

# ***Borough of Brielle***

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**JANUARY 9, 2018**

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April 14 2018

***January 9, 2018***

BRIELLE PLANNING BOARD  
ORGANIZATION MINUTES  
TUESDAY, JANUARY 9, 2018

The Organizational Meeting of the Brielle Planning Board was held on Tuesday, January 9, 2018 in the Brielle Borough Hall, 601 Union Lane at 7:30 p.m. After a moment of Silent Prayer and the Salute to the Flag, roll call was taken:

Present - Mayor Thomas Nicol, Councilman Frank Garruzzo, Joseph Bonacci, Thomas Condon, James Langenberger, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Absent - Eric Lapham

Also present were David Clark, present attorney for the Board, and Joe Clark, past attorney & Board attorney for Waypoint, Alan Hilla, Jr., Board Engineer and Karen Brisben, Board Secretary. There were 20 people in the audience; the meeting was being recorded by two people, Matt from the Coast Star newspaper and Thomas Stuhmann, resident.

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:

Mayor Thomas B. Nicol through 12/31/18  
Councilman Frank A. Garruzzo through 12/31/18  
James Langenberger through 12/31/18  
Stacey Mahany Montalto through 12/31/21  
James Stenson through 12/31/21

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

The Board then turned to the nomination & election of Chairperson and Vice-Chairperson of the Board for 2018 and Mr. Stenson made a motion to appoint Tom Condon as Chairperson and James Stenson as Vice-Chairperson. As there were no other nominations they were closed; Ms. Montalto seconded the motion for appointments and this was followed by a voice vote, all aye.

The following Resolution were then presented for approval:

RESOLUTION FOR BOARD ATTORNEY & BOARD ENGINEER FOR 2018

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 year 2018; 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 contact pursuant to the provisions of N.J.S.A.1:44A-20.5; and

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

WHEREAS, the terms of these contracts are one year (January 1, 2018 to December 31, 2018); and

WHEREAS, David A. 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 Finance 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 2018 contract year.
3. A notice stating the nature, duration, service and amount of this contract shall be published in the Coast Star newspaper 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 Planning/Zoning Board of the Borough of Brielle, this act becoming effective January 19, 1976;

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning 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 evening.
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 Borough.

#### OFFICIAL NEWSPAPERS OF THE BRIELLE PLANNING BOARD FOR 2018

RESOLVED, that the Asbury Park Press and the Coast Star newspaper are designated as the official newspapers for publishing legal notices of the Brielle Planning Board.

#### RESOLUTION FOR PLANNING/ZONING BOARD SECRETARIES FOR 2018

WHEREAS, there is a need for an Administrative Secretary and 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 2018 at a salary of \$5,000 and Karen Brisben be appointed as Recording Secretary/Secretary of the Board for the year 2018 at a salary of \$5,000.

The above Resolutions were approved on a motion by Mr. Maclearie, seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Joseph Bonacci,  
Thomas Condon, James Langenberger, James Maclearie, Stacey  
Montalto, Charles Sarnasi, James Stenson  
Noes: None

#### CORRESPONDENCE:

The November/December 2017 issue of the NJ Planner was received. Also received was a notice to the DEP for Block 73.01, Lots 5-5.01, 405 Riverview Lane, owned by the Manasquan River Yacht club, to allow maintenance dredging for the onsite marina.

## OLD BUSINESS:

The Board then turned to the approval of a Resolution for Block 48.01, Lot 13.02, 308 Fisk Avenue, owned by Tucker & Megan Fort, to allow construction of a 2 ½ story dwelling.

As all Board members had received a draft copy and there were no changes or recommendations, the following was presented for approval:

WHEREAS, TUCKER AND MEGAN FORT (the "Applicants") have applied to the Planning and Zoning Board of the Borough of Brielle (the "Board") seeking a variance for the property located at 308 Fisk Avenue and identified on the tax map of the Borough of Brielle as Block 48.01, Lot 13.02 (the "Property") located within the Borough's Residential Zone 3 (the "R-3 Zone") in order to allow for the construction of a new single-family modular dwelling consisting of 2 ½ stories on the Property; and

WHEREAS, this application specifically requires the following variance:

a. Maximum Building Height ♦ 35 feet allowed; 38 feet proposed.

