

November 9th, 2021

BRIELLE PLANNING BOARD
TUESDAY, NOVEMBER 9th, 2021

The Regular Meeting of the Brielle Planning Board was held on Tuesday, November 9th, 2021, at 6:00 p.m., virtually. Ms. Trainor read the OPMA compliance statement. Ms. Trainor announced it was time for the Salute to the Flag and a moment of silent prayer.

Roll call was taken:

Present: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Absent: None

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer, and Denise Murphy, Recording Secretary.

A motion was made to approve the Minutes of October 12th, 2021, this done by Councilman Frank Garruzzo, seconded by Stephanie Frith, and approved by unanimous vote, all aye.

OLD BUSINESS:

Announcement that the Application for Variance relief for Block 60, Lot 17, 9 Crescent Drive, owned by Peter & Katelyn Cappiello, to allow renovations & addition to a single-family dwelling is being postponed, by the applicant, to the Tuesday, December 14th meeting of the Planning/Zoning Board.

Mr. Clark stated that the application would be carried without the need for further notice but noted if the applicant decided to make any material changes to the application, then they would be required to renotice.

OLD BUSINESS:

Consideration of approval of Resolution for Block 48.01, Lot 3, 339 Magnolia Avenue, owned by Nicholas & Emily Bilotti, for construction of a new dwelling.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF NICHOLAS BILOTTI SEEKING VARIANCE RELIEF FOR CONSTRUCTION OF A SINGLE-FAMILY DWELLING AND CERTAIN OTHER IMPROVEMENTS ON THE PROPERTY LOCATED AT 339 MAGNOLIA AVENUE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 48.01, LOT 3

WHEREAS, Nicholas Bilotti (the “**Applicant**”) filed an application with the Planning Board of the Borough of Brielle (the “**Board**”) seeking variance relief to construct a single-family dwelling and certain other improvements as described more fully herein on the property owned by the Applicant located at 339 Magnolia Avenue and identified on the tax map of the Borough of Brielle as Block 48.01, Lot 3 (the “**Property**”); and

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

WHEREAS, the Property currently has a one-story single-family home with a stone driveway and shed on it; and

WHEREAS, the Applicant is proposing to demolish the existing structures on the Property and to construct a new elevated 2 ½ story single-family home and various accessories on the Property as described more fully within the plans submitted with this application; and

WHEREAS, the existing and proposed uses are conforming to the zone, but the existing lot and the existing and proposed structures are all non-conforming to the zone; and

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

- (a) Lot Area—12,500 square feet required; 7,511 square feet existing
- (b) Lot Width—100 feet required; 81.5 feet existing;
- (c) Lot Depth—125 feet required; 100 feet existing; and

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

- (a) Front Yard Setback (Magnolia Avenue)—30 feet required; **23 feet proposed (to porch); 10 feet proposed (to front steps);**

(b) Rear Yard Setback—35 feet required; **24.9 feet proposed (to porch); 22 feet proposed (to landing balcony);**

(c) Lot Coverage—20% maximum allowed; 20.51% proposed;

(d) half story—maximum is not more than 50% of floor area below; **62.43% of the floor area below proposed;** and

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

(a) Plan of Survey prepared by Charles A. O'Malley, P.L.S., dated July 8, 2021;

(b) Site Plan and Architectural Plans (2 sheets) prepared by Robert G. Dooley, R.A., dated September 1, 2021;

(c) an application package signed by the Applicant; and

(f) a Zoning Permit denial letter from the Zoning Officer dated June 2, 2021; and

WHEREAS, the Board was also provided with letters dated August 30, 2021 and September 13, 2021 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 September 14, 2021 and October 12, 2021; and

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

September 14, 2021 hearing

Mr. Bilotti and Mr. Robert Dooley were sworn in by Mr. Clark. Mr. Dooley stated he was Mr. Bilotti's architect and had been a licensed architect in New Jersey for 20 years. Mr. Dooley stated that he had testified before Brielle's Planning Board as well as several other Planning Boards and had been part of the Long Branch Board of Adjustment for eight years. Ms. Trainor stated that the Board found that Mr. Dooley was qualified in the field of architecture and accepted as an expert witness.

Mr. Dooley stated that he was asked by the applicants to design a home on their site that would be compact in nature. Mr. Dooley stated that the home he designed was a 2 ½ story dwelling and was 2200 square feet altogether. Mr. Dooley stated that the site was a corner property, irregularly shaped with a building area that was somewhat limited.

Mr. Dooley referred to a document he referenced as A-100.0 which was marked by Mr. Clark as Exhibit A-1. Mr. Dooley also referenced a document he described as A-100.1 which was marked as Exhibit A-2. Mr. Clark asked Mr. Dooley if he was correct that both of the Exhibits were in the application package. Mr. Dooley replied that each member should have the Exhibits. Mr. Dooley held up Exhibit A-1 and described a yellow area that he stated indicated the buildable area on the lot. Mr. Dooley stated that the base flood elevation from the F.E.M.A site was 7 foot and that the basement/garage floor would be at 6.6 foot, a little bit below the base flood elevation. Mr. Dooley stated that they would be able to keep the side yard and one of the front yards within the Ordinance but the front yard to Magnolia Avenue and the rear yard would be deficient based on the Zoning table. Mr. Dooley stated they would meet the building height and that the Lot coverage would also be a little deficient. Mr. Dooley referenced Exhibit A-2 and stated that in the upper right-hand corner there was a ½ story plan which the applicant was requesting a variance for.

Ms. Trainor announced it was time to hear any questions for Mr. Dooley from the Board.

Councilman Garruzzo referenced Exhibit A-2 and asked Mr. Dooley if where it said front elevation on both sides of the car if there was a 2-car garage underneath. Mr. Dooley answered that it did show a 2-car garage underneath the residence. Councilman Garruzzo asked if there was another garage door depicted on the backside. Mr. Dooley answered yes, that in the future the applicant would like to build a pool and would use the back part of the garage for pool furniture and a hang out.

Mr. Stenson asked Mr. Dooley to comment on Mr. Hilla's letter, item number 3, regarding drainage. Mr. Dooley answered that when they received Mr. Hilla's letter the applicant hired Charles O'Malley to do a drainage plan and stated that they would be happy to submit it to the Board when they receive it. Mr. Stenson asked Mr. Dooley if they would be providing a grading plan. Mr. Dooley replied that they would be providing one.

Mr. Maclearie asked Mr. Dooley when the grading plan would be submitted to the Board. Mr. Dooley answered that Mr. O'Malley would prepare the plan and then the applicant would give it to the Board and Mr. Hilla. Mr. Maclearie asked Mr. Hilla if he would then check it out and decide if anything else was needed. Mr. Hilla replied that he would.

Mr. Siano asked Mr. Dooley what the elevation of the first floor was. Mr. Dooley responded that it was 9 foot 2 inches from grade. Mr. Siano asked Mr. Dooley if the proposed generator would be under the proposed front porch on a platform at an elevation of 8 foot. Mr. Dooley replied yes, that was correct. Mr. Siano asked Mr. Dooley if they were proposing any soundproofing for the generator being underneath the enclosed structure. Mr. Dooley answered that there would be a transfer switch inside the garage and a thimble to the exterior air intake.

Ms. Brisben asked Mr. Dooley if the garage elevation would be under the Flood Elevation. Mr. Dooley replied yes, the slab in the garage would be at 6.6 feet. Ms. Brisben asked Mr. Hilla if he had a comment on that. Mr. Hilla stated that it was not uncommon and that the flood vents would be key because the finished floor would be below the Flood Elevation. Ms. Brisben asked Mr. Dooley if it would be possible to put the air conditioning units under the front porch or behind the stairs in the rear. Mr. Dooley replied that they would be behind the setback line and that they would screen them with plantings.

Mr. Tice referenced Exhibit A-1 and asked Mr. Dooley how far the steps would be from the pool and if there would be a bump out at the top of the steps. Mr. Dooley answered that the bump out at the top of the steps would be for a grill with no roof over it. Mr. Dooley stated that the bump out would come out exactly 2 feet from the back of the house and that the steps to the pool would be 3 feet, 6 inches.

Mayor Nicol asked Mr. Dooley if the generator would be natural gas powered. Mr. Dooley answered that it would be and that it would be underneath the front porch where they would have break away walls in a ventilated space. Mayor Nicol stated he thought a generator was required to be 8 feet from a house and asked Mr. Dooley if it would meet Code. Mr. Dooley responded that he had never heard of that requirement and stated that a generator had to have good air intake, good exhaust and be well ventilated. Mr. Hilla stated that the Building Code would establish if the generator could be there or not.

Mr. Hilla asked Mr. Dooley if there was something that could be done to make the front steps less protruding into the front yard and more like the other raised structures in Brielle. Mr. Dooley responded that it was a difficult situation, if they turned the steps sideways with a landing, the design would protrude into the yard almost as far. Mr. Bilotti stated that they tried a lot of different ways, and if it wasn't approved by the Board, they would have to change it but aesthetically it was the best way to do it.

Ms. Trainor asked Mr. Dooley what the neighbor's setbacks were. Mr. Bilotti answered that it was different for the corner and that the setbacks are all different. Mr. Dooley answered that he did not know what the neighbor's setbacks were. Ms. Trainor asked if any of the Board members had been over to see what the neighborhood was like. Ms. Brisben stated that she had been, that there was one house next to this one, one catty corner and right across the street was the old Brielle Beach. Ms. Brisben stated the house right next door was very similar to the house that is there now, a one story, stucco type home.

Mr. Siano stated when looking at the back of the house, the way they are dropping down the backstairs would be similar to the front, which would not be as intrusive in the yard. Mr. Siano stated that they could build a landing and even make the stairs go down in each direction, which would be aesthetically more pleasing. Mr. Siano stated that if the applicant dropped one step of the landing in the front it would significantly reduce the front yard impact and not push them so far into the front yard. Mr. Dooley stated that they would consider doing that, but he did not feel that it would look as nice. Mr. Bilotti stated he would agree to change them if he was required to

but stated that he was in a tough position because the property is small, and the house is not very big.

Mr. Siano expressed concerns with respect to the distance between the pool and the foundation of the house. Mr. Bilotti stated that if they moved the pool then it may be close to the street. Mr. Dooley stated he did not think it would be an issue, it was a small pool, 24 x 10 foot, there would be a 10-foot setback on two sides, and it would not affect foundations or would cause any structural issue.

Mr. Dooley then announced that he would like to ask for a variance for the pool setback at the side yard. Ms. Trainor asked Mr. Clark if Mr. Dooley could make that part of his application now. Mr. Clark replied that he thought there were two concerns, a notice issue, and an analytical issue. Councilman Garruzzo stated that he believed that the pool was not being built now and at the present time they are just building a home. Councilman Garruzzo stated he felt that Mr. Siano was expressing a concern and was simply trying to help and save the applicant some time. Mr. Clark stated that Councilman Garruzzo was correct in that the applicant is entitled to get an opinion on what is being submitted now. Mr. Clark stated the pool was not being proposed now and is not part of this application. Mr. Dooley stated that he realized he had been using his eight-inch scale and that the pool was actually closer to 9-feet off the back of the house so they would only have to move the pool a foot to make it compliant if 10-feet is required.

Ms. Trainor announced that 45 minutes had been reached with respect to the application and the application would have to carry to next month.

October 12, 2021 hearing

Architect Mr. Robert Dooley announced he was appearing for Mr. & Mrs. Bilotti. Ms. Trainor asked Mr. Clark if he would let the Board know where they had left off in regard to the application. Mr. Clark stated that Mr. Dooley had provided testimony, that the Board had asked Mr. Dooley questions, that there were no questions from the public, and that the Board had not moved on to comments. Mr. Clark also stated that Mr. Dooley had represented at the last hearing that the applicant would be submitting drainage and grading plans and that such plans had been submitted since the date of the last meeting.

Mr. Dooley asked if he could share his screen. While Mr. Dooley was trying to share a document, he stated that at the conclusion of the last meeting, there were two issues he would like to give testimony on, the pool and the front steps. While Mr. Dooley struggled to share his documents and while trying to fix the issue, Mr. Clark stated to Mr. Dooley that he thought based on testimony from the previous meeting, the applicant was not seeking approval to build a pool. Mr. Clark stated that there was testimony that the applicant might seek to do that in the future. Mr. Dooley answered that the applicant was now requesting to receive an approval from the Planning Board for the pool now and said they had remedied the issue with the pool. Mr. Dooley stated with the changes made, the pool meets the requirement of the Ordinance.

Mr. Dooley stated the other issue he wanted to address was the front steps. Mr. Dooley was still experiencing difficulties sharing his documents, so Mr. Hilla shared a document that he had

received from the applicant and Mr. Clark marked it as Exhibit A-3. Mr. Dooley described the document as a Grading Plan he received from the applicant's Engineer. Mr. Dooley stated that there would be a 10-foot setback to the pool, the pool would be 10 feet away from the foundation wall of the building and the pool would be 9 foot 1 ¼ inches away from that foundation wall. Mr. Dooley stated he had drawn the steps into the front porch 3 feet to eliminate some of the extension of the porch into the front yard. Mr. Dooley stated that he looked at other options for the stairs but determined the best solution for the house would be to bring the steps to the street.

Ms. Trainor asked Mr. Dooley, for the 30-foot front yard setback required, what was the variance he was seeking. Mr. Dooley responded that this was a variance that came up in a Board meeting, that the staircase was not an issue in the Zoning Officer's letter which is why it was not noticed. Mr. Dooley stated it was the Board that brought this up and that he felt the Board should tell him which variance he would seek. Mr. Hilla stated it was part of the principal structure so it should not have been a surprise. Mr. Clark stated that if Mr. Dooley looked at Mr. Hilla's technical review letter, he had identified different variances that he believed would be necessary in the application. Mr. Clark stated that Mr. Hilla's letter had a calculation of what the variance would be to the front steps, the way it was proposed at the last meeting, and asked Mr. Dooley what variance would he be seeking now that changes had been made. Mr. Dooley stated that they wanted to move the stairs 3 more feet from the property line. Ms. Trainor reviewed Mr. Hilla's letter, dated September 13th, 2021, paragraph 1, 4th bullet point which referenced the variance the applicant was seeking. Ms. Trainor asked Mr. Dooley if he would state the variance they were seeking, so it could be considered by the Board. Mr. Dooley answered that the actual variance they would be seeking would be 12.5 feet from the property line to the first step.

