

Borough of Brielle

JANUARY 10, 2017

June 08 2017

January 10th, 2017

BOROUGH OF BRIELLE
PLANNING/ZONING BOARD
ORGANIZATIONAL MEETING
TUESDAY, JANUARY 10, 2017

The Reorganizational meeting of the Brielle Planning/Zoning Board was held on Tuesday, January 10, 2017 at 7:30 pm in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a salute to the flag, roll call was taken:

Present – Mayor Thomas B. Nicol, Councilman Frank A. Garruzzo, Tom Condon, Ralph Condoluci, James Langenberger, Eric Lapham, Stacey Montalto (arrived 7:33), James Maclearie, Charles Sarnasi, James Stenson

Absent – None

Also present were Joe Clark, Board Attorney, Alan Hilla, Jr., Board Engineer and Karen S. Brisben, Recording Secretary. There were about 30 people in the audience.

Mr. Condon opened the meeting and declared a quorum present. He announced that, in compliance with the Open Public Meetings Act, notice of this Body's meeting had been given to both the Asbury Park Press and the Coast Star newspapers.

The following appointments were then made:

Class I - Mayor Thomas B. Nicol through 12/31/17
Class II - James Langenberger through 12/31/17
Class III – Frank A. Garruzzo through 12/31/17
Class IV – Charles Sarnasi through 12/31/20
Class IV – James Maclearie becomes a Regular Member through 12/31/20
to replace Terre Vitale who has resigned
Class IV – Ralph Condoluci, Alternate No. 1, through 12/31/18

Mr. Clark swore in all the members and congratulated them on their new terms.

It was then time for the election of officers for the year 2017. Mr. Langenberger nominated Thomas Condon to the position of Chairperson. As there were no other nominations, Councilman Garruzzo seconded the motion and it was approved unanimously by voice vote, all aye.

Mr. Stenson was nominated for the position of Vice-Chairman by Mr. Condon. As there were no other nominations, Councilman Garruzzo seconded the motion and it was approved unanimously by voice vote, all aye.

Mrs. Brisben was nominated for the position of Secretary of the Board by Mr. Condon. As there were no other nominations, Mr. Stenson seconded the motion and it was approved unanimously by voice vote, all aye.

The following Resolutions were then presented for approval:

BOARD ATTORNEY & BOARD ENGINEER

"WHEREAS, N.J.S.A. 40A:11-5(1)(a)(i) permits the Planning Board to award a professional services contract without public advertising for bids and bidding; and

WHEREAS, the Brielle Planning Board has determined that there is a need for legal services and engineering services during the 2017 calendar year; and

WHEREAS, the Brielle Planning Board has determined to provide the need to acquire legal services and engineering services as a non-fair and open contract pursuant to the provisions of N.J.S.A. 19:44A-20.5: and

WHEREAS, the Chief Finance Officer of the Borough of Brielle has determined to certified in writing that the value of the legal services and engineering services may exceed \$17,500; and

WHEREAS, the term of these contracts are one year (January 1, 2017 to December 31, 2017); and

WHEREAS, Joe Clark of Gluckwalrath, LLC has proposed to provide legal services and Alan Hilla, Jr. of H2M Architecture, LLC, has proposed to provide engineering services; and

WHEREAS, both Mr. Clark and Mr. Hilla have completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to any political or candidate committee in the Borough of Brielle in the previous year, and that the contracts will prohibit them from making any reportable contributions through the term of the contracts; and

WHEREAS, a certification as to the availability of funds executed by the Chief Finance Officer is attached to this Resolution pursuant to the provisions of N.J.A.C. 5:30-4;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle that:

1. The Business Disclosure Entity Certification of both Mr. Clark and Mr. Hilla as well as the Determination of Value Certification of the Chief Financial Officer shall be filed in the office of the Municipal Clerk and shall be available for public inspection.
2. The Planning Board is hereby authorized and directed to execute a contract with Mr. Clark to provide legal services and Mr. Hilla to provide engineering services for the 2017 contract year.
3. A notice stating the nature, duration, service and the amount of this contract shall be published in the Coast Star and this Resolution shall be maintained on file and available for public inspection in the office of the Board Secretary.
4. A certified copy of this Resolution shall be sent to Mr. Clark and Mr. Hilla."