WHEREAS, the Board held a hearing on December 12, 2017, and considered the following documents presented at the hearing in connection with this application:

a. Jurisdictional Packet; and

b. Exhibit A-1-- architectural plans;

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

Tucker Fort ("Mr. Fort"), who owns the Property along with his wife Megan, was sworn in. Mr. Fort testified that his wife grew up in Brielle and that they purchased the Property and want to construct a new single-family modular dwelling consisting of 2 ½ stories on the Property. The Applicants are seeking a variance for an additional 3 feet in height as they need attic space to store things. He also testified that the Property is located within a flood zone.

Mr. Joseph Kociuba ("Mr. Kociuba") of KBA Engineering then was sworn in and presented testimony regarding the application. Mr. Kociuba is a licensed engineer and planner and was accepted as an expert witness by the Board. Mr. Kociuba testified that he prepared the architectural plans marked as Exhibit A-1. Mr. Kociuba testified that this lot was created by a subdivision last year and that the Property is located within Flood Zone A-10 & A-11. He further testified that other residences in the neighborhood had obtained variances for height recently and that the Applicants are asking for the same height variance that was granted to these other residences. The Property is located across the street from Drawbridge West, and the proposed structure on the Property would be 2 ½ stories with the half story being 43% (which is compliant with the code requirement of 50% or less). He testified that the base floor plan starts at 13.4 feet, the minimum is 12 feet but to have it at 12 feet would mean more flood insurance. He stated that the home itself is not tall and they even made the ceilings lower, making it a modular structure and will have a 7/12 pitch for proper stair access which will be storage only in the attic. The owners are asking for a C-2 variance due to the unique property configuration that limits how low they can make their home. He testified that these homes normally have 9 foot ceilings, but that this home was designed with lower ceilings. Mr. Kociuba testified that under the C-2 variance standards the benefits outweigh the detriments as this is a safety issue due to the flood area and an elevated dwelling. The home fully conforms to the neighbor next door at the same height and this will not be against the Zone Plan or Zoning Ordinance.

The Board was then provided with the opportunity to question Mr. Kociuba. Mr. Lapham asked if the design included all of the changes set forth within the letter from the Board's Engineer Alan Hilla, and Mr. Kociuba indicated that these changes had all been made. Mr. Lapham also asked if the driveway was going to be a permeable surface and Mr. Kociuba stated they have a CAFRA application pending and that CAFRA may want this. Mr. Sarnasi asked about water recharge and Mr. Kociuba responded that there is no water recharge system here as the water level is so high that it would not matter. No other Board members had any questions.

The public was then provided with the opportunity to ask Mr. Kociuba questions about his testimony. No questions were presented to Mr. Kociuba by any members of the public.

After Mr. Kociuba concluded his testimony, Mr. Ryan Myers ("Mr. Myers") of Atlantic Modular Builders was sworn in and presented testimony regarding the application. Mr. Myers indicated that he helped to design the modular structure to be constructed on this Property as well as the modular structures constructed on 328 Fisk Avenue and 329 Magnolia Avenue. Mr. Myers testified that this home has a base flood elevation of 10, so it was built at 13 feet, with the bottom of the first floor at 6 inches above the base line. When designing the home they tried to stay as low as possible and they did an 8.6 foot ceiling on the first floor and had 8 feet for parking. He also stated that they needed a 4/12 roof pitch to be at 35 feet, which would not work out here because this is a typical modular home and then went over the figures to the top ridge line of 38 feet.

The Board was then provided with the opportunity to question Mr. Kociuba. Mr. Sarnasi asked if the Base Flood Elevation + one was optional; and was told no, that it is a town requirement. The Board's Engineer, Mr. Hilla, asked about the mechanical equipment and Mr. Myers responded that it will be hung from the ceiling at the garage and at elevation 11 will be the air conditioning units. Mr. Hilla then asked about the curb and

sidewalk which need to be repaired. Mr. Kociuba responded that they would put in new sidewalks and curbs and agreed that they needed to be replaced.

At this time the hearing was opened to the public for questions and/or comments to Mr. Myers and, hearing none, the public portion was closed.

WHEREAS, all Board members were in favor of approving this application, Mr. Lapham made a motion for approval, this seconded by Mr. Maclearie and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Joseph Bonacci, Thomas Condon, James Langenberger, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Noes: None

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 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; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement, which benefit the entire neighborhood by creating an enhanced aesthetic and concomitant sense of community;
- 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.

