there are several photos in the report taken by her at the end of 2023, beginning of 2024. She said these photos show the extent of the disrepair.

Ms. Lelie referenced the list of criteria on page 11 of the report and stated that the question is whether one or more of the parcels in the Study Area satisfy at least one of these eight criteria. She stated that even though there are eight criteria, only one has to be met, and she said that that there are actually several criteria that would be met, especially for Lot 2.

Ms. Lelie stated that criteria A deals with the building or accessory structures on Lot 2, if the building is substandard, unsafe, unsanitary, dilapidated or obsolete, and do any of these particular issues relate to or are conducive to unwholesome living or working conditions. As indicated prior, she said the building is unsafe with broken windows, unsecured wires and doors which creates an unsafe situation which is known as an attractive nuisance which makes it easy for rodents, pests and people to easily enter the building. She referenced several emails from the Fire Department and the Borough Administrator that state that the fire department has been instructed not to enter the building due to its structural integrity. Ms. Lelie referenced the billboard that is attached to the roof of the building and said that she found this to be a substandard and in a dilapidated condition. She said it is her opinion that even though the building has been abandoned, there is construction materials, vehicles and debris on site so this creates an unsafe condition for the people that use the site in some type of way. She said there are homes nearby this site which also creates an unsafe condition for the people who live there.

Ms. Lelie stated that criteria B is looking at the abandonment or discontinuance of buildings, specifically retail or office buildings that are vacant. She said Criteria B says that if there is an abandonment or discontinuance of a building for at least two or more years and the building has fallen into a state of disrepair and is not tenantable, then it would meet this criteria. Based on information received by the current property owner, Ms. Lelie said the building has not been used for any retail activity since 2018. She stated that it was her opinion that this criteria has been met.

Ms. Lelie stated the criteria D is more focused on the overall site. She said the way that this criteria reads is that there are areas with building improvements on the site that show dilapidation, overcrowding, faulty arrangement, obsolete layout or deleterious land use. For instance, when looking at the site, she said there is a lot of debris, a lot of garbage, a lot of overgrown vegetation, outdoor storage of dangerous equipment and materials piled up throughout the site. She said that all of this is an attractive nuisance, especially given that the site is not always occupied. She said this was important because having an abandoned site but also having an intermitted use of it for storage that has not approved as a legitimate business, creates a situation where it is not always being reviewed or looked at by someone that is running a business. She said this situation creates a detriment to health, safety and welfare on people who are on the property

either legally or illegally, so with that she said that Criteria D has been met. Ms. Lelie stated that those three main criteria that in her opinion can be found for Lot 2 deemed for an area in need of redevelopment.

Ms. Lelie began to discuss Lot 1 and then referenced Criteria C and explained that this criteria is for land owned by a municipality, or a public entity or is vacant for 10 years or more. She said if, for several different types of reasons such as soil conditions or a topography issues, this land has not been developed and would need private capital to develop the piece of property. She said she felt that the topography on Lot 1 would create a tough situation if developing it, said the lot is small, has the highway on one side, a light on one side and Higgins Avenue on another side. She said because of the encumbrance from the NJ DOT the ability to have private capital go into the property is non-existent. She said Lot 1 does not meet this criteria as it stands today.

Ms. Lelie referenced Criteria H and said this criteria does not stand on its own but is always added to other criteria. She said Criteria H speaks about smart growth planning and said that she thought that this criteria could be met with any redevelopment that occurs on this piece of property.

Ms. Lelie concluded by saying she felt that Lot 2 meets Criteria A, B, D, and H and said that Lot 1 does not meet any of the criteria at this time. She said that it was her professional opinion that the Planning Board could recommend to Borough Council that they adopt a Resolution declaring that Lot 2 meets several of the criteria and that it could be turned into an area in need of redevelopment.

Ms. Trainor asked if there were any questions for Ms. Lelie from the public. Hearing none, she turned to the Board for questions for Ms. Lelie. Hearing no questions from the Board, she asked if there were any public comments in respect to this item. Hearing none, Ms. Trainor stated it was time to hear comments from the Board.

Mayor Garruzzo stated that he thought Ms. Lelie's presentation was very well done, said it made sense, meets the criteria as established within her report and finished by saying he felt that the Board should move forward with the redevelopment of Lot 2. Councilman Colon thanked Ms. Lelie for her presentation. Mr. Stenson stated that he agreed with the comments made by Mayor Garruzzo and said the report and presentation was very well done. Ms. Brisben stated she felt the presentation was extremely well done and said she had not realized that Lot 1 had all of the issues with the state and said she appreciated that explanation. Mr. Jones said he thought the report was very thorough. Ms. Trainor said she agreed with the testimony that Ms. Lelie provided with respect to the criteria, said she accepts the opinions that were presented and said she found them to be credible and really well supported. She said she found the photographs disheartening and enlightening at the same time. She said she agreed that the structures on the building have not been used actively since 2018 and said they certainly in photographs appear to be substandard, unsafe, unsanitary and dilapidated as stated in Ms. Lelie report and testimony. Ms. Trainor then thanked Ms. Lelie for her well-reasoned opinion.

Ms. Trainor asked if there were any member of the Board that wanted to make a motion to recommend that the Borough Council designate Lot 2 as a Non-Condensation Area in Need of

Redevelopment. Mr. Clark added this would be based upon the findings and criteria in A, B, D, and H.