Ms. Trainor asked Mr. Dooley if there were any other changes in the application since the last meeting. Mr. Dooley replied the only other change was the pool which he believed they remedied. Mr. Clark asked Mr. Dooley to confirm that the applicant was not seeking any variances for the pool because they believed that the pool was compliant with the code. Mr. Dooley answered that was correct.

Mr. Dooley stated that he had revised the floor plan of the house based on the applicant's desire to take 200 square feet out of the house based on cost estimates. Mr. Dooley stated that was the reason there was a second submission of drawings. Mr. Dooley stated he redid the Zoning data and pushed the front of the house and the back of the house in by one foot.

Ms. Trainor announced it was time for questions from the Board for Mr. Dooley in regard to the updated testimony and the change in the variances the applicant is seeking.

Councilman Garruzzo asked Mr. Dooley if he was correct that where the edge of the street meets the grass to the front step was now 12.5 feet. Mr. Dooley replied that was not correct, that it was 12.5 feet from the property line, it would be 22.4 feet from the street line.

Mr. Siano asked Mr. Dooley if he was aware that the stairs and the landing could possibly also need to be 10 feet from the pool line because they are attached to the house and higher than three feet off of grade. Mr. Siano stated that he did not want to say yes to the way the pool was designed, approve the application and then the building permits get denied. Mr. Dooley answered

that he did read the Ordinance, but he was not sure. Mr. Bilotti asked the Board if the applicant could just come back to the Board later for the pool and if they could try to get the house approved now.

Ms. Brisben asked Mr. Dooley if the 35-foot rear yard setback, where 24 foot was proposed, had changed. Mr. Dooley answered that it had not changed and was in the last submission. Ms. Brisben asked if the building coverage had changed since the last submission and if it was now less than 21% since the house was made smaller. Mr. Dooley replied that everything was according to the last submission. Ms. Brisben asked Mr. Dooley what the exact height of the house would be. Mr. Dooley answered that the house was measured for crown of the road and was in the Zoning data.

Ms. Trainor asked Mr. Dooley if the applicant had submitted a grading and drainage plan. Mr. Dooley replied that they had submitted the plan and would not have to do anything further regarding the plan so long as Mr. Hilla was satisfied with it. Mr. Hilla stated that he did receive a plan dated October 5th, 2021, and stated he thought it was not clear around the pool and side yard to the east as to what would be happening there. Mr. Hilla stated there were not enough spot elevations and no indication of how the patio would be relieved down the side yard. Mr. Hilla stated the Board needed clarity that there would be no impact to the adjacent properties. Mr. Dooley stated that there was not anything that would run towards adjacent properties and that actually the adjacent property runs onto Mr. Bilotti's property.

Mr. Clark stated that if the Board voted to approve the application there could be a condition made to the approval that the applicant would give supplements in regard to grading and drainage to Mr. Hilla's satisfaction, so it would not necessarily have to be resolved tonight if the Board choose to move forward.

Ms. Trainor asked Mr. Dooley for some clarification to an answer he gave to a question Councilman Garruzzo had asked with respect to the street line. Mr. Dooley explained to the Board how he had come up with his measurements.

Ms. Trainor announced it was time to hear questions from the public for Mr. Dooley. Hearing none, Ms. Trainor asked Mr. Dooley if had any other testimony to present. Mr. Dooley stated he wanted to make sure that Mr. Hilla had received their engineer's topography report of the existing house and grading. Mr. Hilla replied that he had received it.

Ms. Trainor announced it was now time to hear comments from the Board in regard to the application.

Mayor Nicol asked if the Board was being asked to approve the application with or without a swimming pool. Ms. Trainor replied that it was her understanding that the applicant had withdrawn that portion of the application.

Councilman Garruzzo stated he felt that removing the pool made it a much cleaner, easier application, that he thought the applicant had addressed the front steps and he did not have any issues with the application.

Ms. Brisben stated that the property was on a lightly traveled street, that she did not have any problems with the front steps and would be for approval of the application.

Ms. Trainor stated that the lot is undersized, so the property itself has conditions which she thought would warrant the issuance of setback variances. Ms. Trainor stated she appreciated the applicant's efforts to mitigate the impacts in respect to the front steps and with respect to the pool.

Ms. Trainor announced it was time to hear comments from the public with respect to the application. Hearing none, Ms. Trainor asked Mr. Clark to review any conditions that the applicant had agreed to and that the Board had discussed. Mr. Clark stated that he wanted to clarify that the applicant had withdrawn the request for the pool so the application would be for the site plan without the pool. Mr. Clark stated besides the regular conditions that would be in any resolution, there was testimony that the applicant was willing to screen the HVAC unit with plantings, so there would be a condition that any HVAC screening would be satisfactory to the Board Engineer. Mr. Clark stated another condition would be that the applicant would submit supplemental grading and drainage plans that would also be satisfactory to the Board Engineer. Mr. Clark stated he wanted to clarify that the setback the applicant is requesting from the front steps is 12.5 feet according to testimony.

Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had listed.

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 Property is located within the Borough's R-3 residential zone.
- c. The Property currently has a one-story single-family home with a stone driveway and shed on it.
- d. The Applicant is proposing to demolish the existing structures on the Property and to construct a new elevated 2 ½ story single-family home and various accessories on the Property as described more fully within the plans submitted with this application.
- e. The existing and proposed uses are conforming to the zone, but the existing lot and the existing and proposed structures are all non-conforming to the zone.

- f. The Property has the following non-conformities which are not being impacted or changed by this application: (i) Lot Area—12,500 square feet required; 7,511 square feet existing; (ii) Lot Width—100 feet required; 81.5 feet existing; and (iii) Lot Depth—125 feet required; 100 feet existing.
- g. Thus, the Property is smaller than the standard-sized properties located within the R-3 zone and is irregularly-shaped in that it is exceptionally narrow and shallow.
- h. The Applicant is seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Front Yard Setback (Magnolia Avenue)—30 feet required; **23 feet proposed (to porch); 12.5 feet proposed (to front steps)**; (ii) Rear Yard Setback—35 feet required; **24.9 feet proposed (to porch); 22 feet proposed (to landing balcony)**; (iii) Lot Coverage—20% maximum allowed; **20.51% proposed**; and (iv) half story—maximum is not more than 50% of floor area below; **62.43% of the floor area below proposed**.
- i. During the hearings on this application, the Applicant attempted to address the Board's concerns regarding this application by moving the location of the front steps to reduce their intrusion into the front yard setback and by submitting drainage and grading plans and agreeing to amend these plans to the satisfaction of the Board Engineer.
- j. While the Applicant initially asked for the location of an in-ground pool to be approved as part of this application, due to concerns raised by the Board to the pool's proximity to other structures on the Property the Applicant agreed to withdraw its request to include the pool within its application and to instead seek a permit or future Board approval for the installation of the pool at a later date.
- k. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicant to comply with the requirements of the Borough Code, and the development being proposed by the Applicant is consistent with other development in the neighborhood.
- l. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.
- m. This application and the variance relief sought therein advances the purposes of the Municipal Land Use Law, does 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.

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

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Noes: None

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 Applicant shall screen the HVAC unit on the Property with plantings in a manner acceptable to and approved by the Board Engineer;
- b. The Applicant shall submit revised grading and drainage plans for the Property to the Board Engineer for his review and approval, shall make any changes to such plans as directed by the Board Engineer, and shall thereafter construct the drainage and grading improvements set forth within the plans approved by the Board Engineer;
- c. The Applicant shall submit five (5) sets of revised plans to the Board Secretary showing the final configuration of all structures and improvements that it intends to construct on the Property pursuant to this approval;
- d. The Applicant shall pay all taxes and other applicable assessments, costs, and fees to date, as applicable;
- e. The Applicant 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;
- f. All representations made under oath by the Applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant 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 Karen Brisben, seconded by Councilman Frank Garruzzo and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Noes: None

November 9th, 2021

Not eligible to vote: James Stenson. Jim Maclearie

OLD BUSINESS:

Consideration of approval of Resolution for Block 43.01, Lot 17, 623 Green Avenue, owned by Ryan Burlew, for construction of a new dwelling.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF RYAN BURLEW SEEKING VARIANCE RELIEF FOR THE CONSTRUCTION OF A SINGLE-FAMILY DWELLING AND CERTAIN OTHER IMPROVEMENTS ON THE PROPERTY LOCATED AT 623 GREEN AVENUE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 43.01, LOT 17

WHEREAS, Ryan Burlew (the “**Applicant**”) filed an application with the Planning Board of the Borough of Brielle (the “**Board**”) seeking variance relief to construct a single-family dwelling and certain other improvements as described more fully herein on the property owned by the Applicant located at 623 Green Avenue and identified on the tax map of the Borough of Brielle as Block 43.01, Lot 17 (the “**Property**”); and

WHEREAS, the Property is located within the Borough’s R-4 Residential Zone (the “R-4 Zone”); and

WHEREAS, the Property previously was the site of a single-family home which was demolished and the lot is currently vacant; and

WHEREAS, the Applicant is proposing to construct a two-story single-family dwelling, a detached garage, a swimming pool, paver driveways, and various other accessories on the Property as described more fully within the plans submitted with this application; and

WHEREAS, the existing lot and the proposed principal and primary accessory structures are all non-conforming to the zone; and

WHEREAS, the Property is located on a corner lot which, pursuant to the Borough Code, is considered to have multiple front yards for purposes of calculating setback and other code requirements; and

WHEREAS, the Property has the following non-conformity which is not being impacted or changed by this application:

- (a) Minimum Lot Width—75 feet required; 58 feet existing; and

WHEREAS, the Applicant filed an application with the Board which initially sought the following variance relief (the variances sought are highlighted in bold type below):

- (a) Front Yard Setback (principal to Homestead Road)—25 feet required; **15 feet proposed;**

- (b) Front Yard Setback (accessory garage to Green Avenue)—25 feet required; **12.1 feet proposed;**

- (c) Front Yard Setback (accessory pool to Green Avenue)—25 feet required; **14.1 feet proposed;**

- (d) Front Yard Setback (principal/deck to Green Avenue)—25 feet required; **16.3 feet proposed;**

- (e) Rear Yard Setback (accessory garage)—16 feet required; **10.3 feet proposed;**

- (f) Accessory Building Height (garage)—18 feet maximum allowable—**24 feet proposed;**

- (g) Lot Coverage—20% maximum allowed; **21.8% proposed;** and

- (h) **variance relief to allow a driveway with curb cuts on both Green Avenue and Homestead Road;**

- (j) **variance relief to permit a two-car garage which is 50 feet by 24 feet (1500 square feet) in size and 24 feet in height;**

- (k) Front Yard Setback (pool equipment to Green Avenue)—25 feet required; **13 feet proposed;** and

(l) **variance relief to permit a 4-foot-high fence and plantings in the site triangle area at the intersection of Green Avenue and Union Lane.**

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

- (a) boundary survey prepared by Thomas J. Murphy, P.L.S., dated December 13, 2019;
- (b) topographic survey prepared by Thomas J. Murphy, P.L.S., dated July 7, 2020;
- (c) architectural plans (6 sheets) prepared by Michael J. Millemann, A.I.A. dated December 7, 2020, latest revision June 15, 2021;
- (d) plot plan prepared by Jason Burneyko, P.E. dated March 10, 2021, latest revision June 15, 2021,
- (e) an application package signed by the Applicant's counsel;
- (f) a Zoning Permit denial letter from the Zoning Officer dated January 28, 2021; and
- (g) multiple sets of revised plans that were submitted after the hearings began in order to address concerns raised by Board members during the hearings; and

WHEREAS, the Board was also provided with letters dated May 20, 2021 and July 6, 2021 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 13, 2021, August 10, 2021, September 14, 2021, and October 12, 2021; and

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

July 13, 2021 hearing

Mr. John Giunco from the Giordano, Halleran and Ciesla Law Firm announced he was appearing on behalf of the applicant who was seeking approval to develop a single-family home

at 623 Green Avenue, Lot 17, Block 43.01. Mr. Giunco stated that there were a set of revised plans that had been submitted by the applicant and that some of the variances that Ms. Trainor had just read through had already been modified. Mr. Giunco stated that item number 3, the accessory garage to the front yard setback was now 12.1 feet instead of 14 feet and that the swimming pool listed in variance number 4 is now in compliance with the 10-foot separation. Mr. Giunco stated that variance number 6, the setback for the garage is now 10.3 feet, the driveway at Green Avenue is shown as a one-way access and that the fence area at the intersection for the site triangle protective area is now 3 feet.

Mr. Giunco introduced the project architect, Mr. Michael Millemann, of Tokarski & Millemann Architects. Mr. Millemann was sworn in by Mr. Clark.

Mr. Giunco asked Mr. Millemann to describe his credentials, education, and licensing to the Board. Mr. Millemann stated he graduated from the New Jersey Institute of Technology School of Architecture in 1992 and had been practicing in New Jersey since 1999. Mr. Millemann stated he had presented testimony in front of the Board as well as other Boards in Monmouth County, Ocean County and throughout the state. Mr. Giunco asked that Mr. Millemann be accepted by the Board as an expert in Architecture. Ms. Trainor replied that Mr. Millemann was approved.

Mr. Millemann began by stating that he had prepared the Architectural Plans for this property and stated that the property was vacant but previously had a single-family home that was demolished about 7 years ago.

Mr. Millemann shared an exhibit, marked A-1, and explained that it was a Location Survey dated July 2012 that showed the prior home located on the Lot facing Green Avenue.

Mr. Giunco asked Mr. Millemann to describe the Lot and Zone that the property is in. Mr. Millemann stated that the Lot is Zoned R-4, which permits single-family residences. Mr. Millemann stated that the Lot is significantly oversized for an R-4 Zone and is approximately three times what is required. Mr. Millemann stated that due to the site being bound by 3 roads, the corresponding setbacks reduced the building envelope and restricted the developable land.

Mr. Giunco asked Mr. Millemann if he was familiar with the Ordinances and asked him to discuss the overall design of the home. Mr. Millemann stated he was familiar with the Ordinances and that the owner's objective was to design a home that was consistent with the style, aesthetics, and character of the surrounding homes.

Mr. Millemann displayed an exhibit, marked A-2, and explained that it was the elevations of the home viewed from Homestead Road. Mr. Giunco then stated that he would like the view from Green Avenue marked as Exhibit A-3.