MEETING DATES

"WHEREAS, an act of the Legislature known as the "Open Public Meetings Act" enacted October 21, 1975, requires that advance notice be given of all regularly scheduled meetings of the Zoning Board of Adjustment of the Borough of Brielle, this act becoming effective January 19, 1976,

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle that:

1. The regularly scheduled public business meetings of the Brielle Planning Board shall be held in the Borough Hall, 601 Union Lane, at 7:30 p.m. on the second Tuesday of each month. Work Sessions, if needed, will be held at 7:00 p.m. on the same night.
2. A copy of this Resolution shall be posted on the public bulletin board in the Borough Hall and published in one of the official newspapers of the Board."

NEWSPAPERS

"RESOLVED, that the Asbury Park Press & the Coast Star are designated at the official newspapers for publishing legal notices of the Brielle Planning Board."

SECRETARIES

"WHEREAS, there is a need for an Administrative Secretary and a Recording Secretary for the Brielle Planning/Zoning Board, and

WHEREAS, the Board has money in the Salary Ordinance to cover the expenses associated with these positions,

NOW, THEREFORE, be it resolved that Colleen Castronova be appointed Administrative Secretary for the year 2016 at a salary of \$5,000 and Karen Brisben be appointed as Recording Secretary for the year 2017 at a salary of \$5,000."

A motion was made by Councilman Garruzzo to approve the above Resolutions, this seconded by Mr. Stenson and approved unanimously by voice vote, all aye.

The Minutes of the December 3, 2016 meeting were approved on a motion by Councilman Garruzzo, seconded by Mr. Stenson and unanimously approved, all aye.

CORRESPONDENCE:

A copy of the November/December issue of the NJ Planner was received.

OLD BUSINESS:

The Board turned to the approval of a Resolution for variance relief for Block 99.03, Lot 14, 404 Osprey Point Drive, owned by G. Brian & Elizabeth Hart, to construct a rear yard addition to an existing home. As all Board members had received a copy and there were no changes or corrections to be made, the following was presented for approval:

WHEREAS, G. BRIAN & ELIZABETH HART ("Applicants") have applied to the Planning and Zoning Board ("Board") of the Borough of Brielle seeking variances for the property located at 404 Osprey Point Drive, and known as Block 99.03, Lot 14 (hereinafter "property or parcel"), on the tax map of the Borough of Brielle; and

WHEREAS, This application specifically requires the following variance to construct a rear yard addition to an existing home:

- a. Minimum Rear Yard Setback – 40 feet required, 32 feet existing & proposed to the addition.

WHEREAS, the Board held hearings on November 8, and December 13, 2016; and considered the following documents presented at the hearing in connection with this application:

- a. Jurisdictional Packet;
- b. Exhibit A-1, sheet from Grasso Design Group dated 10/3/16

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

Mr. G. Brian Hart ("Mr. Hart") came forward and was sworn in, giving his address as 404 Osprey Point Drive. He testified that the home was built back in 1959 and was set far back on the property. He further testified that there is a patio at the rear of the home and Applicants would like to enclose that area and put on an addition, it will go straight across, and indicated such on Exhibit A-1.

Mr. Hart said he had gone to the Zoning Officer two years ago and was told he was grandfathered in and could do this, but this time when he went he was told he had to appear before the Board for variance relief. Mr. Hart also testified Applicants wish to expand the kitchen to make more energy efficient living space; the floor space above would be a Master Bedroom. Mr. Stenson wanted conformation that this addition will remain in the same footprint as the patio and the answer was yes. Mr. Lapham asked about the attic space and was told Applicants want to put in dormers. Mr. Maclearie asked about a new patio being put in and Mr. Hart said Applicants have 45 feet on the left side of the home and can put a new patio there because the lot is large enough on that side to accommodate a patio without variance.

Mr. Hilla asked if Applicants are changing any roof lines and Mr. Hart showed where the dormers and bedroom were going to be on the plan. At that point, there was confusion as to whether the plans accompanying the application were in fact accurate. The hearing was adjourned and in the interim, Mr. Hart was able to confirm that the plans submitted were accurate, and the application was carried to December, 2016.

At the December 13, 2016 hearing, Mr. Hart came forward and was once again sworn in. He told the Board he misspoke at the November 8, 2016 hearing regarding the need for another variance. Because the plans were accurate, not other variances were requested. Mr. Hart then reiterated his application again and explained that Applicants want to take the area the patio is in and put on an addition. He further testified that he had spoken to all the neighbors and they had no objections. In fact, no member of the public appeared to speak against the application, though given opportunity to do so.