WHEREAS, the Board after carefully considering the evidence presented at the hearing and of the adjoining property owners and general public, if any, makes the following factual findings and conclusions of law:

- a. The Brielle Borough Council adopted Resolution 2023-105-G on December 18, 2023 directing the Board to conduct a preliminary investigation to determine whether one or more of the properties located within the Study Area contain conditions that would warrant their designation as a Non-Condensation Redevelopment Area under the LRHL.
- b. The Board scheduled a special meeting at 7:00 p.m. on Tuesday, February 27, 2024 for the public hearing on the preliminary investigation of the Study Area.
- c. Prior to the date scheduled for the public hearing on the preliminary investigation of the Study Area, a Preliminary Investigation Report of the Study Area prepared by the Borough's planning consultants Kendra Lelie, P.P., A.I.C.P., L.L.A. and Brett L. Harris, P.P., A.I.C.P. was placed on file in Borough Hall and was made available for public review.
- d. The Preliminary Investigation Report included, among other things, a map showing the boundaries of the Study Area and the location of the properties within it, along with findings from these planning consultants as to whether the properties in the Study Area contain conditions which would warrant their designation as a Non-Condensation Redevelopment Area under the LRHL.
- e. As required under the LRHL, the Board prepared a legal notice to inform the public of the scheduling of the February 27, 2024 public hearing on the preliminary investigation of the Study Area and to provide the public with the date, time and location for the public hearing and notify them that a copy of the Preliminary Investigation Report of the Study Area, which included a map showing the boundaries of the Study Area and the location of the properties within it, along with the basis for study.
- f. The legal notice was published in the Asbury Park Press and in the Coast Star for two consecutive weeks, with the last publication being at least ten (10) days before the scheduled public hearing date.
- g. The legal notice was also mailed to the owners of the properties located within the Study Area more than ten (10) days before the scheduled public hearing date.

- h. Copies of these legal notices and affidavits of publication and mailing are on file with the Planning Board Secretary.
- i. A public hearing was held on February 27, 2024 on the preliminary investigation of the Study Area.
- j. At that public hearing, Kendra Lelie was qualified as an expert planning witness and she provided testimony regarding the boundaries of the Study Area and the conditions existing on the properties located within the Study Area.
- k. Ms. Lelie testified that a majority of the Study Area consists of Block 66.01, Lot 2 (hereinafter, "Lot 2"), which is privately-owned and which is approximately 1.33 acres and is the easternmost parcel in the Study Area. Lot 2 contains a vacant structure that, according to an Environmental Assessment performed by LHG Hydroscience Group on October 30, 2020, dates back to approximately 1969.
- l. The second lot in the Study Area is Block 66.01, Lot 1 (hereinafter, "Lot 1"). Lot 1 is a small triangular shaped vacant lot located to the west of Lot 2 and is approximately 0.42 acres in size. Lot 1 is owned by the Borough and it is encumbered by NJ Department of Transportation restrictions for stormwater management purposes.
- m. Ms. Lelie testified that in order for the properties located within the Study Area to qualify as a Non-Condensation Redevelopment Area, one or more of the conditions listed within N.J.S.A. 40A:12A-5(a) through (h) need to exist on the properties.
- n. One of the enumerated conditions is N.J.S.A. 40A:12A-5(c), which is "Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital."
- o. Ms. Lelie testified that Lot 1, which is owned by the Borough, satisfies some of the N.J.S.A. 40A:12A-5(c) criteria in that the lot is municipally owned, it is vacant unimproved land that has remained vacant for a period of ten years or more, and due to its location, size, and topography, it is unlikely to be redeveloped without consolidation with other lots or without an infusion of private capital. She further testified, however, that the entire lot is deed-restricted by a drainage easement in favor of the New Jersey Department of Transportation and that these restrictions may not be lifted or modified without State House Commission approval. She therefore concluded that it is not appropriate to include Lot 1 in a Non-Condensation Redevelopment Area at

this time as the ability of a private redeveloper to be a catalyst for redevelopment of Lot 1 is impeded by the NJDOT restrictions on the property.

- p. For the reasons set forth herein, the Board accepts Ms. Lelie's recommendations regarding the exclusion of Lot 1 from the proposed Non-Condensation Redevelopment Area.
- q. Ms. Lelie testified that Lot 2 contains a principal structure and numerous accessory structures. The principal structure has been unoccupied and abandoned since at least 2018. All of the structures on Lot 2 are in various levels of disrepair with unsecured doors, broken windows, and hanging and unsecured wires. The Fire Department advised Ms. Lelie that its personnel have been instructed not to enter any of these buildings due to concerns about their structural safety. There is also a billboard on the top of the principal structure that is in disrepair. In addition to the conditions of these structures, the site itself has trash and debris on it. While it appears to be used sporadically for storage purposes, there are no current active uses on the lot, and Lot 2 as a whole is an attractive nuisance.
- r. Ms. Lelie testified that, in her opinion, Lot 2 satisfies the criteria to be designated as a Non-Condensation Redevelopment Area under N.J.S.A. 40A:12A-5(a), (b), (d), and (h). These criteria are analyzed sequentially below.
- s. The conditions set forth within N.J.S.A. 40A:12A-5(a) are that "The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions." Ms. Lelie testified that N.J.S.A. 40A:12A-5(a) focuses on two issues—(i) whether the buildings are substandard, dilapidated, or unsafe, and (ii) whether those conditions result in the property being so lacking in light, air, or space as to be conducive to unwholesome living or working conditions.
- t. Ms. Lelie testified that the buildings on Lot 2 are substandard, unsafe and dilapidated because of the level of disrepair of these buildings. She further testified that these conditions have resulted in the property being so lacking in light, air, and space as to be conducive to unwholesome living or working conditions. This is an issue in that the buildings on the lot are not fit for occupancy. It is also an issue in that the entire lot is an attractive nuisance which is not, in its current state of disrepair, conducive to wholesome working conditions. The Board accepts Ms. Lelie's testimony and agrees that the condition of Lot 2 satisfies the criteria set forth within N.J.S.A. 40A:12A-5(a).
- u. The conditions set forth within N.J.S.A. 40A:12A-5(b) are that "The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant

vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable. Ms. Lelie testified that she believes that N.J.S.A. 40A:12A-5(b) has been satisfied because the principal structure on Lot 2, which had a commercial use, has not been used since at least 2018 and all of the buildings on the lot are abandoned and in disrepair. She further testified that the state of disrepair is such that the buildings on Lot 2 would not currently be fit for occupancy and are untenable. The Board accepts Ms. Lelie's testimony and agrees that the condition of Lot 2 also satisfies the criteria set forth within N.J.S.A. 40A:12A-5(b).