Mr. Millemann stated that the home itself was modest, the footprint a little less than 2000 square feet. Mr. Millemann stated they tried to incorporate materials that would typically be seen in a coastal area, real cedar shake siding, cultured stone base, some standing seam cooper roofing, patios, and decks surrounding the home. Mr. Millemann stated that the objective was to make this house look like it had been there for many years. Mr. Giunco asked Mr. Millemann to explain

Exhibit A-3. Mr. Millemann explained the material used, the masonry chimney and the porte cochere which extends out towards Homestead Road.

Mr. Giunco asked Mr. Millemann to describe the Plot Plan to the Board. Mr. Millemann stated that they would like the front of the home to face Homestead Road facing another residence. Mr. Millemann stated they created a drive from Green Avenue, parallel to Homestead Road to allow access onto the site which would allow the owners to keep their cars close to the home and not on Homestead Road. Mr. Millemann stated that there was a freeform pool and an accessory structure for storage of the owner's vehicles, boat, and personal watercraft. Mr. Millemann displayed an exhibit he referred to as the elevation of the proposed garage. Mr. Millemann stated they were looking to use the same materials as the home, so it would look like the two structures were cohesive in their design.

Mr. Giunco asked Mr. Millemann to explain the deck and the swimming pool to the Board. Mr. Millemann stated that the main structure would be pushed a little bit west, and the garage would be nestled as far back to the west as possible. Mr. Millemann stated that the geometry of the site was a little challenging due to the fact that it is bound by 3 streets which is why they had some de minimis setback issues that they were asking relief from. Mr. Millemann stated that in the interstitial space between the home and the garage is where they were proposing to put the freeform pool. Mr. Millemann stated that there would be decks that surround the house, for view, aesthetics and for supervision of the pool.

Mr. Millemann again displayed the Exhibit that he described as the elevation of the proposed garage and explained that there would be a boat on a trailer stored in the off season and other vehicles parked in front and on the side of the boat.

Mr. Giunco asked Mr. Millemann if in his opinion as an Architect, were the buildings in scale and asked if the buildings were consistent with each other to present a nice, esthetic, pleasing and visual appearance. Mr. Millemann responded that they were and that the home itself was modest in size and the scale was consistent with the other homes in the neighborhood. Mr. Millemann stated that the development of the home, garage and the landscaping would actually buffer any sound that might come off from the marina to the rest of the surrounding homes, so it would be a benefit to the other homes.

Mr. Giunco asked Mr. Millemann if there would be enough setback and space between the buildings. Mr. Millemann answered yes that there would be ample room between the buildings. Mr. Giunco stated he had no further questions for Mr. Millemann.

Ms. Trainor stated this was an amended application and that the Board did have a letter from the Board Engineer, Al Hilla, dated July 6th. Ms. Trainor asked Mr. Hilla if he had any questions for Mr. Millemann. Mr. Hilla stated that there is an appendage off the deck which actually encroaches further into the front yard of Green Avenue and asked Mr. Millemann to explain what that is. Mr. Millemann stated that because the geometry of the deck comes past the setback line, there was a small little screen privacy wall. Mr. Millemann stated that they could reduce the little appendage that comes past the edge of the deck. Mr. Millemann stated that the height would be at rail height, 36 inches above the deck. Mr. Hilla asked Mr. Millemann how it

related to the ground below. Mr. Millemann responded that it would be between 5 and 5 ½ feet total. Mr. Millemann stated he believed that the base would be stone material and some wood screening.

Ms. Trainor announced it was now time for questions from the Board.

Mayor Nicol asked Mr. Millemann what the heights were for the home and the accessory structure for the boats and cars. Mr. Millemann responded that the peak of the home is 34 feet above grade and the peak of the roof of the garage is 24 feet above grade.

Mr. Siano asked Mr. Millemann if a second floor was being proposed in the garage. Mr. Millemann replied that it is a single level structure. Mr. Siano asked Mr. Millemann why the height of the garage is proposed as 24 feet. Mr. Millemann responded that they defined the height of the garage door based on a boat on a trailer and stated that they wanted the roof pitch to be similar to the home. Mr. Siano stated that on the Green Avenue side of the property, he could see that they were kind of closing in the pool area with a pool fence and asked Mr. Millemann how they anticipated keeping the pool separated with the safety fence on Green Avenue side. Mr. Millemann replied that it would have to be separated as defined by Ordinance and Safety Code, and that there would be a fence that goes around the entire area that would be open to the pool and they would have to maintain whatever the required height is for safety.

Ms. Brisben asked Mr. Millemann what would be under the house. Mr. Millemann replied that there would be a crawl space.

Mr. Jones stated on the Plot Plan, it identified an area of possible ROW acquisition and asked Mr. Millemann to clarify what that means. Mr. Giunco responded that this was an area that was sought to be dedicated to the Borough for the road widening and that they would like it to be a dedication by easement so that it would not further diminish the size of the Lot.

Ms. Trainor stated that Mr. Hilla's letter, dated July 6th, states that the accessory building height proposal was 23 feet but that she had heard 24 feet and asked Mr. Millemann to clarify. Mr. Millemann responded that it was 24 feet. Ms. Trainor stated that in Mr. Hilla's letter that the location of the proposed pool equipment is within the Green Avenue front yard setback and asked Mr. Millemann if he could explain the different options they considered regarding the pool equipment and why they settled on this position. Mr. Giunco displayed the Engineer Site Plan, marked as Exhibit A-5. Mr. Millemann stated that the pool equipment was not shown on the document that was displayed but pointed to an area near the pool where they proposed the pool equipment would go. Mr. Millemann continued by saying they were planning to have screening around the pool equipment so it would not be seen from the pool side, Green Avenue or Union Lane side.

Mr. Clark asked Mr. Millemann to explain what the screening would be. Mr. Millemann replied that the fence that would match the house.

Ms. Trainor announced it was now time for questions from the public.

Courtney Volpe, 304 Union Lane, was sworn in by Mr. Clark. Ms. Volpe asked Mr. Millemann what the square foot difference between the house and the accessory structure was. Mr. Millemann responded that the house was 3360 square feet, and the garage was 1400 square feet. Ms. Volpe stated to Mr. Millemann that she had heard 2000 square feet, and she was confused. Mr. Millemann replied that was the footprint of the house, just under 2000 square feet and the gross area of the home was the 3360 number.

Jay Madison, 206 Homestead Road, was sworn in by Mr. Clark. Mr. Madison asked Mr. Millemann if he were aware that the Waypoint driveway comes out in the exact same direction as the driveway that would come out onto Green Avenue and asked how they would address the enforcement of cars not coming out onto Green Avenue from the driveway. Mr. Millemann responded by saying that the roadway going into the site is a one-way road. Mr. Madison stated that they would be crossing a double yellow line to go in that one direction and asked why they would not go all the way around Homestead Road like everyone else. Mr. Giunco replied that there was no prohibition to cross a double yellow line to make a left or right turn under the New Jersey Traffic Code and that the driveway was designed to be accessed in one way. Mr. Millemann stated that this was a single-family home and that they brought the roadway into the site to eliminate or alleviate the possibility of parking cars on the roadway. Mr. Millemann stated that it would be a benefit that they moved the parking of the owner's vehicles onto their property and that they made that concession intentionally. Mr. Madison asked Mr. Millemann if the cars would be coming out on Homestead Road. Mr. Millemann replied yes, that was correct.

Ms. Trainor asked if there were any other questions for Mr. Millemann from the public. Hearing none, Ms. Trainor asked if there were follow up questions from the Board to which no one replied.

Mr. Jason Burneyko, Engineer of Record, employed by PS & S and DW Smith Associates in Wall Township, NJ, was sworn in by Mr. Clark.

Mr. Giunco asked Mr. Burneyko to describe to the Board his training, licensing, and credentials. Mr. Burneyko replied that he had a Bachelor of Science degree in Civil Engineering from New Jersey Institute of Technology in 1996, a Licensed Professional Engineer in New Jersey since 2005, and has appeared before several Municipal Planning Boards throughout Monmouth and Ocean Counties. Mr. Giunco asked Mr. Burneyko if it was under his direction that the plans were submitted to the Board. Mr. Burneyko responded that it was. Mr. Giunco asked the Board to accept Mr. Burneyko as an expert in this application. Ms. Trainor stated that the Board would recognize Mr. Burneyko as an expert.

Ms. Trainor then announced that 45 minutes had passed and stated that the application would be carried to the next month.

August 10, 2021 hearing

Attorney John Giunco from Giordano Halleran & Ciesla law firm announced he was appearing on behalf of the applicant. Mr. Giunco began by saying at the last meeting they had presented the testimony of the architect, Michael Millemann. Mr. Giunco stated that Mr.

Millemann had completed his testimony and cross examination. Mr. Giunco stated that he had introduced Jason Burneyko as the Civil Engineer for the project but announced that Mr. Burneyko was not available to attend this hearing. Mr. Giunco then called Mr. Jason Schooling, Civil Engineer, PS&S & DW Smith Engineering. Mr. Schooling was sworn in by Mr. Clark.

Mr. Giunco asked Mr. Schooling to present to the Board his credentials as a Licensed Professional Engineer. Mr. Schooling stated he graduated with a BS in Civil Engineering from NJIT in 2006, had a license as a Professional Engineer in NJ, a Professional Planner in NJ, a Certified Flood Plain Manager and Vision Sustainability Professional. Mr. Schooling stated he had appeared before several Boards in New Jersey. Mr. Giunco asked that Mr. Schooling be accepted by the Board in the field of Civil Engineering. Ms. Trainor replied that Mr. Schooling was accepted as an expert.

Mr. Giunco displayed an exhibit, marked A-5, and stated that this was the Site Plan. Mr. Giunco asked Mr. Schooling if this was an exhibit that he and others under his direction had worked on and asked if he would describe the design. Mr. Schooling replied that it was and began describing Exhibit A-5. Mr. Schooling stated that the site is known as 623 Green Avenue, is a corner lot that had frontage along 3 roads, triangular in nature, had an existing non-conforming lot width of 58 feet where 75 feet is required and was in the R-4 zone.

Mr. Schooling stated that applicant is proposing to construct a 2-story dwelling with an associated garage and pool in the backyard. Mr. Schooling stated the proposed dwelling would be 3,360 square feet with a porte cochere along the frontage on Homestead Road, wrap around porch and a wooden deck in the rear. Mr. Schooling stated that associated with that were different variances, a front yard variance off of Homestead Road and a setback variance off of Green Avenue. Mr. Schooling stated that the dwelling was completely within the approved building envelope and that only the porte cochere and wood deck would intrude into the setbacks.

Mr. Schooling stated that based on the Board's recommendation, the pool has been re-orientated so that it would meet the building code of being more than 10 feet away from any structures. Mr. Schooling stated that the pool would be 10 feet away from the deck and the proposed garage. Mr. Schooling stated they were proposing a 4-foot vinyl fence and landscaping along the entire back yard to maintain a visual barrier from the street to the pool.

Mr. Schooling said they were proposing a 1500 square foot garage which would be utilized for boat storage and commercial vehicles. Mr. Schooling stated that the Borough had a requirement in an Ordinance that stated no outdoor storage of boats or commercial vehicles is permitted within the R-4 zone. Mr. Schooling did not specify the number of that Ordinance. Mr. Schooling stated because of that, the garage was designed for that purpose. Mr. Schooling stated that there were setback variances requested associated with the garage.

Mr. Schooling stated that there was a proposed driveway on the site. Mr. Schooling stated that in a Borough Ordinance it stated that only one driveway is permitted on a corner property and must be provided on the street that has lower traffic volume. Mr. Schooling stated that in this case it would be Homestead Road. Mr. Schooling did not specify the number of that Ordinance. Mr. Schooling stated the applicant was requesting 2 curb cuts, one along Homestead Road and one

along Green Avenue. Mr. Schooling stated that they had recently received a letter from the Chief of Police stating that they determined that entering and exiting off Green Avenue would not cause an adverse impact to traffic and was not a concern. Mr. Schooling stated that the Green Avenue driveway would be a one-way entrance and an exit off of Homestead Road.

Mr. Schooling stated they were proposing a fence that would run along the rear property line and would have frontage along Green Avenue, Union Lane, and the residential lot to the northwest. Mr. Schooling stated it would be a 4-foot-high fence in most cases, except for along Union Lane within the sight triangle at the intersection of Union Lane and Green Avenue where it would be reduced to 3-feet. Mr. Schooling stated that the applicant had agreed to work with the Borough Engineer in order to design any landscaping along Union Lane.

Mr. Schooling stated there were 3 drywells proposed, one adjacent to the proposed dwelling, one along Union Lane, behind the garage, and one next to the garage closer to Green Avenue in between the garage and pool. Mr. Schooling stated they were also proposing a swale going along the residential lot line.

Mr. Schooling stated that the applicant would agree to an easement to the Borough along Union Lane in order to maintain the sidewalk and public improvements.

Mr. Giunco asked Mr. Schooling to describe to the Board how, at the Union Lane intersection, the 4-foot section of fence would become 3 feet and asked if there would be a fence section to enclose the pool. Mr. Schooling answered that at Union Lane and a portion of the southwest corner of Green Avenue, within the sight triangle at the intersection, it would lower to 3 feet and the remainder of the enclosed backyard area, around the pool and around the garage would be 4 feet.

Mr. Giunco asked Mr. Schooling to describe the screening proposed for the pool equipment. Mr. Schooling replied that it would be an evergreen planting screening as well as a 4-foot vinyl fence that would go around the entire backyard.

Mr. Giunco asked Mr. Schooling if he had the opportunity to consider variances that were requested from an engineering perspective and if he had drawn any conclusions. Mr. Schooling reviewed and described the variances proposed by the applicant. Mr. Giunco asked Mr. Schooling if, from an engineering perspective, the variances would be justified based on the testimony and the conditions proposed to date. Mr. Schooling answered that he believed that the Board could provide relief because there were a lot of positives, no negatives, the screening would adequately provide blocking from the garage, pool or deck that are closer to the setbacks, the building itself would be lying within the building envelope and only the porte cochere and deck would be intruding into the setback itself. Mr. Schooling continued by saying that any increase in impervious coverage on the site beyond what is permitted is de minimis and would be handled by the proposed stormwater system. Mr. Giunco asked Mr. Schooling if, from an engineering perspective, he thought that this would upset the zoning scheme or health and safety of the community if the variances were granted. Mr. Schooling replied that he did not see any negative impact to these things.

Mr. Giunco announced that he had no further direct questions for Mr. Schooling. Ms. Trainor announced that it was now time for questions from the Board for Mr. Schooling.