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

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

B. 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.

C. Applicant shall replace the curb and sidewalk in front of the Property.

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

Ayes: Mayor Thomas Nicol, Joseph Bonacci, Thomas Condon, James Langenberger, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Noes: None

Not Eligible to Vote: Councilman Frank Garruzzo

The Board then turned to the continuation of the hearing for Block 52.01, Lot 1-8.02, 622 Green Avenue, Waypoint 622 Site Plan/Variance application. Before starting this hearing Mayor Nicol, Councilman Garruzzo and Mr. Langenberger all left the dais as they are not eligible to hear this matter.

At this time Mr. Tim Middleton, Esq. came forward and called Don Ziliotto forward, he resides at 404 Ashley Avenue and was sworn in. He testified that he lives next to the Sand Bar, about 50 feet away and is 150-200 feet from the Waypoint location; he has lived here for 16+ years. He told the Board that the year 2015 was unbearable due to the noise from Waypoint; at this point Mr. Jackson intervened and said they knew there were issues and they were corrected, he asked that we proceed with this year. Mr. Condon agreed but Mr. Middleton said he was just trying to bring the history in. Mr. Ziliotto went on to say 2016 was pretty quiet until Labor Day and, in 2017, the noise was picking up and he could hear Waypoint with his air conditioner on, windows closed and tv on, this happened 6 to 8 times this summer. He could hear amplified music on different days, sometimes during the week and sometimes on the weekends, it was mostly from 8:00 to 10:00 p.m. He said he had no problem with the restaurant and the new parking will be great, it's the noise problem. At this time Mr. Jackson was asked if he wanted to do a cross-examination and that was declined; the hearing was then opened to the public to question Mr. Ziliotto and, as there was no response, that portion was closed. None of the Board members had any questions for Mr. Ziliotto either.

Mr. Middleton then called James Aloï forward and he was sworn in, he gave his address as 108 Ocean Avenue and has been there for 19 years with his wife and two children. He, too, was concerned with the music noise; back in 2015 he felt compelled to make complaints, on 7/5 & 9/15. In 2016 it was okay at Waypoint, but in 2017 the noise issue arose again on 6/9 and 8/25 and complaints were made again. The music and lyrics were audible and there was background thumping, it was all disruptive and he added he never had that with any other establishments in the area. Mr. Middleton asked if the Riverhouse music caused him concern and he said no and there was no problem with Union Landing either, he never filed a complaint on anyone other than Waypoint. He asked there be no amplified music and no bands at all. Mr. Jackson declined a cross examination so the hearing was opened for questions to Mr. Aloï and there was no response so that was closed. The Board members did not have any questions for Mr. Aloï as well.

Mr. Middleton did not have anyone else to testify this evening but reserved his right to call Joe Kociuba, their

Planner, at the next meeting; Mr. Kociuba did say, at the December 12th meeting, that he would not be available this evening but would attend on January 23rd.

Mr. Dennis Collins then came forward and called Christy McDonald forward and she was sworn in, giving her address as 609 Leslie Avenue where she has lived for 18 years with her husband and 3 children. Her experience was similar to everyone else's ♦ in 2015 it was bad, 2016 was ok but in 2017 it became bad again. She lives on a dead-end street and people park in violation of the No Parking Zone. She agreed that a sit-down restaurant is lovely and the bar is okay as well, but now the bar serves food. She felt that Waypoint changes the character of the neighborhood for the worse and she has been impacted by Waypoint. As far as the koi pond, there was a lot of plantings and greenery and the noise was muffled; now she hears all, people talking as well as the bands. She said her children can't sleep with the windows open and wants no amplified music, just music that is appropriate. Mr. Jackson asked her if 2016 was good and she said yes, there was no problem in 2016 and she didn't know what changed. The hearing was open for questions to Ms. McDonald and Charlotte Madison of 206 Homestead Road came forward and was sworn in. She asked Ms. McDonald if the music was okay in 2016 but got louder in 2017 and the answer was yes. Ms. Melissa Arnott of 621 Homestead Road came forward, was sworn in, and asked Ms. McDonald if she went to Union Landing when it was there and the answer was yes and commented they did not have a dedicated dance floor. Ms. Arnott asked her if she actually saw a dance floor at Waypoint and Ms. McDonald said she did not. Ms. Arnott then asked her if she thought the parking was worse at Waypoint and Ms. McDonald said yes. As there were no further questions to Ms. McDonald that portion of the hearing was closed, the Board members did not have any questions.