- v. The conditions set forth within N.J.S.A. 40A:12A-5(d) are that "Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community." Ms. Lelie testified that she believes that this criteria has been satisfied because the lot, as a whole, is an attractive nuisance with dilapidated buildings in various levels of disrepair with unsecured doors, broken windows, and hanging and unsecured wires, and with trash and debris throughout the site. These conditions are detrimental to the safety, health, morals, or welfare of the community. The Board accepts Ms. Lelie's testimony and agrees that the condition of Lot 2 also satisfies the criteria set forth within N.J.S.A. 40A:12A-5(d).
- w. The conditions set forth within N.J.S.A. 40A:12A-5(h) are that "The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation." Ms. Lelie provided testimony that the designation of Lot 2 as a Non-Condensation Redevelopment Area is consistent with smart growth planning principles. The Board accepts Ms. Lelie's testimony and agrees that the designation of Lot 2 as a Non-Condensation Redevelopment Area is consistent with smart growth planning principles and that it therefore satisfies the criteria set forth within N.J.S.A. 40A:12A-5(h).
- x. Finally, the Board notes that no members of the public spoke at the public hearing to either oppose or to support the proposed designation of some or all of the properties in the Study Area as a Non-Condensation Redevelopment Area, and that the owner of Lot 2 and his attorney attended the hearing but did not question Ms. Lelie or provide any public comment regarding this potential designation.

WHEREAS, James Stenson moved to recommend to the Borough Council that Lot 1 be excluded from the Non-Condensation Redevelopment Area and to recommend to the Borough

Tuesday, March 12, 2024

Council the designation of Lot 2 as a Non-Condemnation Redevelopment Area due to the presence of the conditions set forth within N.J.S.A. 40A:12A-5(a), (b), (d), and (h) on Lot 2; this motion was seconded by Karen Brisben. At that time the motion was approved by the following roll call vote:

Ayes: Mayor Frank Garruzzo, Councilman Eliot Colon, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Not eligible to vote: Daniel Turak

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Board hereby provides the following recommendations to the Borough Council as a result of its preliminary investigation into whether one or more of the properties located within the Study Area should be designated as a Non-Condemnation Redevelopment Area:

- a. The Board recommends that the Borough-owned lot located at Block 66.01, Lot 1 in the Study Area be excluded from the proposed Non-Condemnation Redevelopment Area due to the NJ Department of Transportation restrictions on the lot which impede its potential for redevelopment at this time.
- b. The Board finds that the privately-owned lot located at Block 66.01, Lot 2 in the Study Area satisfies the conditions enumerated within N.J.S.A. 40A:12A-5(a), (b), (d), and (h) and therefore recommends that the Borough Council designate Lot 2 as a Non-Condemnation Redevelopment Area based upon those statutory criteria.

A motion to approve the above Resolution was made by James Stenson, seconded by Charlie Tice and then by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Daniel Turak

Noes: None

Absent: Mayor Frank Garruzzo, Councilman Eliot Colon, Chris Siano, Amber Fernicola (arrived at 7:39 pm)

Not eligible to vote: G. Kevin Callahan

OLD BUSINESS: Continuation of hearing for application for Use Variance/Site Plan, Block 33.01, Lot 1, 110 Union Avenue, M & D Ventures, LLC (site of LaMondina Restaurant) to allow addition to site.

Attorney Robert Shea came forward on behalf on the applicant. Mr. Shea called Jason Hanrahan, MODE Architects, to testify. Mr. Hanrahan was sworn in by Mr. Clark and after listing his credentials, he was accepted as an expert witness by the Board.

Mr. Hanrahan presented a document which was marked as Exhibit A-4 by Mr. Clark. Mr. Hanrahan said the exhibit showed the floor plan of the LaMondina restaurant and the additional space that the applicant is proposing to add to the rear of the building. He referenced this Exhibit and described to the Board the proposed additions and changes on the first and second level.

Mr. Shea asked Mr. Hanrahan what the total square footage would be. Mr. Hanrahan answered that the proposed square footage of the new addition was 8,365 square feet for the first level and 2,077 square feet for the second level. Mr. Shea asked what was the square footage of the new addition being proposed. Mr. Hanrahan replied roughly 1,500 square feet on the first level and roughly 1,100 square feet on the second level. He then said that the current square footage is 6,855 square feet on the first level with 8,365 being proposed and the current square footage on the second level is 892 square feet with 2,077 square feet being proposed. Mr. Hanrahan stated that these calculations did not include the patio space.

Mr. Hanrahan presented a document which was marked as Exhibit A-5 by Mr. Clark. Mr. Hanrahan described this exhibit as a cross section of the restaurant space and the additional space being proposed. He referenced Section 1 of this exhibit and spoke about the existing angled A-frame room and said they were proposing to shift the right side angled A-frame 10 feet to the right and said this would create more volume and head height which would make the space more functional. He said that this was essentially the goal of the second level.