Councilman Garruzzo stated he understood the applicant's intent for the garage and asked Mr. Schooling if it was necessary for it to be 23 feet tall. Mr. Giunco replied that he would ask the architect to consider that, discuss it with the applicant and come back to address if there was the ability to lower the height. Mr. Giunco stated that the height was proposed to follow the same slope line as the roofline on the main house and then asked to have that question deferred.

Mr. Maclearie asked Mr. Schooling what kind of commercial vehicle or equipment would be stored in the garage. Mr. Giunco answered that the vehicle is a commercial Dodge pickup truck that is used in the applicant's business. Mr. Giunco stated that there would also be two boats. Mr. Maclearie asked if the garage would be used as a work shed to work or if it would be the applicant's personal garage. Mr. Giunco answered that it would be used as the applicant's personal garage.

Mr. Clark stated that he believed that last month the architect had testified that they were looking for an approval for a 24-foot-high garage and now the engineer stated 23-feet and asked Mr. Giunco to clarify that. Mr. Giunco stated that the application did state 24-feet. Mr. Giunco stated they would come back and clarify that.

Ms. Brisben asked why the applicant would need to keep a boat in a garage when there is a dock a block away. Ms. Brisben then asked Mr. Clark if it were correct that the Municipal Land Use Law states that variances should only be approved if they benefit the town and not just the applicant. Mr. Clark replied that there are two kinds of variances, C-1 variances that relate to the topography of a property and whether a hardship is created because of the property and C-2 talks about a benefit not to just to the applicant but to the public at large. Ms. Brisben asked Mr. Schooling if he would clarify which variance they were seeking for the garage. Mr. Schooling stated he would defer to the planner for the answer. Ms. Brisben stated to Mr. Schooling that on the plot plan it shows a car exiting onto Green Avenue and asked Mr. Schooling if it were possible to make the driveway a L shape driveway instead. Mr. Schooling stated that the plan Ms. Brisben was referring to had been revised to show only a one-way ingress off of Green Avenue. Mr. Giunco stated that the original plan did show a full-service driveway but based on Mr. Hilla's recommendation, it became a one-way entry. Ms. Brisben asked Mr. Schooling how wide the driveway at Green Avenue is. Mr. Schooling replied that it was 14 feet.

Ms. Trainor asked Mr. Schooling if it was correct that they were proposing a setback of 9.6 feet on Green Avenue to the pool. Mr. Schooling answered that the 9.6 feet is a spot elevation and that it would be set back 13.2 feet off Green Avenue.

Mr. Hilla asked Mr. Schooling how large the boats were that would be stored in the garage. Mr. Schooling answered that the boats were 34 foot and 21 foot long.

Ms. Trainor announced it was the time for questions for Mr. Schooling from the public. Hearing none, Mr. Giunco called Mr. Andrew Janiw, Licensed Professional Planner. Mr. Giunco stated he would be offering him as an expert in the field of Professional Planning. Mr. Janiw was

sworn in by Mr. Clark. Mr. Janiw stated he was a principal in Beacon Planning and Consulting Services located in Colts Neck, New Jersey.

Mr. Giunco asked Mr. Janiw to present his licensing and credentials to the Board. Mr. Janiw replied that he had a bachelor's and master's degree in Civil Engineering from NJIT, a Professional Planners License and was a member of the American Institute of Certified Planners. Mr. Janiw stated he is currently serving as the Planner for the Borough of Carteret, Middlesex County, the Township of Livingston, Essex County and as a redevelopment advisor to Toms River, South Amboy, Flemington, Plainsboro, and Neptune City. Mr. Janiw stated he had appeared before this Board previously as well as others throughout and had been qualified as an expert in Land Use Planning by the Superior Court of New Jersey.

Mr. Giunco asked the Board to accept Mr. Janiw as an expert in the field of Professional Planning. Ms. Trainor stated Mr. Janiw was approved.

Mr. Janiw stated he had reviewed the Borough's Ordinances, the Borough's Master Plan, Mr. Hilla's review letter, visited the site and the surrounding neighborhood and then formulated the opinions relative to the variances being sought.

Mr. Janiw stated the lot was significantly oversized. Mr. Janiw stated the lot was in the R-4 single family zone which requires 5000 square foot minimum lot area for an interior lot and 7500 square foot lot area for a corner lot. Mr. Janiw stated that this lot was 23,237 square feet, which is more than three times the maximum lot size required within the zone.

Mr. Janiw stated that the garage is proposed to house Mr. Burlew's pickup truck and provide winter storage of two boats. Mr. Janiw stated he wanted the Board to remember that the Borough Ordinance stated that boats are permitted to be stored in driveways so storing the boats outside would be the alternative. Mr. Janiw stated that this property was in a transitional district and that Green Avenue acted as a buffer between the residential community and the commercial neighborhood. Mr. Janiw stated that Mr. Burlew carefully considered the property to buffer the residential neighborhood from the commercial users.

Mr. Janiw displayed an Exhibit A-6 and described it as an aerial photograph prepared by his office from the ESRI website, which was essentially a GIS database. Mr. Janiw pointed out the property, a parking lot, the marina, multi-family housing and single-family homes. Mr. Janiw pointed out other lots in the area that had two driveway access points similar to the configuration proposed.

Mr. Janiw stated that he had looked at the Borough's Master Plan and its objectives. Mr. Janiw stated the Master Plan was very protective of residential neighborhoods and asked if he could read into the record that it includes principles and points that require an application to promote and enhance a visually desirable environment, to encourage the coordination of numerous public and private regulations and activities which influence land development towards a goal of producing efficient use of land with the appropriate type of development and scale, encouraging residential development at densities that were compatible with existing developmental patterns

and to consider and evaluate innovative developmental proposals that would enhance and protect the features of a property.

Mr. Janiw stated that when looking at this property on a gross density basis as would be in Master Planning, the property was 3 to 3 1/2 times the size that would typically be proposed in the R-4 Zone so they tried to create consistent with the zone pattern of the single-family homes nearby. Mr. Janiw stated that the configuration of the lot was unique in terms of protecting the character of the neighborhood.

Mr. Janiw stated that the property has no rear yard, only 3 front yards and a side yard which created difficulties in terms of properly locating accessories, such as the garage or pool. Mr. Janiw stated what Mr. Burlew was trying to do with the oversized garage was to create a buffer to the pool so any noise associated with the pool is screened to the neighbors while creating an interior storage area for boats and a commercial vehicle. Mr. Janiw stated that they felt this was a superior alternative than leaving them in the driveway which would be permitted. Mr. Janiw stated that the garage would also serve as a buffer to the properties from the commercial uses further south. Mr. Janiw stated that his impression as a planner was that this was a very thoughtful layout of the property in terms of the orientation of the home, garage and pool and would not have any type of detrimental impact or visual intrusion.

Mr. Janiw referred to Municipal Land Use Law 40:55D-2, 40:55D-2(g) and 40:55D-2(i), 40:55D-2(m) and read them into the record. Mr. Janiw stated he believed that the application promotes three of the purposes of zoning, thereby providing a public benefit. Mr. Janiw stated that a lot of thought was given into the orientation of the home, the elements of the home, and the port cochere, Mr. Janiw stated that the home would not be modern looking but would blend with the architecture and style of the community. Mr. Janiw stated that he believed the application would provide a desirable environment and would be efficient and that the traffic pattern proposed would have minimal impact on Homestead Road and the community.

Mr. Janiw stated that the Borough's Ordinance does allow boats to be stored within the driveway, but that Mr. Burlew would prefer to screen those from the neighbors and thought the better alternative would be to store them within an enclosed area which meant they would have to configure the garage to accommodate that.

Mr. Janiw stated that all the variances requested could be justified under the C-2 or balanced criteria. Mr. Janiw stated that the balance test is essentially a five-pronged test, three to the positive and began explaining those to the Board. Mr. Janiw stated the first is that the application relates to a specific piece of property which Mr. Janiw stated it did. Mr. Janiw stated the second is that the purpose of the Municipal Land Use Law would be advanced and stated that he had already read them to the Board. Mr. Janiw stated that the third was that the variance could be granted without detriment to the public good and stated that the engineer had previously gone through the variances and had concluded that there would be no detriment to the public. Mr. Janiw stated he believed that there would be no detriment with respect to traffic, trash, noise and would be developed as anticipated in the zone plan, at a lesser intensity.

Mr. Janiw stated he believed that the Board had the ability to grant the variances based on the evidence and testimony presented.

Ms. Trainor announced that there was a 45-minute cap on applications but then stated that since two of the applications had been carried and if there were no objections from the Board, they could finish up with Mr. Janiw. Ms. Trainor stated she did not hear any objections and announced it was time to hear questions for Mr. Janiw from the Board.

Ms. Brisben asked Mr. Janiw if he could justify an oversized garage being visually desirable right on the corner of Green Avenue and Union Lane. Mr. Janiw stated that it came down to a better zoning alternative because the alternative would be to store the boats in the open and that the garage would be designed to be compatible with the house. Mr. Brisben asked why the driveway going out to Green Avenue would be 14-feet wide if it is intended to be an ingress only. Mr. Janiw answered that he would have to defer to the engineer. Ms. Brisben stated that she would like to hear the answer to her question from the engineer if he was available. Mr. Schooling answered that the driveway could be reduced to 12-foot if needed. Mr. Schooling stated that the 14 feet was on the plan when it was proposed as a 2-way driveway and had not been reduced when it was changed to a one-way driveway.

Ms. Brisben asked Mr. Hilla if there was anything in the Zoning Ordinances that spoke about a boat being a certain size to be allowed in a driveway. Mr. Hilla referred to Code Section 21-9.22 and read that the maximum length of a boat that can be stored outside on a residential lot would be 26-feet. Ms. Brisben stated that the applicant would not be able to leave his boat in the driveway as they had testified, they would have to store it at a dock. Mr. Janiw stated the applicant did have a boat that was 21-foot long. Ms. Brisben stated she was referring to the boat that they said was 34-foot long. Mr. Janiw replied that the garage was configured to store both boats.

Ms. Trainor read into the record Ordinance 21-9.22. Ms. Trainor and stated that it appeared that she and the Board were concerned with the garage and did not appreciate the proposal that the applicant would just leave the boat in the driveway if the garage were not approved. Ms. Trainor stated she had heard the testimony about the unique shape of the lot would affect the setback and asked Mr. Janiw how that would affect the size or height of the garage. Mr. Janiw replied that the size and height of the garage was configured in order to store the vehicles that were entered into testimony.

There were no other questions from the Board, but several other members expressed concern over the size of the garage and felt it should be reduced.

Mr. Giunco stated that based on what the Board members had stated, his client and architect would like to have the opportunity to try to design a garage that would be more acceptable and asked if the application could be carried to the next meeting. Ms. Brisben stated that the September meeting was full and did not think that there would be room to carry this application to September. Mr. Giunco asked the Board if the application could be added to September with a clear understanding that only if there was room, they would be heard. Ms. Brisben suggested that the Board carry this application to September and that the Board could announce at that meeting if the application would be heard or carried. Mr. Giunco thanked the Board and stated that they would

November 9th, 2021

work hard to design a garage that everyone would be happy with and still meet Mr. Burlew's requirements.

September 14, 2021

Mr. John Giunco announced that he was appearing on behalf of the applicant. Mr. Giunco began by saying that at the last meeting, they had finished their presentation and discussion and that there had been two recommendations, that the driveway width be reduced to 12 feet and to try to reduce the size of the garage. Mr. Giunco stated that the plans had been revised and resubmitted and that the driveway was now at 12-feet, the garage had been reduced from 24-feet to 20-feet and the length had been reduced from 50-feet to 40-feet. Mr. Giunco stated that the applicant is now under the 20% requirement which would eliminate the variance for building coverage.

Mr. Giunco began questioning Michael Millemann, Architect, who had been sworn in at a previous meeting. Mr. Clark stated that Mr. Millemann was still under oath and could testify about the revised plans.

Mr. Giunco asked Mr. Millemann if he would describe to the Board the amendments and how they changed the site. Mr. Millemann referred to drawing, SKS, last dated August 26th, 2021, and stated that the concrete paver driveway was reduced from 14-feet to 12-feet, that the size of the garage was reduced from 30 x 50 feet to 30 x 40 feet, eliminating the variance for coverage.

Mr. Millemann presented and displayed to the Board a drawing he referred to as SK5, dated August 26th, 2021. Mr. Clark marked the whole plan set as Exhibit A-7. Mr. Millemann stated that this Exhibit showed the reduction of height and length of the structure and stated that they kept all of the architectural components and materials the same as originally proposed. Mr. Giunco asked Mr. Millemann if the building was still in the same design, consistent with the house. Mr. Millemann replied that was correct. Mr. Giunco asked Mr. Millemann if there were any other amendments made to the plans. Mr. Millemann replied that only the driveway and the height and length of the garage were changed. Mr. Giunco stated he thought that those were the issues raised by the Board at the previous meeting and their intent was to meet their request.

Ms. Trainor asked Mr. Millemann if by reducing the size of the garage, did the setback or the footprint change. Mr. Millemann stated that they eliminated the square footage in the north-east corner of the building and took footage off of that area, allowing more room around the pool. Mr. Millemann stated that it would also help to allow a little bit more line of sight across the property to the waterline.

Ms. Trainor announced it was now time for questions from the Board.

Mr. Maclearie asked Mr. Millemann what the percentage of impervious coverage was now. Mr. Millemann answered it was 19.6%. Mr. Maclearie asked Mr. Millemann if there would be grass along the front Homestead Road. Mr. Millemann replied that was correct.

Mr. Siano asked Mr. Millemann how large the boats were that were being proposed to be stored in the garage. Mr. Giunco answered that the larger of the two boats, 34-feet, would not be

stored on the property and the other boat was 24-feet. Mr. Siano asked Mr. Millemann if he thought there was still a need for a 1200 square foot detached structure on the property. Mr. Giunco replied yes that it would permit that all vehicles would be stored inside the garage. Mr. Siano asked Mr. Millemann if it was ever considered to possibly build a 900 square foot, 30 x 30 garage which would fall within the setbacks and not require a variance for the garage structure, other than height.

Mr. Millemann answered that based on the meetings with the owners, they had done a few layouts with the vehicles, and this was the size that would permit the parking of the cars, and different watercraft that the owner had. Mr. Millemann stated they were trying to keep as many of the vehicles inside the enclosed structure. Mr. Siano asked if there were any commercial vehicles. Mr. Giunco answered there was one commercial vehicle which by ordinance would have to be kept in the garage.