Mr. Hilla asked about the door at the rear of the architect's plans and questioned whether there were steps there. Mr. Hart said this is not being changed from what is there now and Mr. Hilla was satisfied.

There were no further Board comments or questions and the hearing was opened to the public for questions or comments. There were none and that portion was closed.

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

- a. The variance relates to a specific piece of property;
- b. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the variance encourages municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; promotes the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement;
- c. The variance can be granted without substantial detriment to the public good;
- d. The benefits of the deviation substantially outweigh any detriment; and
- e. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

The Board then voted on the application on a roll call on a motion by Councilman Garruzzo, seconded by Mr. Stenson and it was approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Langenberger, Eric Lapham, Stacey Montalto, Charles Sarnasi, James Maclearie, James Stenson

Noes: None

Not Eligible to Vote: Tom Condon

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

A. Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.

B. Applicants shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application.

A motion was made by Mr. Langenberger to approve the above Resolution, this seconded by Councilman Garruzzo and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Langenberger, Eric Lapham, Stacey Montalto, James Maclearie, Charles Sarnasi, James Stenson

Noes: None

Not Eligible to Vote: Tom Condon, Ralph Condoluci

The Board then heard the continuing application for variance relief for Block 110, Lot 2, 1025 Highway 70 owned by Alpha Property Management, LLC (site of Dance for Joy) to allow expansion of the dance studio.

Mr. David Leone, Esq. came forward and told the Board he had just gotten the architect's drawings on the layout of the Alpha Property Management building, he was going to ask for an adjournment of tonight's meeting to give time to the Engineer for a report but decided to ask the Board to allow the Dance for Joy owner to testify this evening to move this process along. The Board was agreeable and Kimberly Houli came forward and was sworn in. She has owned Dance for Joy for 11 seasons and has 11 staff members which include 8 teachers and three work at any given time; she has 265 students and her hours are Tuesday, Thursday and Friday from 9-10 a.m., Tuesday through Friday from 4-9 p.m. and Saturday until 2:00 p.m. The a.m. classes are for preschool and her largest class consists of 10 students; the parents of the small ones stay and the parents of the older students drop them off and pick them up when their class is over. The evening and Saturday classes are held when the other businesses are not on the premises. She explained there is a drop-off in the front of the building and did admit the cars do back up behind the building but there is no drop-off in the rear of the building.

Dance for Joy is a 100% dance studio and they do performances at other places, such as the Algonquin Theater, the Strand Theater in Lakewood, Rutgers, etc. The only time they are in their building is the their Christmas Show that is done inside the studio and the audience views them from the outside; the shows are 30 minutes long and run for two hours, she added there has never been a problem with traffic.

Ms. Houli said she would like to have the additional space for rehearsal areas so they can divide up the kids so more things can happen. They also want to have a Special Needs program, they have tried in the past but it did not work and they need more space to do this; they also would like to add more music lessons. She said all her students are under 18 and there are 7 seniors this year, so they may take a few parking spaces as well as her dance instructors. They do have a Kindergarten class, one on Monday, Wednesday and Friday with about 12 at most in one class; not all parents stay. She staggers the classes and the classes for the young ones are 45 minutes long; other classes are either an hour and hour & half. Mr. Leone asked if she would be willing to maybe stagger the class time more so the cars don't back up as much as she said okay.

Mr. Leone asked if she were going to expand the number of students and Ms. Houli said "not right now." They need more studio space for rehearsals, they do not have any music or voice classes and perhaps would like to have a small room for that.

Mr. Langenberger felt there will be 1/3 more space and there are 265 students now, if that goes to 300 students he asked how will that affect circulation of the cars outside? With 265 students there already is traffic congestion and he was concerned about adding more students. He also noted that the safety door in the rear gets propped open with a brick and anyone could walk in. The employee who is doing this has to be spoken to as this door has to remain closed. Ms. Houli said there were only 2 times she could remember when this door was opened, 99.9% of the time it is closed and locked; she puts a brick out there when she is putting out the garbage as the door locks automatically when closed. She did agree to staggering the class time to help with the traffic and she offered to try to have the parents pick up their children in the parking area down the walkway. Mr. Langenberger said he was given a photo of the door being opened but he didn't have a problem with this, he was just concerned about more students.

Ms. Montalto asked about the other classes that won't be dance, would the music and voice be for other students? Ms. Houli said she may have some new students but she could see her dance members doing this. She also said there is a lot of competition out there, a lot of dancing schools so she could not know about an increase in students.