Mr. Shea asked Mr. Hanrahan if the outdoor space was being changed. Mr. Hanrahan replied that it was not being changed. Mr. Shea stated he did not have any other questions and asked Mr. Hanrahan if he had anything else to add. He replied that she did not at this time have anything else to say.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Hanrahan. Mr. Jones asked how many additional seats would be added to the dining area on the second level and where the office was currently. Mr. Hanrahan answered that no additional seats would be added and said that currently there was a small office near the kitchen on the ground floor.

Ms. Brisben asked if the extension of the second floor would be use for restaurant use or office space. Mr. Hanrahan answered that they would be adding 320 square feet of new additional floor space for the restaurant and the rest of it would be two offices, a two-story foyer, a wine room, a coat closet and a single bathroom. He said the new space would bring more organization and proper functionality to the restaurant.

Mr. Tice asked a question about the total square footage of the new space. Mr. Hanrahan explained that the square footage of the new addition on the first floor would be roughly 1,500 square feet and said that the total square footage would be 2,695 square feet. Mr. Tice asked how many of the 2,695 square footage would be utilized for restaurant tables. Mr. Shea answered that the number of tables would remain the same.

Ms. Brisben how many dining seats were on the patio. Mr. Shea answered that there are 44 seats in the outdoor dining area.

Ms. Trainor asked what the existing office space would be used for if the office was moving upstairs. Mr. Hanrahan answered that the existing office space would remain and said that this space is where the security equipment is and said that the staff also uses this space. He said the office space on the second level would be more private.

Mr. Hilla asked Mr. Hanrahan to review the different elevation views of the structure. Mr. Hanrahan referenced Exhibit A-5 which was previously marked which describes the elevations to the Board. Mr. Hilla asked if the mechanicals would remain on the roof. Mr. Hanrahan replied that they would remain in the same place on the roof and said that there would be a new unit to handle the new addition volume of the building would be placed there too. He said they would create a roof plan showing where the mechanicals would be.

Mr. Hanrahan presented a document which was marked as Exhibit A-6 by Mr. Clark. Mr. Hanrahan stated that Exhibit A-6 was a rendering of the side facade which showed how the addition would look from the street.

Ms. Trainor asked if there would be any new additional doors or staircases that would be visible from the outside. Mr. Hanrahan responded that in the rear parking lot area would be the main entry doors to the new vestibule, doors on the left side for access to the kitchen, and a door to the storage room that would be created. Ms. Trainor asked if there were currently doors in these areas. Mr. Hanrahan replied that there are doors in the kitchen area and said that the doors in the new vestibule area will be a new entrance to the restaurant.

Hearing no other questions from the Board, Ms. Trainor asked if there were any questions from the public for Mr. Hanrahan, Mr. Shea referenced two questions that were raised at the last meeting regarding the outdoor seating area. He said one of the questions asked was if heating was ever approved for that area. He stated that he had provided the Board with copies of a 2022 plan which he said was part of the original application submitted. He said that the type of heater was identified in that plan and said that the Resolution contains the exact verbiage and the page number of those plans. He said he also had the Architectural plans that were signed by the Zoning Officer and said that they believe the heating was approved. He then said there was also a question about motorized screening and said that the applicant stated that that screening was not a part of the original approval process. He said the applicant stated that the screening rolls up and down is plugged into an outlet and said the screening is used in increment weather. There was then discussion about the part of the Resolution that Mr. Shea had referenced regarding the heating in the outdoor area. Ms.

Trainor asked Mr. Shea if the applicant was seeking a variance from the Board or any decision with respect to the heating elements. Mr. Shea answered that it was their position that the heating has already been approved and said they were not asking the Board to make any decisions about that. He did say that the applicant was requesting approval for the motorized screening as part of this application.

Mr. Stenson asked if the screening is movable and if this is what the applicant was asking for a variance for. Mr. Hanrahan answered that the screening is like clear vinyl plastic that is attached to a system that moves it up and down and is plugged into an outlet. Mr. Turak asked what the purpose of the screening is. Mr. Hanrahan replied the purpose is to prevent the rain and wind from entering that space. He also said that the screening is not weatherproof and that on a cold night no one would be able to sit out there. Ms. Brisben disagreed with him and said that just a few weeks ago she was there when it was ten degrees outside, the patio was full and it was warm in that space.

At that point, Ms. Trainor announced that the hearing had gone beyond the extended time period that the Board had granted for tonight's hearing and indicated that the application would be carried to next month's meeting and would continue then.

NEW BUSINESS: Application for Major Site Plan/Use Variance for Block 78.02, Lot 7, 417 Euclid Avenue, owned by Azoulas Seduikis, to allow Residential Use combined with Commercial Use in the C-1 Commercial Zone. Residential Use – not allowed in the C-1 Zone. Minimum Front Yard Setback – 30 feet required, 26 feet proposed (to front steps). Minimum Side Yard Setback – 10 feet required, 6.38 feet existing, 6.38 feet proposed (to new second floor). Existing Nonconformities: Residential Use in a Commercial Zone. Minimum Lot Depth – 150 feet required, 110 feet existing.

Attorney Keith Henderson, Henderson & Henderson, Manasquan, NJ came forward on behalf on the applicant. Mr. Henderson stated he had three witnesses to present and asked that they all be sworn in. Ingrid Seduikis, Dario Pasquariello, Architect, and Josphe Kociuba, KBA Engineering Services, Manasquan, NJ were sworn in by Mr. Clark.

Mr. Henderson called Ms. Seduikis to testify. Ms. Seduikis stated she was one of the owners of the property and was before the Board to ask for some relief from some conditions in order to enjoy the property more. She said they would like to add a second story to the property, and divide the first floor into two parts, one for an apartment and the other part for office space. She said her husband intended to use the office space for his real estate business and that her mother would occupy the first floor apartment. Mr. Henderson stated he did not have any other questions for Ms. Seduikis.