Ms. Brisben asked Mr. Millemann if he would explain why the garage door was 14-feet high. Mr. Millemann replied that it was to permit the boat on a trailer and to eliminate the boat being damaged. Ms. Brisben asked Mr. Millemann if it was true that the driveway from Green Avenue would be one way. Mr. Millemann stated that the intent was to make it a one way from Green Avenue.

Mr. Hilla asked Mr. Giunco if the Planner was available for questions. Mr. Giunco stated that Mr. Andrew Janiw, Planner, was available. Mr. Hilla stated the Ordinance only allows, in the Zone, two spaces in private garages and asked Mr. Janiw if he could explain how the storage of a boat in a building was a customary accessory. Mr. Hilla stated that Brielle is a marine municipality and that besides marinas, he wasn't aware of many sizable boats being stored inside buildings. Mr. Hilla also asked Mr. Janiw if he had any testimony for the exceedance of the typical two car garage. Mr. Janiw answered that while the Ordinance was limited to a two-car garage, it did not have a square footage limitation. Mr. Janiw stated that he had testified prior that the intent was to store both boats and because they have reduced the size, it really only accommodates the one smaller boat. Mr. Janiw continued by saying they believed visually given that this was an oversized lot, it was a better Zoning alternative. Mr. Janiw stated that there was a question as to whether they could resolve the setback issue by a 30 x 30 garage and stated that the answer was that it would not resolve the issue because 30 is the width and the width is creating the setback issue to the rear property line.

Mr. Hilla stated he was under the impression that there was talk of sliding the building further away from Union Lane, keeping the same setback to the property to the west but getting it further away from the Union Lane, Green Avenue corner. Mr. Janiw stated that they were compliant there and by leaving it there, they would create the appropriate space around the pool. Mr. Hilla stated that they would not achieve the front setback to Green Avenue but if it slid to the north-east, where the front of the garage was going to be before they took off 10-feet, it would come pretty close to achieving front setback to Green Avenue as well.

Mr. Janiw stated that with speaking to their clients, Mr. Burlew was willing to slide the garage forward to provide a greater setback to Union Lane and Green Avenue but was asking to keep the 30 x 40 dimension, which was critical to the storage of the boat, the trailer and hitch. Mr.

Janiw stated that their engineer explained to him that it would not be a problem moving it 5-feet forward towards Homestead Road.

Ms. Trainor asked if any Board members had any questions based on the conversation that Mr. Hilla just had. Hearing none, Ms. Trainor announced it was now time for the public to ask questions of the witnesses. Hearing none, Ms. Trainor asked Mr. Giunco if he had any additional testimony to which Mr. Giunco replied he did not. Mr. Giunco stated he felt that the application was well prepared, well designed and was aesthetically very appealing and based on the comments they received, they tried to react to them and make the site more accommodating. Mr. Giunco stated he felt that they provided adequate justification to each of the requested variances and that the plans were well thought out and compliant. Mr. Giunco asked the Board to approve the application and stated he thought it would be a very nice addition to the community.

Ms. Trainor announced it was time to hear comments from the public in regard to the application.

Mr. Dan Burke, 1013 Cedar Lane, Brielle, NJ, was sworn in by Mr. Clark. Mr. Burke stated he thought the garage should be pulled away as far as possible from the intersection at Green Avenue and Union Lane. Mr. Burke stated that the intersection is extremely busy and that sight distance around the intersection is critical to traffic safety. Mr. Burke stated that anything that could be done to reduce the size of the garage to the normal size of 600 square feet and that even perhaps 900 square feet would accommodate three units.

Ms. Trainor asked if anyone else had any comments in respect to the application.

Mayor Nicol stated that he did not have a problem with the application if the garage were moved 5 feet further from Union Lane. Mayor Nicol added he felt it would be a great improvement to the Lot.

Councilman Garruzzo stated he thought this would be an improvement and an asset to the community but that the garage had always been his concern.

Mr. Stenson stated he agree with Mayor Nicol and that the garage should be moved another 5 feet.

Mr. Maclearie stated he also agreed with Mayor Nicol that moving the garage 5 feet from Union Lane would help and also lowering the roof height would definitely help too.

Mr. Siano stated he agreed with his fellow Board members and would like to see the garage pushed back to where it originally started on the old Plan.

Ms. Brisben stated that she was not for the large size of the garage, agreed with Mr. Burke and thought there might be a sight triangle issue. Ms. Brisben stated that the street was heavily travelled and also had a problem with the driveway being a one way. Ms. Brisben stated she would not be in favor of the application.

Mr. Jones stated he was opposed to the size of the garage.

Ms. Trainor stated she did not think there had been testimony that she was willing to accept that there was a hardship or some other unique condition of the Lot that would require or allow a variance that she would be willing to grant for a garage of that size. Ms. Trainor stated she agreed with Ms. Brisben and also had not heard anything other than a personal reason that would only strictly benefit the owner that would allow a second curb cut with respect to the driveway.

Ms. Trainor stated that there were a number of conditions or issues raised and asked Mr. Clark if he would go through them and then see if someone would be willing to make a motion with respect to those conditions and what conditions the applicant was prepared to accept.

Mr. Clark stated he would summarize some of the conditions that were discussed during the last three meetings. Mr. Clark stated a condition agreed to by the applicant was having a one-way driveway with two curb cuts, and the applicant agreed that there would be screening for the pool equipment in a manner satisfactory to the Board Engineer. Mr. Clark stated there was testimony and also within Mr. Hilla's letter a dedication of a right-of-way, or easement in one area of the property and talk in Mr. Hilla's letter about getting that dedication to be able to extend the sidewalk across the property. Mr. Clark stated he believed that the applicant had agreed to this.

Mr. Clark stated he thought the Board needed to consider if they wanted to make a motion to approve the application with the revised garage in its now revised size but moved 5 feet away from Union Lane which was agreed to by the applicant or whether the Board would prefer something else.

Ms. Trainor asked Mr. Giunco, based on what Mr. Clark had said, what his thoughts were and what he would suggest the Board do.

Mr. Giunco stated that he would like to remind the Board that on June 1st, the Police Department issued a letter regarding the driveway, that stated the Traffic Safety Unit did not see a safety concern. Mr. Giunco read the letter into the Record. Mr. Giunco stated it was the Board's preference that the garage be moved 5 feet towards Homestead Road, then the applicant would agree to do that. Mr. Giunco stated he would like the Board to approve the application and thought that the applicant worked hard to meet each of the comments that were made.

Ms. Trainor asked if there were a member of the Board willing to make a motion of the kind that Mr. Giunco advocated for. Mr. Clark stated that the motion would be to approve the application with moving the garage 5 feet over and with the other conditions listed.

Mayor Thomas Nicol made a motion. Ms. Trainor asked if any member of the Board wanted to second the motion. Hearing none, Ms. Trainor announced no one had seconded the motion and asked Mr. Giunco if there were a secondary motion he would advocate for. Mr. Giunco asked the Board for a moment to confer with his client. Mr. Giunco stated the applicant would like some time to consider it and would like an opportunity to speak further with the Board Engineer, Mr. Hilla about his comments. Mr. Giunco asked the Board to carry the application for a vote at the next meeting.

Ms. Trainor asked for a motion to carry the application for one meeting. The Board approved the motion to carry the application to the next meeting.

October 12, 2021 meeting

Attorney Evan Zimmerman, from Giordano, Halleran & Ciesla, announced he was stepping in for Mr. Giunco who was originally representing the applicant, Mr. Burlew.

Ms. Trainor stated that at the last meeting, the Board had heard all of the testimony and that she had asked for a motion from the Board to approve the application. Ms. Trainor stated that although a motion was made, no member of the Board seconded the motion. Ms. Trainor stated that she then asked Mr. Giunco if there was a different motion, he would like to present to the Board to consider and Mr. Giunco responded by asking for an adjournment. Ms. Trainor asked if Mr. Zimmermann agreed with Ms. Trainor's recap of the previous meeting and stated since the last meeting the applicant's team reviewed the plans further and made a couple of additional revisions, most notably, to the garage.

Mr. Zimmermann stated that they were able to move the garage about 15-feet so it would be located outside of the required setback to Green Avenue and had reduced the garage to 30 x 35 feet. Mr. Zimmermann asked the Board if the applicant's architect, Mr. Millemann could explain the changes made to the Board. Ms. Trainor asked Mr. Zimmermann if he was asking to reopen the testimony to address changes they had made. Mr. Zimmermann replied that that was correct.

Ms. Trainor asked for a motion to reopen the hearing and allow additional testimony. Councilman Frank Garruzzo made a motion, seconded by Chris Siano, and followed by the roll call vote.

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Charlie Tice

Noes: None

Not eligible to vote: Jay Jones

Mr. Zimmermann called Mr. Millemann to testify and stated that Mr. Millemann had already been sworn in. Mr. Millemann display a Plot Plan, labeled SKS, dated September 20th, 2021, marked as Exhibit A-8. Mr. Millemann stated that this plan reflected the changes made to the garage. Mr. Millemann shared and described a document referred to as the Garage Elevation, dated September 20th, 2021. Mr. Zimmermann asked Mr. Millemann if there were any other changes made to the Plans or were the revisions limited to the garage. Mr. Millemann responded that the scope of the revisions were limited to the size and location of the garage on the property. Mr. Zimmermann stated he had no further questions.

Ms. Trainor announced it was now time to hear questions for Mr. Millemann from the Board.

Mr. Jones asked what the proposed height of the garage would be. Mr. Millemann responded it was proposed at 20-feet to the top of the ridge.

Ms. Trainor asked Mr. Millemann if the variance for the accessory structure the applicant was seeking was now 20-feet. Mr. Millemann stated that was correct. Ms. Trainor asked Mr. Millemann what the proposed square footage of the garage was. Mr. Millemann answered it would be 30 x 35, 1050 square feet. Ms. Trainor asked Mr. Millemann if they had made any changes to the driveway curb cut, they were seeking. Mr. Millemann replied that there were no changes made.

Ms. Trainor announced it was time to hear questions for Mr. Millemann from the public.

Charlotte Madison, 206 Homestead Road, was sworn in by Mr. Clark. Ms. Madison asked Mr. Millemann how the driveway on Green Avenue would be controlled going one way when no one controls the entrance of Waypoint or people driving the wrong way onto Homestead Road. Mr. Zimmermann stated he could not speak on the off-site condition but that they were proposing to limit the driveway to be one way and that it could be enforceable by the Planning Board by making a condition for its approval that the driveway be limited to one way and also by code enforcement. Ms. Madison asked if the two trees on Green Avenue would remain. Mr. Zimmermann answered that his client stated that they were not proposing to remove the trees. Ms. Madison referred to the traffic letter submitted by the Brielle Police department, dated June 1st, 2021, and stated that the traffic study was not done at the height of the season as opposed to the Tuesday after Memorial Day weekend. Mr. Zimmermann stated to Ms. Madison that the Police did not conduct traffic counts on the street, they simply reviewed the Plans and reported back that the traffic safety officer, Lieutenant Stephen Boyd, did not see a safety concern with the driveway exiting on to Green Avenue. Ms. Madison asked Mr. Zimmermann if he felt that a traffic study should be done. Mr. Zimmermann answered that he did not believe that it should be required when developing a single-family home. Mr. Zimmermann stated the applicant had taken steps to respond to comments and made it a one-way driveway.

Ms. Trainor announced it was time to hear comments for Mr. Millemann from the public.

Margaret Herman, 208 Homestead Road, Brielle, NJ was sworn in by Mr. Clark. Mr. Herman expressed her concerns about the traffic on Green Avenue.

Hearing no other comments from the public, Ms. Trainor announced it was time to hear comments from the Board with respect to the application.

Mayor Nicol stated he felt it was an improvement over last month and that it was a good application.

Councilman Garruzzo stated he agreed with Mayor Nicol, that the changes were more palatable, and better for the area.

Mr. Siano stated he agreed with Mayor Nicol and Councilman Garruzzo.

Ms. Brisben stated she did not approve of the application, felt the garage was too large, and did not approve of the driveway going out onto Green Avenue. Ms. Brisben stated she agreed with everything Ms. Madison and Ms. Herman said and would prefer if the driveway was cut off before Green Avenue and made into a parking area for the applicant.

Mr. Jones stated he felt the height of the garage was too high.

Ms. Trainor stated that with the respect to the garage, she had not heard anything about the property or any hardship that would justify granting an application with respect to the height variance. Ms. Trainor stated that she also did not agree with the size of the garage and had not heard anything about any hardship that would uniquely permit or justify the square footage increase that she would be willing to give credit to. Ms. Trainor stated that for those reasons, even though she felt the applicant had made good efforts to mitigate the concerns, she had not heard testimony that would properly support the variances they are seeking.

Mr. Zimmermann stated he wanted to address the comments heard during the public portion and the Board. Mr. Zimmermann stated he thought there might be some confusion as to what variances they were actually requesting with regard to the driveway and the garage. Mr. Zimmermann stated that there were no variances being sought with regard to the driveway and two variances associated with the garage. Mr. Zimmermann asked that the Planner be allowed to address the Board. Ms. Trainor stated to Mr. Zimmermann that the Board had already heard his comments and that he had stated he did not have any other testimony. Ms. Trainor stated that Mr. Zimmermann could tell the Board what variances were being sought but there was not a need to re-open testimony to have one of his experts to address it. Ms. Trainor stated to Mr. Zimmermann that she understood there was only one curb cut permitted and that it must be on the less traveled road, so it did seem that a variance would be needed to have a second curb cut. Mr. Zimmermann stated he believed that it would be a Design Standard Waiver condition, not a variance. Mr. Hilla stated that it was not a Design Waiver, it was Variance condition and was in the Zoning Ordinance. Mr. Hilla stated that driveways are supposed to be to the roads of lesser traffic classification, that it would be Homestead Road in this case, so the fact that they are requesting a driveway on Green Avenue makes it a non-conforming condition and because it is in the Zoning Ordinance, it is not a Design Waiver condition.