Mr. Maclearie asked about what would happen if she did get 100 more kids and more kids with cars, there could be 200 people there. Mr. Leone said there are 54 parking spaces there now and they have 7 seniors this year who will not be attending next year, they can't predict the future; Mr. Maclearie felt the potential was there. Ms. Houli said this dance school is for those under 18, she did have a student come back that went to college and was told she couldn't join again.

Mr. Lapham asked her what she felt the maximum number of students could be and Ms. Houli guessed at maybe 315 at the maximum. Mr. Sarnasi asked if there is an occupancy limit and Ms. Houli said yes but she was not sure and felt that maybe one studio was 30 and the other two maybe 25. Mr. Sarnasi said if there are more students she will have to keep that in mind. Ms. Houli said they usually stop the class size at 15, they don't want to have more than that. Mr. Sarnasi asked how many students are there when they are the busiest and the answer was 35-40 kids. Councilman Garruzzo asked for confirmation that the average class is 15 and Ms. Houli said yes and a lot of the classes are smaller with 6-8 kids. Councilman Garruzzo felt this school traffic was working and if the classes can be staggered it would work better. Ms. Houli said she has had 250-270 kids for the last 10 years every year. Councilman Garruzzo explained the Board was concerned about the future.

At this time the hearing was opened to the public for questions to Ms. Houli and, as there was no response, that portion was closed. Mr. Leone then asked to have this application carried to the February 21st meeting with no further notice and it was approved.

NEW BUSINESS:

The Board then turned to an application for Variance relief for Block 29.01, Lot 4, 325 Harris Avenue, owned by Charles & Deborah Kauffman, to allow demolition and reconstruction with expansion of a single family dwelling & detached garage. Lot Size – 11,250 square feet required, 10,150 square feet existing. Lot Width – 75 feet required, 50 feet existing. Building Height – 35 feet allowed, 36.5 feet proposed. Front Yard Setback – 30 feet required, 26.1 feet proposed. Side Yard Setback – 10 feet required, 8 feet proposed. Accessory Side Yard Setback – 7 feet required, 5 feet proposed.

The proper fees were paid, taxes are paid to date and the property owners within 200 feet, as well as the newspaper, were properly notified.

Mr. Charles Kauffman came forward and was sworn in, giving his address as 325 Harris Avenue. He said they moved to Brielle in 2005 and bought a smaller home as they had no children at the time, they now have two boys. Mr. Kauffman said they are involved in the town, he is a Cub Master and his wife volunteers at the school, they love living on Harris Avenue. They would like to build a home they have planned so they can stay here and they have the owner of 525 Harris Avenue, their next door neighbor, here to support them; he also has Kieran Kelly here, the architect who did the plans, as well as a letter from the owners of 521 Harris Avenue. Mr. Clark explained the Board cannot accept a letter as it cannot be cross examined, the owner would have to be here to testify.

Mr. Kauffman then went on to say some of the variances are pre-existing and some are new ones, they are also trying to keep up with FEMA as their area is prone to flooding. He then went through Mr. Hilla's Engineering report and stated their lot is undersized and they can't get any more land. As far as the front & side yard setback they are staying within the lines of the other homes on this street. They are asking for a height variance to 37.5 feet, this is due to the foundation of the proposed home, they current have a crawl space and they can't keep it, they have to be at base flood elevation in accordance with FEMA regulations. Mr. Condon said the application says they are asking for 36.5 feet elevation, not 37.5 feet.

At this time Mr. Kieran Kelly was sworn in, he is a licensed architect in New Jersey and was accepted by the Board as an expert witness. Mrs. Brisben said that the notice that was sent out says a height of 36.5 feet but Mr. Clark felt this was okay as they are not asking for a new variance and they noticed for a height variance, this was not a problem. Mr. Clark marked the application, called Z-2 by the architect, as Exhibit A-1.

Mr. Kauffman continued and said they have a detached garage and want to put in an attached garage and are 2.9 feet off on that on the side line setback. The property to the west has a two story garage with a 5 foot setback. In regards to Mr. Hilla's comments on the ½ story calculation they would like to keep this as they need as much useful space as possible. If the walkway on the west side is a problem they can pull it in if that is a concern to the Board; the driveway will be along the east property line and this will encroach on the

neighbor's property; he said they actually encroach on the town's property and they can curve the driveway back so this is not an issue. The mechanical equipment, HVAC, will be on the 3rd floor space with is why they need the extra height as they are in the flood plain. The AC condensers will be on the west side by the back of the house and they may also put a gas generator there. As far as the grading and drainage they will comply with the town requirements on this.