Ms. Trainor stated it was time to hear questions from the Board for Ms. Seduikis. Mr. Callahan stated he did not understand Ms. Sudeikis's explanation of her husband's business. Ms. Seduikis replied that her husband owned a real estate business. Ms. Trainor asked if the business was a real estate brokerage and asked if they were anticipating having three Certificates of Occupancies in effect for the first and second floor apartments and the commercial space. Ms. Seduikis answered yes to both of those questions. Ms. Trainor asked if they were seeking approval for a single family

to occupy all of the space or were they looking for the ability to have different unrelated parties to occupy the three different spaces. Ms. Seduikis answered that eventually they would like to have the ability for unrelated parties to occupy the space. Mr. Callahan asked Ms. Seduikis what the name of the real estate brokerage was, if there were other agents that worked for the brokerage and if her husband had plans to advertise on the property. Ms. Seduikis said the name of the brokerage was Brielle Realty, that there were no other agents and said she thought he probably would want to advertise the business. Mr. Henderson stated the applicant would stipulate that any signs posted would comply with the Borough's Sign Ordinance.

There were no further questions from the Board. Ms. Trainor stated it was time to hear questions from the public. Hearing none, Mr. Henderson called Dario Pasquariello, Dario Architecture and Design, Beachwood, NJ to testify. Mr. Pasquariello presented a document which was marked as Exhibit A-1 by Mr. Clark. Mr. Pasquariello said the exhibit shows the existing and proposed first floor, explained to the Board the proposed changes that would be made and pointed to a staircase that would access the second floor. Mr. Pasquariello presented a document which was marked as Exhibit A-2 by Mr. Clark. He said this exhibit showed a large open area, three bedrooms and a deck. He then presented another document he described as the elevations and view of the exterior building which was marked as Exhibit A-3 by Mr. Clark. Mr. Pasquariello finished by saying it was his professional opinion that the proposed changes would be more aesthetically pleasing and that the home would fit nicely in the neighborhood. Mr. Henderson stated he did not have any other questions for Mr. Pasquariello.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Pasquariello.

Mr. Callahan asked if there would be third floor space and if there was a basement. Mr. Pasquariello answered there would not be any third floor space and said that there is an existing basement that would be used for storage and would only be accessible through the garage. He said this storage space would be used primarily by the owners. Mr. Callahan asked if there would be any other storage to which Mr. Pasquariello responded that the office would have closet storage. Mr. Callahan asked if the kitchen area was backed up by the fireplace. Mr. Pasquariello answered that it was in that space.

Ms. Trainor asked Mr. Pasquariello to describe the other uses in the neighborhood. He replied that to the left was a multi-use unit, to the right was a post office.

Mr. Hilla asked if the proposed ramp to the uncovered porch and the existing doorway to the office space would be ADA compliant. Mr. Pasquariello answered that it would comply with ADA requirements. There was then a discussion in reference to parking, parking in the garage and whether there would be a landing for the staircase.

Ms. Trainor referenced the Borough's Ordinance book because she said she wanted to make sure that real estate offices are included as a permitted use in the C-1 Zone and if multi-family residential is also included. Mr. Kociuba answered real estate offices are included but said multi-family is not.

There were no other questions from the Board. Ms. Trainor asked if there were any questions from the public for Mr. Pasquariello. Hearing none, Mr. Henderson called Joseph Kociuba to testify.

Mr. Kociuba presented a document which was marked as Exhibit A-4 by Mr. Clark. Mr. Kociuba described this Exhibit as an aerial exhibit prepared by his office dated February 5, 2024 which showed the site layered over the aerial and the proposed layout with the surrounding area. He said the size of the site is 11,000 square feet, 100 feet wide and 110 feet deep located in the C-1 Zone. Mr. Kociuba described the existing building, the proposed changes, the surrounding properties and their uses.

Mr. Kociuba presented a document which was marked as Exhibit A-5 by Mr. Clark. Mr. Kociuba described this Exhibit as the layout plan prepared by his office which was last revised on October 18, 2023, sheet 3 of 6. He said the applicant was requesting front yard setback relief of 26 feet to the stairs. He said typically the Borough Ordinance does not require a variance for stairs but he said these stairs would be motorized, so if a disabled person needed to utilize them, they would just press a button which would cause the stairs to level to a platform. He said it was less than 30 inches and did not require a railing but it would be enough to get someone in a wheelchair up to the first floor and because these stairs are not typical, they are asking for a front yard setback at 26 feet. Mr. Kociuba stated they were proposing 8 parking stalls in order to comply with the parking demand and said they are proposing one handicapped accessible stall at the front of the property and a 20 foot aisle access down the right hand side of the property adjacent to the post office parking lot. He said they are proposing to add a rear deck and said there is a pre-existing fence. Mr. Kociuba discussed the placement of the stairs for the second floor, said the trash cans for the home are currently stored in the back corner and said there is a pre-existing 4-foot shadow box fence that sits on a short retaining wall. He said that from a drainage standpoint, everything will drain to Euclid Avenue and said they would be adding drywells to the site.