Mr. Zimmermann asked if he could poll the Board to see if there was anything that the applicant could do to amend the application that would be permissible and meet the Board's approval. Ms. Trainor stated that her suggestion, rather than taking a poll, would be to proceed variance by variance that the applicant is seeking and then the Board could identify the ones that are troublesome, but the Board would have to take a vote. Mr. Zimmermann stated he felt that was fair and stated the first variance would be the height of the garage. Councilman Garruzzo asked for clarification as to what the reasoning was for Mr. Zimmermann would be listing variance by variance. Ms. Trainor stated Mr. Zimmermann requested to poll the Board to determine whether there was anything the applicant could do to help the Board approve the application. Mr. Clark stated that the Board could vote on a variance-by-variance manner as long as everyone understood what they would be voting for. Mr. Clark stated that what was before the Board now is an entire package with several variances but could be voted on a variance-by-variance manner. Ms. Trainor asked Mr. Clark if she could ask for a motion to approve the application as it is and if it did not

pass by majority, could a member of the Board make a second motion be made for something short of all the variances. Mr. Clark answered that yes but that the only issue would be is the applicant pressing something short of all of the variances or is the applicant seeking all or nothing. Ms. Trainor stated to Mr. Zimmermann that she wanted to provide that information so that he could decide as to what they would like to do. Ms. Trainor stated she could ask for a motion for the entire package, the Board could vote and if he would like to advocate for something lesser than the entire package, he would be able to do that. Mr. Zimmermann asked for the Board to vote on the entire package.

Mr. Clark asked Mr. Zimmermann what variances they were requesting based on their redesign. Mr. Zimmermann replied one was for the height of the garage, 20 feet proposed, 18 feet required and another one was the setback to the rear property line, 12 feet proposed, 13.3 feet required. Mr. Zimmermann stated that the setback to Green Avenue complies, and the lot coverage was now compliant with the reduced garage size. Mr. Clark asked Mr. Zimmermann if his position was that even though the accessory structure would be 1050 square feet, the code did not have a particular size limitation, it just says two-car garage. Mr. Zimmermann answered yes, that was correct.

Ms. Trainor asked Mr. Clark to go through the conditions that the applicants agreed to that would be attending to the entire application.

Mr. Clark stated that other than the general conditions that would be in any Resolution, one condition discussed was that the proposed driveway would be a one-way only driveway with two curb cuts, one would be that there would be adequate screening around the pool equipment to the satisfaction of the Board Engineer, and another one would be that the applicant would be willing to give an easement to the Borough of Brielle, allowing the Borough access to extend sidewalks and public improvements along the road.

Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had listed.

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 Property is located within the Borough's R-4 residential zone.
- c. The Property previously was the site of a single-family home which was demolished and the lot is currently vacant.

- d. The Applicant is proposing to construct a two-story single-family dwelling, a detached garage, a swimming pool, paver driveways, and various other accessories on the Property as described more fully within the plans submitted with this application (as amended).
- e. The existing lot and the proposed principal and primary accessory structures are all non-conforming to the zone.
- f. The Property is located on a corner lot which, pursuant to the Borough Code, is considered to have multiple front yards for purposes of calculating setback and other code requirements.
- g. The Property is significantly oversized in that the R-4 single family zone requires a 5000 square foot minimum lot area for an interior lot and a 7500 square foot lot area for a corner lot. The Property is 23,237 square feet, which is more than three times the maximum lot size required within the zone.
- h. The Property is exceptionally narrow as this zone has a Minimum Lot Width of 75 feet, but the Property only has a lot width of 58 feet.
- i. The Applicant initially sought the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Front Yard Setback (principal to Homestead Road)—25 feet required; **15 feet proposed**; (ii) Front Yard Setback (accessory garage to Green Avenue)—25 feet required; **12.1 feet proposed**; (iii) Front Yard Setback (accessory pool to Green Avenue)—25 feet required; **14.1 feet proposed**; (iv) Front Yard Setback (principal/deck to Green Avenue)—25 feet required; **16.3 feet proposed**; (v) Rear Yard Setback (accessory garage)—16 feet required; **10.3 feet proposed**; (vi) Accessory Building Height (garage)—18 feet maximum allowable—**24 feet proposed**; (vii) Lot Coverage—20% maximum allowed; **21.8% proposed**; (viii) **variance relief to allow a driveway with curb cuts on two streets (i.e. Green Avenue and Homestead Road)**; (ix) **variance relief to permit a two-car garage which is 50 feet by 24 feet (1500 square feet) in size and 24 feet in height**; (x) Front Yard Setback (pool equipment to Green Avenue)—25 feet required; **13 feet proposed**; and (xi) **variance relief to permit a 4-foot-high fence and plantings in the site triangle area at the intersection of Green Avenue and Union Lane**.
- j. The house proposed within this application is modest in size and its scale is consistent with the other homes in the neighborhood.
- k. The structure of the dwelling is completely within the approved building envelope and only the porte cochere and wood deck intrude into the setbacks.
- l. The improvements proposed through this application are located to the back and side of the house in an area that would be considered the side yard but for

the fact that the Property is a corner lot with multiple front yards for purposes of calculating setback requirements.

- m. The Borough Code permits two-car garages within the R-4 zone, but does not include any size restriction for two-car garages.
- n. The Board Engineer has indicated that although the sizing of a garage is not an exact science, in his view a typical two-car garage is approximately 600 square feet in size. He therefore characterized the garage proposed by the Applicant as being oversized.
- o. The Applicant originally sought approval for an approximately 1500 square foot garage that was 50 feet by 24 feet in size and which was 24 feet high.
- p. Due to concerns raised by Board members and members of the public during the hearings, however, the Applicant reduced the size, height, and proposed location of the garage. The Applicant first proposed to reduce the size of the garage to 40 feet by 20 feet, and then when that reduced size was not acceptable to the Board, the Applicant re-designed the garage again so that it was reduced to 30 feet by 35 feet (1050 square feet) in size and 20 feet in height.
- q. The Applicant's willingness to reduce the size of the proposed garage eliminated the need for a lot coverage variance and for a variance for the setback to Green Avenue and reduced the scope of some of the other variances sought, thereby making the proposed improvements more consistent with the requirements of the Borough Code.
- r. The Applicant also originally sought approval for a variance to allow a driveway with curb cuts on two streets (i.e. Green Avenue and Homestead Road) and proposed that the driveway allow two-way traffic. As a result of comments by the Board Engineer and by Board members, however, the Applicant modified its application to reduce the width of the proposed driveway from 14 feet to 12 feet and to restrict the driveway to one-way traffic only with traffic entering off of Green Avenue and exiting onto Homestead Road, thereby reducing and mitigating any adverse impact caused by this variance relief. Additionally, the Borough Police Department reviewed these proposed improvements and the Police Department's traffic safety coordinator had no objections to this proposed driveway.
- s. The Applicant also changed the proposed pool to address concerns raised by the Board. Specifically, the proposed pool was re-oriented to provide greater separation from the other proposed structures to be constructed on the Property. The pool equipment was also relocated outside of the front yard setback to Green Avenue, but the screening for the equipment will be located within the setback area.

- t. The Applicant also reduced the height of the proposed fence and plantings in the site triangle area at the intersection of Green Avenue and Union Lane to three (3) feet, which complies.
- u. As a result of the revisions that the Applicant made to its proposed plans during the hearing process on this application, the Applicant is now seeking the following variance relief through its application (the variances sought are highlighted in bold type below): (i) Front Yard Setback (principal to Homestead Road)—25 feet required; **15 feet proposed**; (ii) Front Yard Setback (accessory pool to Green Avenue)—25 feet required; **13.2 feet proposed**; (iii) Front Yard Setback (principal/deck to Green Avenue)—25 feet required; **16.3 feet proposed**; (iv) Rear Yard Setback (accessory garage)—16 feet required; **12.1 feet proposed**; (v) Accessory Building Height (garage)—18 feet maximum allowable—**20 feet proposed**; (v) **variance relief to allow a driveway with curb cuts on two streets (i.e. Green Avenue and Homestead Road)**; (vi) **variance relief to permit a two-car garage which is 30 feet by 35 feet (1050 square feet) in size and 20 feet in height**; and (vii) (x) Front Yard Setback (pool equipment screen to Green Avenue)—25 feet required; **21 feet proposed**.
- v. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicant to comply with the requirements of the Borough Code, and the development being proposed by the Applicant is consistent with other development in the neighborhood.
- w. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments. Moreover, the Applicant has mitigated and reduced the impact of any detriments caused by its deviation from the Borough Code requirements by re-designing and relocating its proposed garage, by re-designing its proposed driveway, and by relocating its proposed pool in order to eliminate and/or reduce the scope of the variances that it is seeking.
- x. This application and the variance relief sought therein advances the purposes of the Municipal Land Use Law, does 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.
- y. For all of these reasons, the revised application satisfies the requirements for a N.J.S.A. 40:55D-70(c)(1) variance.
- z. N.J.S.A. 40:55D-70(c)(2) 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;

- aa. The Applicant herein has presented testimony demonstrating to the satisfaction of the Board that the purposes of the Municipal Land Use Law would be advanced by granting the variance relief requested by the Applicant because, among other things, the application promotes and enhances a visually desirable environment, encourages the coordination of numerous public and private regulations and activities which influence land development towards a goal of producing efficient use of land with the appropriate type of development and scale, encourages residential development at densities compatible with existing developmental patterns and considers and evaluates innovative developmental proposals that would enhance and protect the features of a property. It therefore promotes the goals and objectives set forth within N.J.S.A. 40:55D-2(g), (i), and (m) of the Municipal Land Use Law.
- bb. The Board finds that the Applicant has mitigated and reduced the impact of any detriments caused by its deviation from the Borough Code requirements by re-designing and relocating its proposed garage, by re-designing its proposed driveway, and by relocating its proposed pool in order to eliminate and/or reduce the scope of the variances that it is seeking.
- cc. The Board also finds that granting this variance relief will not impair, and rather will further, the intent of the zone plan and zoning ordinance for the reasons set forth herein
- dd. For these reasons, the Board also finds that the requirements for a N.J.S.A. 40:55D-70(c)(2) variance have also been satisfied by the Applicant as the purposes of the Borough Code and the Municipal Land Use Law would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.

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

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Chris Siano, Charlie Tice

Noes: Corinne Trainor, Karen Brisben, Stephanie Frith

Not eligible to vote: Jay Jones

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 Applicant has stipulated and agreed that the driveway entrance onto Green Avenue shall be one-way only with traffic entering off of Green Avenue and exiting onto Homestead Road and that any violations of these traffic restrictions may be enforced by the Borough's code enforcement officers;
- b. The Applicant has stipulated and agreed to work with the Board Engineer in order to design and install landscaping along Union Lane and particularly within the site triangle at the intersection of Union Lane and Green Avenue. All landscaping in this area shall be acceptable to and approved by the Board Engineer;
- c. The Applicant shall provide adequate screening around the pool equipment on the Property in a manner acceptable to and approved by the Board Engineer;
- d. The Applicant shall provide an easement or some equivalent property right to the Borough of Brielle, in a form acceptable to the Borough Attorney, to allow for the legal continuation of the Union Lane sidewalk across the Applicant's property;
- e. Unless it has already done so, the Applicant shall submit five (5) sets of revised plans to the Board Secretary showing the final configuration of all structures and improvements that it intends to construct on the Property pursuant to this approval;
- f. The Applicant shall pay all taxes and other applicable assessments, costs, and fees to date, as applicable;
- g. The Applicant 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;
- h. All representations made under oath by the Applicant, or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant 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 Mayor Thomas Nicol, seconded by Councilman Frank Garruzzo, and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Chris Siano, Charlie Tice

Noes: None

Not eligible to vote: James Stenson, Corinne Trainor, Jim Maclearie, Karen Brisben, Stephanie Frith, Jay Jones

OLD BUSINESS:

Request of time extension for filing of a Minor Subdivision for Block 61, Lot 1.01, 22 Crescent Drive, owned by Michael Centrella.

Ms. Trainor stated that the Board had received correspondence and asked Mr. Clark to review it with the Board. Mr. Clark stated that there was an application submitted by Mr. and Mrs. Centrella in August that asked for an extension to the deadline to perfect the subdivision. Mr. Clark stated the application to extend had been carried a number of times as the Centrella's had switched attorneys over time. Mr. Clark stated that most recently, Mr. Centrella, who is the record owner of the property, asked that the application be carried to the December meeting so he could retain a new attorney as his previous attorney, Mr. Middleton, had withdrawn himself from the application.

Mr. Clark stated the Board had received a letter from Attorney Ron Gasiorowski stating he had been retained to represent Mrs. Centrella. Mr. Clark stated that Mr. Gasiorowski indicated in the letter that Mrs. Centrella did not want the application to be carried and is no longer interested in seeking an extension to the deadline for perfecting the subdivision.

Mr. Centrella stated that he was requesting more time to retain a new lawyer to represent him and would like to carry the request forward and make determinations at the next meeting.

Mr. Ron Gasiorowski stated he was recently retained by Mrs. Centrella. Mr. Gasiorowski stated that there was a companion case in which he believed that Mr. Centrella was being represented by a different attorney with regard to divorce proceedings and for the sake of clarity asked that the matter be denied without prejudice so the rights of all the parties in question were protected.

Mr. Centrella stated if the application could be pushed forward without prejudice, and they could reapply without having to go through a number of hoops then he would agree but said he did not think that would be the case so he would prefer to carry forward. Mr. Centrella stated he would be happy to postpone the application like Mr. Gasiorowski had mentioned but did not want to lose what had been done so far.

Ms. Trainor asked Mr. Clark to explain to the Board the statute that would allow for the dismissal without prejudice, the right to bring the application again or the extension of time be granted even if the application was denied.

Mr. Clark stated that the statute talks about extending a deadline to perfect a subdivision indicates that the request for an extension can be made either before or after the deadlines expires. Mr. Clark stated that if the application were dismissed and taken off the agenda, there is nothing that could prevent someone from coming before the Board to try to argue cause to extend it. Mr. Clark stated he thought it was up to the Board whether they would like to carry the request or dismiss it without prejudice with the understanding that there was a right to refile at some later point.

Ms. Trainor asked Mr. Gasiorowski if Mr. Clark's position was consistent with his understanding of the statute. Mr. Gasiorowski answered yes and stated that he would submit to the Board that dismissing it without prejudice would not prejudice the rights of either party and would clean up the application.

Mr. Centrella stated he agreed with Mr. Gasiorowski as long as it was dismissed without prejudice.

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Ms. Trainor asked the Board if they had any questions for Mr. Gasiorowski or Mr. Centrella. Hearing none, Ms. Trainor asked for a motion to dismiss the application without prejudice. James Maclearie made a motion, seconded by James Stenson, and followed by the roll call vote.

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones

Noes: None

Ms. Trainor announced that Mayor Thomas Nicol and Mr. Frank Garruzzo needed to recuse themselves from the remainder of the agenda.