Mr. Langenberger asked about the deck area in the rear and Mr. Kauffman said that will be 5 feet from the neighbors. On a question from Mr. Stenson about the lot size Mr. Kauffman told the Board the plans submitted show the existing and an overlay of the new home. Mr. Langenberger asked about the lot coverage and Mr. Kelly spoke and said the existing home is 17.4% and the new home will be 17.53% and this includes the garage. Mr. Condon noted the application states the lot coverage is 42% and Mr. Kauffman said that was his error, he took the floor area ratio by mistake.

Mr. Maclearie asked if any of the other neighbors have a two car garage and Mr. Kauffman said the last home built on this street has a two car garage. Mr. Lapham asked about the current driveway and was told it was within one foot of the property line. Mr. Kelly referenced the survey which shows it curves back towards the center. Mr. Clark marked this survey, called Z1 on the plan, as Exhibit A-2. Mr. Lapham asked about this again and was told it will to right down the property line. Mr. Lapham asked Mr. Hilla if that is a problem and Mr. Hilla said there is no room for any error here and it may become a grading problem; Mr. Kauffman noted his neighbors ran Belgian block down their driveway, he said $\frac{3}{4}$ goes to the front and $\frac{1}{4}$ goes to the back. Mr. Condon felt the town needs a grading plan and this will be addressed at that time, Mr. Hilla was in agreement with this.

Mr. Sarnasi asked about the floor heights, are the ceilings 10 feet? Mr. Kauffman said no, they will be 9 feet on the first floor, then 8 feet and then 8 feet. Mr. Sarnasi asked about the crawl space and Mr. Kelly said it will be 3 feet clear and there will be 12 inches for the first floor framing. Mr. Sarnasi wanted to see them get closer to the 35 foot height limit allowed. Mr. Kelly said this was about a low as they could get, they can't excavate any more. Mr. Sarnasi asked if there was a way to shrink the duct work and Mr. Kelly said they could but can't make that call right now. Mr. Sarnasi asked where does their ridge line go compared with the home next door and Mr. Kelly said maybe 2.5 feet, Mr. Kauffman said they lost space with the crawl space. Mayor Nicol asked about the second story on the garage and wanted confirmation that there will be no water there and Mr. Kauffman agreed there will be no water, he didn't want it there.

At this time the hearing was opened to the public for questions to Mr. Kauffman and, as there was no response that portion was closed.

Mr. Kelly offered to walk the Board through the plans but the Board felt all their concerns were answered. Mr. Kelly did offer a rendering of the proposed house which shows the vinyl siding and cultured stone base; this was marked as Exhibit A-3. Mr. Lapham asked about the pitched roof and was told was 35 degrees and 8.5.

The hearing was opened again to the public for questions to Mr. Kelly and, having no response, that portion was closed and the Board went into discussion. Mr. Langenberger said he would like to see the AC condensers moved as he felt they were going to be too close to the neighbors but, other than that was okay with the application. He asked if the deck was raised and Mr. Kelly said no, it is really a patio at grade. Ms. Montalto felt it was a nice addition and the other Board members agreed with her. Mayor Nicol also had no problem but reminded Mr. Kauffman he will have to work out the grading with the engineer.

At this time the application was opened to the public for comments and, as there were none, that portion was closed and a motion for approval was made by Mr. Stenson, seconded by Councilman Garruzzo and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham, Stacey Montalto, James Maclearie, Charles Sarnasi, James Stenson

Noes: None

Not Eligible to Vote: Ralph Condoluci

The next item on the agenda was an application for Variance for Block 57, Lot 5, 108 Lake Avenue, owned by Joseph & Rebecca Dubicki, to allow construction of a new single family dwelling. Lot Size – 12,500 square feet required, 10,198 square feet existing. Lot Width – 75 feet required, 40 feet existing. Side Yard Setback – 10 feet required, 5.7 feet proposed on both sides. Mr. Maclearie has to recuse himself from this hearing as he has had business dealings with the attorney, Mr. Lane.

The proper fees were paid, taxes are paid to date and the property owners within 200 feet, as well as the

newspaper, were properly notified. Mr. Joseph Lane, Esq. came forward to present this application and the following items were marked:

- A-1. Proposed home plan done by Grasso Design Group.
- A-2. Site plan done by Charles O'Malley.
- A-3. Rendering of proposed structure.