Mr. Kociuba presented a document which was marked as Exhibit A-6 by Mr. Clark. Mr. Kociuba described this Exhibit as the lighting and landscaping plan prepared by his office which was last revised on October 18, 2023, sheet 5 of 6. He said they would be adding some maple trees at the front of the property and a row of shrubs along the side which will grow to 3 to 4 feet in height which he said would provide a visual screen between their parking area and the post office. Mr. Kociuba said that the office use is a conforming use that is permitted in the C-1 Zone. He said the applicant is requesting relief from the use to allow the residential to be maintained, to have the two apartments. He said this does require a D variance for this use and said that it was his opinion that this proposed site is particularly suitable for the use they are proposing. He said that the site is well fitted in terms of location, topography, shape, surrounding area, site quality and the appropriateness of the use on the site. He discussed the positive criteria, said he felt that there was not any negative criteria and said this would be a low traffic generator, less than many of the other permitted uses. Mr. Kociuba finished by saying it was his opinion that the Board could grant the variances that were being requested and said he could go through Mr. Hilla's review letter to address any other concerns he may have. He then discussed with the Board items 1 through 13 from Mr. Hilla's review letter. Mr. Hilla said that typically each unit should have its own services to which Mr. Kociuba stated that they would provide 3 separate services. He said they would contact the water department and abide by any rules they have.

Ms. Trainor announced that 45 minutes had elapsed and asked the Board members if they wanted to proceed with this application. The Board unanimously agreed to proceed. Ms. Trainor stated that it was time to hear questions from the Board for Mr. Kociuba. Ms. Brisben asked if cars backing up from those spaces would have trouble with the proposed plantings on the westerly side. Mr. Kociuba responded that there would be plenty of room there for cars to back up. Mr. Callahan asked if there would be a dumpster or trash cans. Mr. Kociuba replied that there would be cans that would be rolled out to the curb. Mr. Callahan asked if the Lots along the same side of street as the applicant are the same depth. Mr. Kociuba answered that the majority are except for the through lots. Ms. Brisben stated that she would need 5 sets of revised plans for Resolution compliance. Mr. Callahan asked if the buffering on the east side was the neighbors. Mr. Kociuba replied that it is the neighbors buffering and was installed as part of their approvals. Ms. Trainor said that some of the other permitted uses listed seem more trash intensive than the proposed current use and asked if the application was approved, wasn't it possible and appropriate that any of the other permitted uses in the C-1 Zone could occupy this particular space that the current applicant would be using as a real estate office. Mr. Kociuba answered that was correct except that many of the uses would not comply with parking and could require a parking variance and said it would then be appropriate to discuss the trash issue. Mr. Kociuba said they were asking for the permitted office uses that are non-medical and then listed business office, professional office, real estate and insurance offices. Ms. Trainor asked if the parking lot would have ADA spaces. Mr. Kociuba replied that at the very front there would be a van accessible ADA parking stall with an aisle and curb ramp.

Ms. Trainor stated it was time to hear questions from the public for Mr. Kociuba. Hearing none, Ms. Trainor asked if there was anyone from the public that had comments about the application. Richard Graham, 410 Higgins Avenue, was sworn in by Mr. Clark. Mr. Graham stated he was in favor of the application and asked if any lighting installed in the back of the building could be downward facing, low intensity lighting. Mr. Graham also expressed his concern for future drainage issues. Mr. Kociuba stated that they would have no objections to Mr. Graham's lighting comment and said that any water would drain out to Euclid Avenue and not to the rear of the property.

Hearing no other comments from the public, it was time to hear comments from the Board. Mr. Stenson said he thought the application was consistent with the multi-use of the area and said the rendering of the new building would be an improvement to the area. Mr. Jones said he agreed with Mr. Stenson. Ms. Brisben said she did have some concerns but after hearing all of the testimony and hearing that everything would be addressed she had no comment. Mr. Tice said he felt it was a good application and a good addition to that area of town. Ms. Fernicola said she thought it would be a nice improvement. Mr. Turak said he agreed with the comments given by the other Board members. Mr. Callahan said he thought it was a very nice application and said all of his questions were answered by the witnesses. Ms. Trainor said she accepted Mr. Kociuba's testimony, thought it was compelling in the satisfaction of the criteria that the Board was considering and said she did support approval of the application with the conditions that were addressed, specifically with respect to the limited permitted uses for this space.

Ms. Trainor asked Mr. Clark to review the items that the Applicants had agreed to. Ms. Trainor then asked for a motion to approve the application with the stipulations that Mr. Clark had listed.

A motion to approve the above application was made by James Stenson, seconded by Jay Jones and then by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola, Daniel Turak

Noes: None

Not eligible to vote: G. Kevin Callahan

NEW BUSINESS: Application for Site Plan and Use Variance, Block 85, Lot 4 & Lot 7, 201 Union Lane & 708 Ashley Avenue, owned by Fletcher Marine, LLC (site of Pig & Parrot and parking lot) to allow “at grade seating area” for dining and “west deck area” for dining, use of the second floor for indoor dining and modify the site with an updated parking configuration. Unoccupied Open Space – 25% minimum required, 23.1% existing, 17.4% proposed. Off-Street Parking – 216 spaces required (includes Marina), 86 spaces existing, 103 spaces proposed. Lot 9 (restaurant) – Minimum Unoccupied Open space – 25% required, 10.7% existing, 10.3% proposed. Existing nonconformities: Lot Width (Restaurant) – 75 feet required, 71 feet existing. Front Yard Setback (Restaurant, Union Lane) – 30 feet required, 27.1 feet existing. Front Yard Setback (Primary Building, Union Lane) – 30 feet required, 22.8 feet existing. Front Yard Setback (Accessory building) – 30 feet required, 2.2 feet existing. Side Yard Setback (Primary Building) – 10 feet required, 0 feet existing. Rear Yard Setback (restaurant) – 30 feet required, 27 feet existing. Side Yard Setback (accessory building, Freezer) – 10 feet required, 5.7 feet existing. Lot Area – 2 acres minimum required, 1.52 acres existing.