NEW BUSINESS:

Application for Minor Subdivision for Block 82.01, Lot 1, 409 Union Lane, owned by Estate of Charlotte Burke (Applicant – Daniel Burke). Lot Frontage – 30 feet required, 27.11 feet proposed for Lot “B”. Lot Depth – 125 feet required, 122.40 proposed for east side of Lot “B” and 122.91 proposed for west side of Lot “B”.

Attorney Michael Henderson, Law Firm of Henderson and Henderson, Manasquan, New Jersey announced that he was representing the applicant, Dan Burke as the Executor of the Estate of Charlotte Burke.

Mr. Henderson stated the application was for a minor subdivision with bulk and use variances and was located in the R-3 Zone.

Mr. Henderson stated he had only one witness to present, Mr. Dan Burke, owner, and applicant, who would also be testifying as a planner and engineer. Mr. Burke was sworn in by Mr. Clark. Mr. Burke stated that he was a Licensed Engineer and a Licensed Planner and was employed by the city of New Brunswick as the City Engineer and represents the Planning and Zoning Board in that capacity.

Mr. Henderson asked Mr. Burke when his family acquired the property and what he was proposing to do with the site. Mr. Burke responded that the property was acquired in 1962 and that he was proposing to subdivide the property to create an additional residential lot.

Mr. Henderson asked Mr. Burke if there were any improvements currently on the property. Mr. Burke replied there was a shed that he characterized as historical based on the lumber that was used to build it. Mr. Burke stated there was a principal structure on the property constructed around 1910 with 3 stories, 8 bedrooms, 4 bathrooms and a full basement.

Mr. Henderson asked Mr. Burke if he had testified before any Planning Boards. Mr. Burke replied that he had testified before the City of New Brunswick, Jackson Township and Point Pleasant Borough. Mr. Henderson asked if the Board would accept Mr. Burke’s credentials as a professional. Ms. Trainor stated Mr. Burke’s credentials were approved.

Mr. Henderson asked Mr. Burke if he prepared the site plan. Mr. Burke answered that he had prepared the site plan. Mr. Henderson displayed a document, marked as Exhibit A-1, and described it as a Minor Subdivision Plan.

Mr. Henderson asked Mr. Burke if he would describe Exhibit A-1. Mr. Burke described the size of the property, property line, shed and the residential road, Melrose Avenue. Mr. Henderson asked Mr. Burke to describe to the Board where the subdivision line would be. Mr. Burke replied that the subdivision line would be off center of Melrose Avenue.

Mr. Henderson asked Mr. Burke to explain to the Board what variance relief was being sought in connection with the application. Mr. Burke stated that the bulk variance relief requested was for Lot Depth, Lot Frontage, and a Use Variance for the shed.

Mr. Henderson asked Mr. Burke if there was any required relief for Lot A which was displayed on Exhibit A-1. Mr. Burke answered that Lot A would remain a conforming lot and stated all the relief that was being sought was in connection with Lot B.

Mr. Henderson asked Mr. Burke if he was familiar with the criteria of C-2 Variances. Mr. Burke replied that he was familiar with it and stated that as to the variance relief on Lot B, it is regarding Lot Depth and Lot Frontage that the C Variances are required.

Mr. Henderson asked Mr. Burke if he had the opportunity to review the density and the pattern of the development on his block. Mr. Burke replied that he had and stated that there were 6 developed properties along Melrose Avenue. Mr. Burke then referenced the upper left-hand corner of Exhibit A-1, titled Location Map. Mr. Burke stated that none of the Lots conform to the Bulk Zone requirements, and none of them meet the Lot Depth requirements. Mr. Burke stated that out of the 29 parcels that are shown on Exhibit A-1, there are only 5 that are conforming as to Lot Bulk Dimension requirements of the Zone.

Mr. Henderson asked Mr. Burke if it was his professional opinion that the approval of the application would be consistent with and promote the appropriate density of the block. Mr. Burke replied that he believed the density, and the size of the lot meet the neighboring required densities and is conforming in nature to what is found in the rest of the block along Melrose Avenue.

Mr. Henderson asked Mr. Burke if he had inquired if there was any other land available for purchase on either side of the Lot. Mr. Burke answered that he had asked the owners on the south face of the Lot if they would consider selling land but both of them said they would not.

Mr. Henderson asked Mr. Burke if he would speak to the justification for variance relief for shed. Mr. Burke stated that the shed predates the Borough's Zoning Laws and the Municipal Land Use Laws and was a pre-existing non-conformance.

Mr. Henderson asked Mr. Burke if the application was approved, would he expect that the Lot would be developed shortly thereafter. Mr. Burke stated that there had been interest in the Lot and that it would be developed as a residential property.

Mr. Henderson asked Mr. Burke to comment on the variance being sought for the frontage on Lot B along Melrose Avenue. Mr. Burke stated that the objective of not going the full 30 feet would allow a point of egress from Lot A in the future.

Mr. Henderson stated he did not have any further questions for Mr. Burke and then asked him if he had anything else he wanted to add. Mr. Burke referred to Mr. Hilla's letter in regard to access to utilities and pointed to connections marked on Exhibit A-1. Mr. Henderson referred to Mr.

Hilla's letter, paragraph 4, and asked Mr. Burke if he would agree to comply with a property survey. Mr. Burke answered that he would comply. Mr. Henderson asked Mr. Burke if he would also depict the existing gravel driveway servicing Lot A. Mr. Burke stated he would comply and then gave the Board a description of the driveway, where it was located and where the driveway exited. Mr. Henderson asked Mr. Burke, if approved, would his updated plan depict the property addresses issued by the Tax Assessor. Mr. Burke answered that it would depict the addresses. Mr. Henderson referred to paragraph 6 of Mr. Hilla's letter and asked Mr. Burke if he would comment on the trees and foliage on the property. Mr. Burke stated it was not his intention to remove any trees. Mr. Henderson stated he had no other questions for Mr. Burke.

Ms. Trainor announced it was now time to hear questions from the Board for Mr. Burke.

Mr. Maclearie asked how snow plowing takes place currently. Mr. Burke answered that generally snow was plowed to the end of the road at the dead end. Mr. Burke stated he had a considerable amount of experience plowing and some dead ends and cul-de-sacs can be challenging but it was something plow operators learn to handle. Mr. Maclearie asked Mr. Burke if he was the owner of Lot 8. Mr. Burke replied that he was not. Mr. Maclearie asked Mr. Burke if that was there the gravel driveway was. Mr. Burke answered that was correct.

Mr. Siano asked Mr. Burke what the height of the shed was. Mr. Burke replied that he would estimate it to be 16 feet. Mr. Siano stated that he had heard Mr. Burke refer to the 50-foot right of way when he was referencing the property and that Melrose is a 40-foot right of way and asked Mr. Burke if this changes anything with the application because it is only a 40-foot, and the roads are around 30. Mr. Burke answered that the Code does not address a right of way of lesser than 50 feet, it addresses the requirement for 30 feet on a 50 foot right of way. Mr. Burke stated he had done a map survey of the Borough and noted some 21 other dead-end roads without cul-de-sacs with a number of them not even as wide. Mr. Siano asked Mr. Burke if Lot 8 was part of the parcel. Mr. Burke answered that it was, but it had been sold.

Ms. Brisben asked Mr. Burke if he would be building on Lot B or if he would be selling the Lot with a stipulation that the shed would have to stay. Mr. Burke replied that there had been some interest from family members, but that had not been decided. Mr. Burke stated he did not plan on having a stipulation regarding the shed but one of the parties that expressed interest expressed a desire to retain the shed for use. Ms. Brisben asked Mr. Burke if he had considered moving the subdivision line and took the total part of Melrose Avenue for the new lot. Ms. Brisben stated that would help satisfy the right-of-way variance and make it more compliant. Mr. Burke answered that the idea was to retain the exit, that historically there had been an exit from that Lot onto Melrose Avenue. Mr. Burke stated they left Lot A as large as it is because it is a large historical structure. Mr. Burke stated he did not want to diminish the rear lot any more than need be and stated that Lot B is conforming in lot area within the zone. Mr. Henderson stated that Brielle Zoning Code, section 21.13 does say that the R-3 zone is there to provide smaller Lot sizes.

Mr. Tice asked Mr. Burke if he had stated that the driveway, situation at the end where the two Lots come together, for Lot A there were 13 feet left which could possibly become consistent to what is already there. Mr. Burke answered that it could become a drive exit onto Melrose Avenue. Mr. Tice stated with regard to Lot B, that would leave another 27-feet, so 40-feet for essentially two driveways. Mr. Burke replied that was correct. Mr. Tice asked Mr. Burke if he was concerned

about traffic patterns, in regard to trucks and other delivery situations making turnarounds with two driveways being next to each other. Mr. Burke answered it was not uncommon in developed cul-de-sacs and that he had seen as many as 5 driveways entering a cul-de-sac with minimal distance and stated this would be similar to that. Mr. Burke stated that there were 21 other streets in the Borough that were similarly situated where there was not a cul-de-sac at the end.

Ms. Trainor stated that Mr. Burke had spoken about a hardship that was required for the variance and then asked Mr. Burke if this were really a self-created hardship. Mr. Burke responded that the hardship was the roadway width which was created because it was at a dead-end road and the lot depth was created because of the way the lot depth was measured. Ms. Trainor asked Mr. Burke if he was compounding a problem where he was proposing the division of the property and, in that regard, self-creating a hardship with respect to the right-of-way that is required under the Ordinance. Mr. Burke replied that if the Lot were to be subdivided in any other way it could result in the same position.

Mr. Hilla stated to the point of the 50-foot right-of-way for at least 30-feet, that was really intended for creating 50-foot rights-of-ways where they are not presently but there was not the ability to do that on this lot, this configuration is not conducive to that because you could not create any greater width of right-of-way for Melrose Avenue from the applicant's Lot.

Ms. Trainor announced it was time to hear questions from the public for Mr. Burke.

Mr. Pete Donnelly, 411 Melrose Avenue, was sworn in by Mr. Clark. Mr. Donnelly stated he was challenging the width of the street of Melrose Avenue. Mr. Burke stated the Borough information provided that it is a 40-foot right-of-way, that he physically measured it and since there are no curbs, it varies a bit.

Hearing no other questions, Ms. Trainor announced that Ms. Nuccio was formally objecting to the application. Ms. Kim Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio stated she had some concerns about the variances required for the subdivision because there was no site plan accompanying the request. Ms. Nuccio stated that one of the concerns she had was frontage and referenced Borough Code Section 21.9-13. Ms. Nuccio stated that the end of Melrose is neither a dead end, turn around nor a cul-de-sac. Ms. Nuccio addressed the hardship Mr. Burke had discussed and stated that it seemed to her that Mr. Burke was proposing to make a nonconforming Lot from an existing conforming Lot and creating a self-created hardship. Ms. Nuccio stated N.J.S.A 40:55D-70C does not allow for self-created hardships. Ms. Nuccio stated that another concern was for Lot Depth. Ms. Nuccio stated that the deficient Lot Depth would leave a very skinny building envelope for new development. Ms. Nuccio stated that all the properties on Melrose Avenue, except one, are 100-feet deep. Ms. Nuccio stated she wanted to talk about the accessory structure and thought the word shed was a mischaracterization of the existing structure. Ms. Nuccio stated she thought the structure was substantial, much like a garage. Ms. Nuccio referenced Section 21-13.1. Ms. Nuccio asked why the shed would be allowed to stay on a newly established Lot. Ms. Nuccio stated that she had concerns about the trees on Lot B and stated she felt that development of the Lot would require the clear cutting of all of the mature trees. Ms. Nuccio stated from an ecological and environmental perspective, the trees matter. Ms. Nuccio stated that the subdivision would negatively affect the surrounding property values.

Ms. Trainor announced that 45 minutes had passed and stated to Ms. Nuccio that any additional testimony she had to present would need to carry to next month.

NEW BUSINESS:

Application for Use Variance for Block 66.01, Lot 2, 628 Higgins Avenue, owned by Anthony & Catherine Grieco (Applicant – M&D Two, LLC) to allow Multi-Family Use, townhouse units (not allowed in C-1A Zone). Note: this is a two-part application, applicant is asking for Use Variance first, then will submit detailed site plan for townhouse units if Use Variance is approved.

Mr. Matthew Posada, Sills Cummis & Gross, announced he was representing the applicant, M&D Two, LLC.

Ms. Trainor stated she understood there might be a threshold issue noted in the agenda that this was a bifurcated application and asked Mr. Clark to address the issue or if it would have to be addressed as the application proceeded. Mr. Clark stated the Municipal Land Use Law discusses the right of an applicant to bifurcate an application which is what this applicant was seeking to do since they are seeking Use Variance relief in both change of use and change of density. Mr. Clark stated the applicant was seeking to get rulings on the Use Variance issues and Variance issues first and, if approved, then would move forward with the site plan application. Mr. Clark stated that ultimately, it is the Board's decision whether it feels it has sufficient information, necessary to make the decisions that it needs to make or whether information was missing, such as things in the site plan that it feels it needs in order to make those decisions. Mr. Clark stated that since this was a Use Variance, ultimately to grant the relief, there would need to be an affirmative vote of at least 5 Board members to grant the variance or it would be denied. Mr. Clark asked Mr. Posada if he would generally agree that was a fair statement of the legal process. Mr. Posada replied that he agreed. Mr. Posada stated he would provide some background in his opening statement why the applicant decided to pursue the Use Variance portion first.

Ms. Trainor stated the Board had received correspondence on the issue from the Brielle Environmental Commission. Ms. Trainor read the letter into the Record. Ms. Trainor stated that the edition of the New Jersey Planner was attached to the letter and would also be part of the Record but would not be read at length. Mr. Posada stated the applicant had received the correspondence on November 8th, 2021.

Mr. Posada stated that the Use Variance application is a D-1 Use Variance, pursuant to the Municipal Land Use Law and case law it requires the applicant to go through both the positive and negative criteria so they would make sure to satisfy the criteria requirements in order to educate the Board on what was being proposed.

Mr. Posada stated the applicant was seeking Use Variance relief for 22 multi-family townhomes. Mr. Posada stated that the applicant would address all the same issues that would be seen in an ordinary site plan application, civil plans, lighting, landscaping, storm water, site circulation, proposed rendering, the facade, elevation, and height. Mr. Posada stated that the best way to move forward was to work with the Board and if any Board member or professional requested further detailed information they would be happy to provide it.