As the objecting attorneys had no one else to come forward this evening and it was still early, Mr. Jackson spoke to the Board and told he will have people here on January 23rd to speak and he will go before the Board then. The Board then decided to open this hearing to the public for general comments this evening and on January 23rd the objector's Planner and Mr. Jackson will have time to present their cases.

As the hearing was now open for general comments Mr. Richard Holmquist of Green Avenue came before the Board and was sworn in. He reminded the Board that Waypoint was before them because building permits were violated which has resulted in all these hearings. They overbuilt and no one planned for this; its this Board's job to address what was done as this was never approved. If the Board does approve this application what are they going to say to the next applicant, if they allow one person to get away with overbuilding then they have to approve all. The Board has to make a decision to keep planning control of the Commercial District.

Mrs. Margaret Herman of 208 Homestead Road then came forward and was sworn in. She said that, at a previous council meeting, she made a statement at that meeting and Mr. Grafas jumped up and screamed in her face; the Mayor had to stop him. After the meeting Mr. Grafas spoke to her and Charlotte Madison in the parking lot and she went to the police to complain about this happening and she was told to let them know if it happened again. At the next meeting she had two men walk them in so Mr. Grafas could not get hold of them again; this was in 2016.

Charlotte Madison of 206 Homestead Road came forward again and was again sworn in. She said she moved here 11 years ago and loved Union Landing, now she has cars blocking her driveway, the music is so loud she has to turn her tv up. This is not why she moved to Brielle and felt her quality of life has been affected, there are cars driving up Homestead Road the wrong way and she had an issue with the garbage at Waypoint. She had pictures she wanted to present to the Board to be put into evidence, each one has a time and date. She did not want to raise her children in this environment and asked if Mr. Grafas was going to get a pass because he is rich. She said when she made complaints to the Police they did not come to her home to check on the noise. Mr. Condon asked if the photos were taken by her and she said some were taken by her and some came from Google Earth. At this time the 22 photos submitted were marked as Exhibit 0-27.

Ms. Melissa Arnott of 621 Homestead Road came forward again and was sworn in, she said she lives across the street from Mrs. Herman and Ms. Madison. She said she had spoken to Councilman Gianforte about hearing the music at Waypoint and he rode his bike around the area and told her the only thing he could hear was music from the Patio Bar across the river. She went on to say that, when Union Landing was there, one could hear music all the time, there was a band called Blue Highway that was very loud; and there were people parking all over when it was Union Landing and she felt the parking is better now and the No Parking signs have been there for years. There is a different clientele now and Waypoint is not closing at 2 a.m., she didn't get all the complaints as it is not as bad as when it was Union Landing. Mr. Grafas had changed the area for the better, he has made it nice and people now park in the marina, he hires local kids and adults and is trying to clean up the area. Grownup people are coming in to Waypoint and she can't hear the music in her house but she heard it from Union Landing. She felt the statements made were ridiculous and this is not right, the town is supposed to encourage small businesses. She told the board the River House has amplified music and if the Brielle Landing people have a problem with music it is from the Sand Bar, she said she can hear the Sand Bar on a Sunday night even though it is all inside. She said if you take away from Waypoint you are taking away from the town, he has donated to the school and other charities.

At this time Mrs. Herman wanted to come up and asked Ms. Arnott questions and Mr. Condon explained to

her that this is public comment time only and is not the time to ask questions of people speaking.

Mr. Don Ziliotto came forward again and said they fought long and hard over the Sand Bar noise and they have to keep their doors and windows shut; he did say there is a new owner that is ramping it up and the condo owners are taking care of this. He did not agree that Union Landing went on to 2 a.m. and noted that on Sunday night they were dead.

As there were no more comments, that portion of the hearing was closed for this evening and Mr. Condon again reminded everyone that it will be re-opened again after all testimony is finished. He also reminded the audience that there will be a special meeting on Tuesday, January 23rd just for Waypoint, the meeting will start at 7:30 in the Borough Hall.

As there was no other business to come before the Board a motion to adjourn was made by Mr. Maclearie, seconded by Ms. Montalto and unanimously approved, all aye. The meeting was adjourned at 8:25 p.m.

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Karen S. Brisben, Secretary  
Approved: February 6, 2018