At this time Mr. Joseph Dubicki came forward and was sworn in, giving his address as 157 McLean Avenue, Manasquan. He explained that he wants to build a single family home on Lake Avenue and the lot does not comply with the Ordinance requirements. The home will be 34 feet, 10 inches high and will be three stories, the entrance and garage will be on the first floor and the second & third floors will be living space for him and his family. Right now it is an empty lot with just a shed on it – he would like to keep the shed for storage until the home is done and then have it removed.

Mr. Lane asked him to address Exhibit A-2, the plan that shows the setbacks and Mr. Dubicki said he can do a 10 foot sideline due to the lot width; he will also put in fill to conform to the code. This property is about 250 feet from Debbie's Creek so he does not need CAFRA approval. In regards to drainage, there will be two 450 square foot drywells on each side which will be sufficient for rainfall there and he plans on using the utilities from the old home that was there and taken down.

Mr. Lane noted a driveway on the east side with a curbcut on the west side and Mr. Dubicki said if he can use that curbcut he will and he may have to move the driveway around. Mr. Lane asked about a holly tree that is on the property and Mr. Dubicki said this is where the driveway will be, it will have to be taken down but he will replace it; he commented it is now in the wires. Exhibit A-3 is a rendering of the home and shows it will be 30 feet from the curb and 205 feet from the high tide water line; this complies with the other homes in the area.

Mr. Stenson noted the plan shows 2.5 stories but Mr. Dubicki said he was asking for 3 stories and Mr. Dubicki said the first floor is just on pilings and is not livable space. Mr. Lapham asked about a Flood Hazard Permit and is that an issue, Mr. Hilla said that is standard. Mr. Lane said there is an O-4 Flood Hazard Permit that may be required and, if so, they will get one. Mr. Sarnasi noticed a jog in the building and wanted to know what that was and Mr. Dubicki said it is the way the property was designed; Mr. Sarnasi then commented that the setback in the corner is closer to the 10 feet and Mr. Dubicki said yes, the other side is at 5.7 feet. Mr. Condon asked about the one car garage and the opening in the rear; Mr. Dubicki said area will be open and used for kayak/paddleboard storage.

At this time the hearing was opened to the public for questions and Mr. Tom Pair from Leslie Avenue came forward and was sworn in but, as he wanted to give a statement, he was told to come forward and that portion of the hearing was open for comments, this was for questions only. As there were no questions, that portion was closed and the hearing was again opened for comments and Mr. Pair did come forward again and told the Board he felt this will be an asset for the neighborhood, right now it is an unmaintained lot. As there were no other comments that portion of the hearing was closed and the Board went into discussion.

Mr. Hilla felt there will be a problem when it comes to utilities and drainage, there is a 5 year moratorium on Lake Avenue right now, he felt if the road has to be opened they may have to use infra-red, etc., there are strict rules on opening within a moratorium.

As no Board members had any further comments or questions, a motion for approval, with stipulations as noted by the Engineer, was made by Councilman Garruzzo, seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, Ralph Condoluci, James Langenberger, Eric Lapham, Stacey Montalto, Charles Sarnasi, James Stenson

Noes: None

OTHER BUSINESS:

The last item to be heard was the continuation of the hearing for Waypoint 622, Use Variance and Minor Site Plan, Block 52, Lot 1 through 8.01. Mayor Nicol, Councilman Garruzzo and Mr. Langenberger all left the dais as they are not eligible to hear this application.

Mr. John Jackson, Esq. came forward to continue this hearing. Before he started, Mr. Condon told the audience that this is heard at the end of the evening so the Board can take more than the allowed 45 minutes that is usually given and the Board would like to have this application finalized as soon as possible.

Mr. Jackson said that the owner, Mr. Larry Grafas, was present in the audience but had to leave as he felt ill. At this time Mr. Jackson called Mr. Tim Lurie of DW Smith Engineers & Planners to come forward and give testimony. The Board accepted him as an expert Witness as he has testified before them before. Mr. Jackson also had Mr. Clark mark into evidence Exhibit A-6 which is correspondence dated 1/9/17 and also a copy of a notice from 8/5/16 regarding the band testing that was going to be done in September 2016. Exhibit A-7 were photos of the sound recording equipment that is in place, 3 sheets. Mr. Lurie said the photos of Exhibit A-7 were authentic. He was familiar with Waypoint and DW Smith originally did the survey for the previous owner and when Mr. Grafas bought the property worked with him to get the dock permits. He was familiar with the operations here and has lived in the area since he was 18 years old.