Mr. Posada stated Mr. Kyle Kavinsky would be providing the civil engineering testimony. Mr. Kyle Kavinski, Dynamic Engineering, was sworn in by Mr. Clark.

Mr. Posada asked Mr. Kavinsky to provide to the Board his educational credentials and list at least three Boards that had qualified him as an expert in Engineering. Mr. Kavinski stated he was a partner with Dynamic Engineering with over 12 years of experience, held a bachelor's degree in Engineer Technology from the University of Delaware and was a Licensed Engineer in New Jersey. Mr. Kavinski stated he had appeared before numerous Board in New Jersey including Toms River, Union, Metuchen, and Red Bank. Mr. Posada asked the Board if Mr. Kavinski was accepted as an expert in Civil Engineering. Ms. Trainor answered yes, the Board found Mr. Kavinski qualified.

Mr. Posada asked Mr. Kavinski if he was familiar with the Gateway Zone and if the property was located in the Gateway Zone. Mr. Kavinsky answered that he was familiar with the Gateway Zone and stated that the property was in the Gateway Zone. Mr. Posada asked Mr. Kavinski if he was familiar with the Borough's Zoning Ordinances and Master Plan. Mr. Kavinsky replied yes, he was familiar with them. Mr. Posada asked Mr. Kavinski if he and his team drafted the proposed concept civil plans. Mr. Kavinski answered that they did. Mr. Posada asked Mr. Kavinski when drafting the plans, did they take into consideration the Borough's Zoning Ordinances and Master Plan. Mr. Kavinski responded that they had.

Mr. Posada asked Mr. Kavinski to describe to the Board what was being proposed. Mr. Kavinski displayed a document he described as an aerial exhibit, dated November 9th, 2021, which was marked as A-1. Mr. Kavinski stated the exhibit was a colored aerial of the subject site and surrounding properties. Mr. Clark asked Mr. Kavinski if this exhibit was part of the application package. Mr. Kavinski answered that the exhibit was a separate exhibit. Mr. Clark stated that since there were exhibits being marked that were not part of the package, a hardcopy would need to be sent to the Planning Board Secretary to be kept in the Borough's files.

Mr. Kavinski described Exhibit A-1 to the Board. Mr. Kavinski shared an exhibit, described as a Site Plan Rendering, dated November 9th, 2021, prepared by his office, which was marked as Exhibit A-2. Mr. Kavinski described Exhibit A-2 to the Board.

Mr. Kavinski stated that they were before the Board for a Bifurcated Variance Application to redevelop the site into a multi-family development with 22- 3-story units which is a non-permitted use with the Zone. Mr. Kavinski stated that townhomes would include 16- 2-bedroom units and 6- 3-bedroom units. Mr. Kavinski stated access to the site would be on Higgins Avenue, provided by a driveway, which would be 24-feet wide with two-way circulation. Mr. Kavinski stated there would be 30 surface parking spaces and 22 garage spaces for a total of 52 parking spaces provided. Mr. Kavinski stated there would be a playground and sitting area on the northern portion of the parcel with access to the parking lot. Mr. Kavinski stated that a screened, enclosed, and covered refuse and recycling area would be provided for use by the residences which would be picked up by a private hauler as needed. Mr. Kavinski stated that utilities for the site are anticipated to be connected through Higgins Avenue. Mr. Kavinski stated that the applicant had obtained "will serve" letters from all of the applicable utility companies for the proposed project. Mr. Kavinski stated typical residential lighting would be provided throughout the parking lot and access points. Mr. Kavinski stated that landscaping would be provided by 12 ornamental trees, 19 evergreen trees

and 336 shrubs and ground covers throughout the site. Mr. Kavinski stated that there was a significant existing tree buffer on the eastern portion of the property. Mr. Kavinski stated that they would be providing some additional supplemental trees in that location as well as where the existing buffering is on Route 35 and along Higgins Avenue.

Mr. Posada asked Mr. Kavinski to describe to the Board what type of stormwater improvements could be used for capturing stormwater. Mr. Kavinski answered that they would provide inlets located in the parking lot area and driveway area, which would then tie them into a bio-retention system and an infiltration basin and treat the water that would go into that area and would provide a recharge of any pavement they would be putting down as part of the development. Mr. Kavinski stated that currently there were no stormwater facilities on the site.

Mr. Posada asked Mr. Kavinski if the existing and proposed vegetation would shield the proposed lighting from any kind of spillage onto the adjacent properties. Mr. Kavinski replied yes and stated that the lighting would be lower light fixtures which would be downward facing.

Mr. Posada stated he had no further questions for Mr. Kavinski.

Ms. Trainor asked Mr. Hilla if he had any comments and if the applicant's engineer had addressed any of his concerns detailed in his letter. Mr. Hilla stated he did not expect the applicant to start with the site plan as this was a bifurcated case. Mr. Hilla stated that there were not many things in his review letter that related to the site plan because that was not the thrust of how the application was being presented. Ms. Trainor stated that it might be difficult to understand or ask questions without Mr. Hilla's ability to have provided the Board with his advice.

Ms. Trainor announced it was time to hear questions from the Board.

Mr. Stenson stated he had no questions about the site plan, that the applicant is proposing 22, 3-story units not permitted in the Gateway Zone and stated that is what should be discussed.

Mr. Maclearie stated he felt there was a lot going on with a small piece of property and asked why they are proposing so many homes. Mr. Posada responded that the Planner would be going into more detail. Mr. Maclearie asked what the height of the building would be. Mr. Posada responded that the Architect would have to answer that question.

Mr. Siano stated he agreed with Mr. Stenson, and he did not understand why if this was being considered a two-part application, why it was being presented like it was moving forward.

Ms. Brisben asked if the project would be age restricted. Mr. Posada answered that it was not. Ms. Brisben asked if there would be an affordable housing element. Mr. Posada replied that they would comply with whatever the affordable housing obligation is at the time of approval. Ms. Brisben stated she agreed with the other Board members about the Use Variance part and would like to hear more of that.

Mr. Jones stated he agreed with the other Board members and asked how this proposed development compares to other multi-family developments in Brielle. Mr. Kavinski answered that the Planner would be able to answer that question.

Ms. Frith stated she felt she would need more information before having any questions.

Mr. Tice stated he agreed with the other Board members and had no questions.

Ms. Trainor stated that it sounded to her that the Board may have questions for Mr. Kavinski at a later time and would reserve the right to ask those questions if the application moves forward.

Ms. Trainor announced it was now time to hear questions from the public for Mr. Kavinski.

Hearing none, Ms. Trainor asked Mr. Posada if he had any further remarks. Mr. Posada stated that it was clear from the Board that they are looking to hear the details of the Use Variance application and the negative and positive criteria before moving onto the improvements. Mr. Posada stated to provide some clarity, their original intention was to provide testimony regarding the civil architectural next so the Board would be able to understand the totality of the project, how it would be configured and used on the property itself before going into the planning testimony, but he would present the planning testimony next in order to respond to the Board's questions.

Mr. Posada called Mr. Charles Heydt with the firm Dresdner Robin. Mr. Heydt was sworn in by Mr. Clark. Mr. Posada asked Mr. Heydt to provide to the Board his educational credentials, licensure, and list three Boards he had been previously qualified as an expert in Planning. Mr. Heydt stated that he was the Director of Planning at Dresdner Robin, held a Professional Planner license in New Jersey for about 10 years, had obtained his American Institute of Certified Trainer Certificate, had been practicing for about 12 years and had appeared before Boards in Long Branch, Jersey City, New Brunswick, and Camden and all the way out to Atlantic County. Mr. Heydt stated he held a master's degree in Regional and City Planning from Rutgers University. Mr. Posada asked the Board if they accepted Mr. Heydt as an expert in Planning. Ms. Trainor responded that the Board did accept Mr. Heydt as an expert.

Mr. Posada asked Mr. Heydt if he was familiar with the Gateway Zone and if the subject property was in the Gateway Zone. Mr. Heydt responded that he was familiar and that the property is in the Gateway Zone. Mr. Posada asked Mr. Heydt if he was familiar with the Borough's Ordinances and Master Plan. Mr. Heydt replied that he was.

Mr. Posada asked Mr. Heydt to describe the project to the Board, how it relates to the variance relief and how they believe it would satisfy both positive and negative criteria. Mr. Heydt stated they were proposing a multi-family use in the district which is not permitted. Mr. Heydt stated they had done a thorough evaluation of land uses in the area as well as density and that they have a photo log as an additional exhibit.

Ms. Trainor announced it had been 45 minutes and that the application would be carried to the meeting next month. Mr. Posada asked if it would be posted on the Record that the application was being carried with no need to re-notice. Mr. Clark stated that it would be noted on the Record.

OTHER BUSINESS:

Consideration of approval of Borough Council proposed Ordinance No.1112, Storage of Recreational Vehicles & Storage Containers

Ms. Trainor asked Mr. Clark if he could guide the Board with respect to this and stated the description on the agenda needs some explanation. Mr. Clark stated that anytime the Borough Council adopts any changes to Borough Ordinances, especially Land Use Regulation Ordinances,

they are required to refer those Ordinances to the Planning Board and the Board undertakes a consistency review. Mr. Clark stated the Planning Board does not approve the Ordinance but renders a report. Mr. Clark stated he had written a proposed Resolution that was circulated to the Board Members and the Board could try to fill in any parts of it that they decide or make comments.

Ms. Trainor asked Mr. Clark if the Board would hear any public comment in regard to this Ordinance. Mr. Clark replied that there was no public comment component to this because this was not a Land Use application, but the Board may want to hear from Mr. Hilla.

Mr. Clark stated that the Board's consideration is for the consistency determination of the Ordinance. Mr. Hilla stated that this was the Board's opportunity to determine if this Ordinance was in keeping with and consistent with the Master Plan. Mr. Hilla discussed with the Board the contents of Ordinance No.1112.

Ms. Trainor asked if any Board Members had any questions or comments with regard to Ordinance No.1112. Ms. Trainor also asked the Board Members to provide any opinions.

Mr. Stenson stated that in regard to storage containers, he felt paragraph A and B could be combined into one paragraph. Mr. Clark stated that Mr. Maclearie had sent a comment to the Borough Administrator and thought that he had sent a reply explaining his understanding of the Ordinance. Mr. Stenson stated that he felt that as long as it says that they are permitted only during a construction period and then would have to be moved.

Mr. Maclearie stated he did not understand section 2A and 2B. Mr. Maclearie stated one section says it is permitted and one section says it was permitted during construction.

Mr. Siano stated he agreed with Mr. Stenson and Mr. Maclearie.

Ms. Brisben stated she thought this was just updating an Ordinance that was already on the books and asked Mr. Hilla to confirm that. Mr. Hilla stated that was correct and he had remembered going through it 12 or 13 years ago when pods first started showing up. Mr. Hilla stated that the Council probably found a weakness in the Ordinance through Code Enforcement. Ms. Brisben stated she agreed with Mr. Hilla and felt that it was fine the way it was.

Ms. Frith stated she agreed with the other Board Members.

Mr. Clark stated that the Resolution he had drafted in advance stated that the Board did not find that the proposed Ordinance is inconsistent with the Master Plan. Mr. Clark stated that if the Board wanted to add a second paragraph talking about the revision that Mr. Stenson and Mr. Maclearie talked about, he could add that the Board also recommends that the language be modified to clarify the issue. Mr. Clark stated that the Borough Council could choose to do that or not but if the Board wished, he could amend the Resolution.

Ms. Trainor asked for a motion to approve Ordinance No.1112. Jim Maclearie made a motion, seconded by James Stenson, and followed by the roll call vote.

Ayes: James Stenson, Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Noes: None

November 9th, 2021

Ms. Trainor stated if there were no other business, she would ask for a motion to adjourn. James Stenson made the motion, seconded by Karen Brisben, and unanimously approved by the Board, all aye.

Denise Murphy, Recording Secretary

Approved: December 14th, 2021

**BOROUGH OF BRIELLE
ORDINANCE NO. 1112**

**AN ORDINANCE TO AMEND CHAPTER TWENTY-ONE OF THE
CODE OF THE BOROUGH OF BRIELLE ENTITLED “ZONING”.**

BE IT ORDAINED, by the Governing Body of the Borough of Brielle that **Section 21-9.22** of Chapter Twenty-One shall now be entitled **Storage of Recreational Vehicles and Storage Containers** and shall read as follows:

(1) Recreational Vehicles.

- a. Recreational vehicles shall include boats and boat trailers, trailers, motor homes and campers.
- b. Recreational vehicles shall be permitted to be stored in any rear or side yard but shall not be located any closer to a side or rear lot line than a permitted accessory building and shall be located on a durable maintenance free surface. For purposes of this section, a side yard shall be defined as the line extending from the front corner of the house to the nearest side line property.
- c. There can be no storage of any recreational vehicle in a front yard.
- d. The maximum length of any recreational vehicle shall be twenty-four (24) feet.
- e. No more than one recreational vehicle can be stored on any property at a time, with the exception of a single boat that is stored on a single boat trailer.
- f. A recreational vehicle may be parked on a public street for a maximum of forty-eight (48) hours for loading and unloading. A recreational vehicle may be parked in a driveway for a maximum of seven (7) days for loading and unloading.

- g. Living and/or sleeping within any stored recreational vehicle is strictly prohibited at any time.
- h. All stored recreational vehicles must be registered in the name of the property owner or an immediate family member with a primary residence at the property where the recreational vehicle is parked.
- i. This section is not intended to apply to any kayak, row boat or other similar non-motorized craft, nor is it intended to apply to any recreational vehicle stored inside of a garage.

(2) Storage Containers.

- a. In residential zones, landscape trailers and storage containers commonly known as storage pods, shall be permitted to be stored in any yard but shall not be located any closer to a side or rear lot line than a permitted accessory building and shall be located on a durable maintenance free surface. They shall be set back no less than 10 feet from the front lot line.
- b. Pods and storage trailers shall only be permitted to be stored on a residential lot during renovations and/or construction and shall be removed prior to the issuance of a Certificate of Occupancy.
- c. No landscape trailer or storage pod may be parked overnight on a public street in any residential zone.

BE IT FURTHER ORDAINED, that all ordinances or parts of ordinance inconsistent with the foregoing is hereby repealed, but only to the extent of the inconsistency.

BE IT FURTHER ORDAINED, that this ordinance shall take effect on January 20th, 2022 after passage and publication according to law, with the exception of boats.

BE IT FURTHER ORDAINED, that the provision of this ordinance as they relate to “boats” shall take effect on May 15th, 2022.