Attorney Keith Henderson, Henderson & Henderson, Manasquan, NJ came forward on behalf on the applicant. Mr. Henderson stated that the owner of the property is Fletcher Marine, LLC and said Tom Fletcher is the principal of this entity. Mr. Henderson called Mr. Fletcher to testify. Mr. Fletcher was sworn in by Mr. Clark. Mr. Fletcher stated he has owned Fletcher Marine, LLC since the fall of 2019. Mr. Henderson asked Mr. Fletcher to describe the condition of the entity when it was purchased. Mr. Fletcher answered the property was in very bad shape, the docks were impassable, the parking lot and restaurant and the deck around the restaurant were in terrible condition. He said he bought the property in as-in condition and said everything needed to be redone which he did. Mr. Fletcher said he added a new fuel system, new docks, new decking, fixed the outside and inside of the restaurant, and new refrigeration. Mr. Fletcher said then Covid hit and they were basically closed down and when they were allowed to open no one wanted to eat inside the Pig & Parrot so they had outside seating which was allowed by NJ state law. Mr. Henderson asked Mr. Fletcher if the facility has recovered since the time of Covid to which he answered that it has recovered. Mr. Henderson referenced the Brielle Landing Home Owner’s Association and asked Mr. Fletcher if they were on good terms with them. Mr. Fletcher answered that he thought they were, that many of the residents eat at the restaurant and stated that after all the work was completed he felt their property values went up. Mr. Henderson stated he did not have any other questions for Mr. Fletcher.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Fletcher. Hearing none, Ms. Trainor asked if there was anyone from the public that had questions for Mr. Fletcher. Attorney Timothy Middleton, Middleton Law, Manasquan, NJ, came forward and said he was representing Deborah and Anthony Palumbo, Donald Ziliotto, Evelyn and Dean Tuttle, Constance Russell and Donald Paschburg, Diane Lucianna, and Dave Schneider. Mr. Middleton stated that these people live adjacent to the Pig & Parrot.

Mr. Middleton asked Mr. Fletcher if he has any interest in the Pig & Parrot. Mr. Fletcher answered that he did not and said he just owns the building. Mr. Middleton asked Mr. Fletcher if he was represented by counsel when he bought the marina and asked if he had reviewed the Master Deed and the prior Resolutions issued by the Planning Board. Mr. Fletcher responded yes to those questions. Mr. Middleton asked Mr. Fletcher if he was aware that in 2019 outdoor dining was prohibited and that outdoor speakers were also prohibited. Mr. Fletcher replied that he was aware of this. Mr. Middleton asked if it was true that Mr. Fletcher's involvement in this application was that he is the owner of the property which he replied was true. Mr. Middleton stated he did not have any other questions for Mr. Fletcher.

Robert Lettieri, 311 Ashley Avenue, was sworn in by Mr. Clark. He stated he thought there was a typographical error in the application regarding the number of parking spaces requested. Mr. Henderson said he thought that another witness would be able to address this. There were not any other questions from the public.

Mr. Henderson called Pat Ward, Professional Engineer, Insite Engineering, Wall Township to testify. Mr. Ward was sworn in by Mr. Clark and after listing his credentials, he was recognized as a Professional Engineer by the Board. Mr. Ward stated that his firm was asked to prepare a survey of the property, propose a site plan with limited improvements and to represent the applicant in front of the Planning Board.

Mr. Ward presented a document which was marked as Exhibit A-1 by Mr. Clark. Mr. Ward described this Exhibit as an aerial image of the site plan and surrounding areas, dated March 12th, 2024. Mr. Ward said this Exhibit shows where the property and the existing units are located and said this property is very unusual. Mr. Ward stated that what the applicant is requesting is very minimal as far as site improvements and said that there are no physical changes being made to the restaurant. He said they are proposing to covert one space that is in the parking lot adjacent to the restaurant into a proper ADA spot and said there is an accessible route from that area to the restaurant. Mr. Ward said the focus on the changes are on Lot 4 which he said is an L-shaped lot on the corner of Union Lane and Ashley Avenue. He said that they were proposing to elongate the parking bank closer to Union Lane and to create more parking stalls, opposite to the new parking bank. Mr. Ward stated that it is correct that there is an error on the plans but said it isn't 130 parking spaces like Mr. Lettieri stated, he said there is actually 105 spaces, currently 86 existing, with a net of 19 spaces being proposed. He said they want to expand the parking to accommodate the request to make permanent seating outside of the restaurant and said they would add lighting and enhance the landscaping.

Mr. Ward then addressed Mr. Hilla's review letter and said that the applicant was seeking to

maintain the storm water conditions in place and said they were also proposing to add two new light poles. Mr. Ward stated that the added parking was an important enhancement of the application because it improves a non-compliant parking situation. He said that there is more than the parking and operations of each use which he said should be noted. He said it was their opinion that the marina and the restaurant are complimentary uses when it comes to parking. He said the fishermen use the parking lot in the morning and mid-day and the restaurant has its peak service sometimes at the lunch service but mostly at the dinner service and beyond. He said there are other modes of transportation the patrons use and said that the restaurant currently has an arrangement with two local taxi services to provide travel for patrons with lessens the parking burden and said that in the summer months patrons walk or ride their bikes to use the facilities. Mr. Ward referenced the Exhibit and pointed out where the outdoor dining would be. He said those areas were included in the parking calculation and said this would be permanent and seasonal.

Mr. Ward stated the Pig & Parrot Restaurant is a two story building. He said the ground floor is the main bar and restaurant area and said that the applicant would like to use the upstairs for small private parties or banquets. Mr. Henderson stated he did not have any further questions for Mr. Ward.