He then presented Exhibit A-8, the deck plan from a 2011 survey; Exhibit A-9 is the preliminary/final site plan and dock area with Hoffman's Marina, last revised 11/18/16. He noted a green line that runs through the zones between the R4 zone and the C-2 zone. Hoffman's is to the east, lots 3-8 and is bounded by the railroad with 56 slips, Waypoint added 25 slips and now has 23 slips. The parking lot is at elevation 9, the building floor is 7 and the bulkhead is at 5.

Mr. Jackson asked that an amended site from 5/29/1979 be marked as Exhibit A-10, a site plan of Union Landing Restaurant site which they received from the Borough, this is all they could find and this is the best baseline they can get from 1979. This was for a proposed addition, the configuration is a little different and shows a hobby shop and apartments over the restaurant with 44 parking spaces. Everything shown here is on the 2011 survey except the upper deck patio, and they don't know why there is a difference as there are no records of this.

Mr. Lurie mentioned a strip of property was lost, in the old days the property ran to the center of the street but not now, there is no record of this strip. On Exhibit A-8 the lot line runs along the edge of Union Lane and on Exhibit A-10 it runs through the center of Union Lane, approximately 15-16 feet of land area was lost. The 1979 survey shows it and the 2011 survey does not. In 2011 Mr. Grafas did not own this property and the property at Hoffman's and Union Landing were separate; these lots are now owned by the same entity.

Mr. Lurie said the 2011 survey, Exhibit A-8, is a 2 ½ story building located closest to Green Avenue with a 1 story dwelling to the south. There are 42 parking spaces shown along with an entrance and exit, a koi pond and a canopy area by Union Lane with another one on the east portion of the steps leading down to another area and the bulkhead, then the boat slips; there is lighting on the poles and trees. He then went over the setbacks that were here at that time.

Mr. Jackson asked about the changes and Mr. Lurie had Exhibit A-11 marked, a preliminary/final site plan, a current as-built dated 10/28/15 and then another revised site plan, marked Exhibit A-12 and dated 10/11/16 which shows the proposed site. He noted these are colorized versions of what the Board has received. There was some confusion as to these Exhibits as the dates did not match but Mr. Lurie explained the differences in the dates and again showed this is what the Board had. After further discussion and examination it was determined which Exhibits were actually being referred to, the Board did have them.

At this time Mr. Lurie made a comparison of the 2011 plans and the 2015 plans, the entrance was made wider due to the reconstruction of a fire hydrant, a change to the ingress & egress and they did a new dumpster area. They had 42 spaces and now have 41 spaces, a concrete pad area was changed and a wood deck put in. The lighting stayed the same and all elevations remained the same except the canopy deck which had to be above the Flood Elevation 11. The koi pond was removed due to a storage tank underground and this area was made all concrete. Mr. Jackson said they had tables and chairs on this area and it was a concern for the Zoning Officer. Mr. Jackson asked Mr. Lurie about the covered area & outside deck and Mr. Lurie said they are just off by inches of each other and they have approval for the canopy that was put in. The deck had a different configuration than what is there now, there were stairs.

In regards to the Fire Zone it was located between the deck area and sitting area along the bulkhead, this Fire Lane was approved by the town. He commented that Exhibit A-8 shows no Fire Lane but the 1979 plan had a Fire Lane. Mr. Jackson said this issue has been all worked out and there are signatures by the Fire Department Chief, Borough Engineer and town with striping done. The wooden walkway here is also okay and is on the 2011 survey.

Mr. Jackson asked Mr. Lurie about the sitting area that is on Exhibit A-8 and he said it is 300 square feet south of the restaurant area with a larger canopy area of the eastern 975 square feet with steps to a lower sitting area by the bulkhead; there was a small fence with seat benches and there was also seating by the koi pond. Mr. Jackson said in 2015 there was now a one level deck and Mr. Lurie said it is in the same footprint, it's just a different configuration than what was approved. Exhibit A-12 is a revised 2015 site plan based on the Board's Engineer's review letter #2 and there was a meeting with the objecting attorneys on this. Mr.

Collins, attorney for objectors, spoke up and said there was no agreement made on this at that time, the meeting was supposed to be "without prejudice". Mr. Jackson said this was a technical review letter that was discussed and Mr. Collins again said he agreed to no changes that were done, Mr. Condon said that will be noted in the record.