Mr. Hilla asked Mr. Ward if he would go through the items of his review letter. Mr. Ward discussed items 4, 6, 7, 8, 9, 10, 11, 12, 13, 16, and 17 of the review letter with Mr. Hilla and the Board members.

Mr. Ward stated that back in 1985 there was a CAFRA permit for the whole development and said that the applicant is seeking an individual CAFRA permit because of prior CAFRA approval and because of the total of parking spaces on the site. He said the applicant would stipulate that there would be no live or amplified music outside.

Mr. Ward presented a document he called the site plan set, sheet C-300, last revised June 29th, 2023. He said this Exhibit depicts an existing sign on Union Lane that would be relocated because of the expansion of the parking lot. This document was marked as Exhibit A-2 by Mr. Clark.

Mr. Hilla asked if the loading and unloading situation was going to remain the same. Mr. Ward answered that was no change proposed for that configuration. Mr. Fletcher stated that he felt that the loading area works well where it currently is based on the way the road was designed, that there is a dead end and has a ramp that goes through the gates into the back door of the Pig & Parrot. Mr. Hilla asked about the trash enclosure. Mr. Ward said the trash enclosure is behind a solid fence, is picked up privately and said they could adjust the frequency as needed. There was then a discussion about the waterfront access easement and the original CAFRA permit between Mr. Hilla, Mr. Ward, Mr. Henderson and Mr. Clark. Mr. Hilla stated he wanted to address the pontoon boat operation. Mr. Ward stated that he spoke with the applicant about that and said there is a boat that is a Pig & Parrot boat that is used as a private charter use and said that the applicant could testify to the frequency of service. Mr. Hilla asked if this would be a parking burden that would go with that. Mr. Ward replied that it was his opinion that the parking burden is the slip that the boat sits in.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Ward. Ms. Trainor announced that 45 minutes had elapsed and asked the Board members if they wanted to proceed with this application. The Board unanimously agreed to proceed. Mr. Stenson asked Mr. Fletcher if he owned Lot 4 and Lot 9. Mr. Fletcher answered that he did. Mr. Stenson asked what the number of parking spots would be on Lot 4 and on Lot 9. Mr. Ward answered there would be 64 parking spaces on Lot 4 and 41 parking spaces on Lot 9. Mr. Stenson asked Mr. Ward if the seating that they are requested is where the CAFRA walkway is. Mr. Ward responded as shown on the image.

Mr. Jones asked where the overflow currently parking park. Mr. Ward replied that he thinks it's the complimentary uses, and also the ability for alternative modes of transportation such as bike and pedestrian traffic. He said that the applicant pays for a shuttle service from two local taxi companies to pick up people to go to the restaurant and to bring them home.

Ms. Brisben said to answer Mr. Jones' question, they park all over, wherever they can find a space. She referenced moving the sign closer to the condominiums on Wainright Place and asked if this would affect that condo area. Mr. Ward they are proposing landscaping to screen that area.

Mr. Tice asked if Mr. Ward could explain how they would be adding the additional parking spaces and if the width would change on the parking spots on Lots 4 and 9. Mr. Ward presented a document he called sheet C-200 of their plan set, last revised June 29th, 2023 was marked as Exhibit A-3 by Mr. Clark. Mr. Ward used this Exhibit to answer Mr. Tice's question.

Mr. Hilla asked what kind of buffer would they use from the end of the parking to the sidewalk. Mr. Ward presented a document he called sheet C-600, the landscaping plan, was marked as Exhibit A-4 by Mr. Clark. Mr. Ward used this Exhibit to answer Mr. Hilla's question.

Mr. Turak asked if the applicant was planning on adding more seats to the outdoor, waterfront dining area. Mr. Ward responded that they are not seeking to increase the number of seats and said they will have to work with the requirements of CAFRA. Mr. Tice asked how many seats they were proposing for the outdoor west deck area. Mr. Ward answered that the goal is to have 16 seats on that deck. Mr. Turak asked if the tables would be high-top tables to which Mr. Ward replied they would be low tables.

Mr. Callahan asked if the seating under the tent would remain. Mr. Ward answered that the tent would be removed and said that he would have to refer to the applicant with regard to the seating. Mr. Henderson stated he did not think that they knew what the rules would be at this point. Mr. Ward stated that this area is included in his parking count. Mr. Callahan asked if the gate to access deliveries is the same gate to access garbage and recycling. Mr. Ward answered he did not think it was the same gate but said they are reasonably adjacent to each other. Mr. Callahan said that the sign that would be moved is illuminated by a spotlight mounted on the ground that he said is very glaring and asked if it would be possible when the sign is relocated that the lighting be part of the sign structure. Mr. Ward said the light could be attached to the top of the sign and make the light shine downward.

Ms. Trainor asked what the setback was from Ashley Avenue to the northwest side of Lot 4, from the sidewalk to the where the pavement begins. Mr. Ward answered from the side walk it is about

Tuesday, March 12, 2024

17 ½ feet from the right-of-way and 15 ½ feet as proposed. Ms. Trainor asked if this space would have the landscaping that was discussed with Mr. Hilla and asked if that was, in his experience, a typical set up where parking is directly next to a sidewalk with pedestrian traffic. Mr. Ward answered yes to those questions. Ms. Trainor asked if there would be something on the parking spaces to maintain the safety of the pedestrians. Mr. Hilla suggested that maybe a berm could be used. Ms. Trainor stated she wanted to reserve any other questions she may have until after she hears Mr. Middleton's questions.

Ms. Trainor announced at this time the application would be carried to the next meeting. As there was no other business to come before the Board a motion to adjourn was made, seconded and approved, all aye. The meeting was adjourned at 10:18 p.m.

Denise Murphy, Recording Secretary

Approved: April 9, 2024