Mr. Lurie said they changed the entrance to be only on Green Avenue with an entrance & exit on Union Lane and they did the landscaping to match the 2011 plan. The elevations remain the same and again said they have to be above the FEMA Flood Elevations, the original lower deck was below this elevation and the upper deck was around Elevation 9 which is below the base flood elevations. This area flooded in 2012 and the deck had to be rebuilt due to Hurricane Sandy and had to be flood compliant. Also, having it at one level made it more desirable and it was upgraded to be handicapped accessible, this one level deck allows the crowd to spread out and there are no steps.

The front setback allows for 30 feet and they have 22 feet, no change to what was there, Mr. Lurie also noted some other setback information. Mr. Laurie did say they need 131 parking spaces and they have 42, they have made arrangements with Hoffman's marina to use their parking spaces, either valet park or self park. He also mentioned that the koi pond area is now passive seating, they tried to match the seating that was there but with a more contemporary seating area for a waiting area, no impact or expansion. Mr. Lurie added that there are now 50 more parking spaces with using the Hoffman's Marina lot.

Mr. Lurie said the changes in the decks show almost the same square footage, just configured differently, so there really is no expansion in the square footage. Mr. Condon questioned this as the original Union Landing decks were upper & lower with the lower deck having two planters, so about 380 square feet was not used; the planters were taken out. Mr. Jackson said the Zoning Officer agreed with their figures & gave them a permit that said they could stay within those 4 corners and they built the new deck based on that. Mr. Condon said that is not how he interpreted it and still felt there is an increase in square footage. Mr. Jackson said there was never an appeal on it and it was okay to issue the permit to stay within the 4 corners, it just came out in a different configuration. Their application now is a Conditional Use application and the Zoning Officer said they expanded due to the steps and koi pond being removed; the Conditional Use criteria has not been expanded and the changes they have made has helped the parking with offsite parking and spoke of the dock workers using the Hoffman's space. Mr. opposing attorneys had a discussion on this and Mr. Clark said he did not think they can speak of dock workers here. The attorneys then continued their opinions on protocol here. Mr. Collins said this application is not what was noticed and the Zoning Officer is not here to testify. The question was raised by the Chairman on usable area and this also applies to the koi pond area and he wanted to be able to question this. He objected to hearsay testimony. Mr. Middleton agreed that witnesses that are not here should not be quoted. This application has changed entirely the look and feel of the Union Landing site. There now is a 62x25 foot canopy and a large area for a band, the bar is 40x25 and seats over 40 people; he felt this has turned into a night club and is a different establishment, not only physically differently but by operation as well – he said the Board has to address this.

Mr. Condon said that places do change and the Board is trying to decide if the changes here are in accordance with the Borough; they are trying to make the best of it. Mr. Collins said there are certain things permitted in this zone and certain things that are not. The Use Variance should be limited by this Board and he felt there may be a need for more parking. Mr. Jackson talked about the "Law of the Case" and this is a continuation of the Zoning Officer's determination and again commented that the Zoning Officer did not bring into play the planters that were removed. The Rules of Evidence do not apply to this Land Use application and the attorneys know this; this use is permitted in this zone. They do not meet all the conditions and that is why they are before the Board and have all these plans being shown, to see what the minor changes are. Prior to owning this land, Hoffman's was separate so there were parking problems, this is now absorbed by the use of Hoffman's marina lot. They are here because of noise complaints and not the size of the building. They have been going uphill on this and the opposing attorneys' comments are not proper.

Mr. Condon noted it was now 10:30 p.m. and the Board has been hearing this for 1 ½ hours; he asked that Mr. Grafas speak at the next meeting. Mr. Collins once again said he is working from the notice given and is questioning that notice. At this time Mr. Condon announced to the audience that this hearing is being carried, without further notice, to the Tuesday, March 14th meeting of the Planning Board. At this time both Peg Herman and Charlotte Madison spoke from the audience, Mrs. Herman saying it's more than the noise that they are here for and Ms. Madison said their website says they have 50 slips and it was testified they have 56 slips, she also questioned a sign that is up. Mr. Condon told them and the rest of the audience that they can ask questions when the testimony is done by each expert.

As there was no other business to come before the Board, a motion to adjourn was made by Ms. Montalto, seconded by Mr. Maclearie and unanimously approved by the Board, all aye. The meeting was adjourned at

10:48 pm.

Karen Brisben, Recording Secretary
Approved: