

# ***Borough of Brielle***

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**APRIL 10, 2018**

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May 17 2018

***April 10th, 2018***

BRIELLE PLANNING BOARD

TUESDAY, April 10th, 2018

The Regular Meeting of the Brielle Planning Board was held on Tuesday, April 10th, 2018 at 7:30 p.m. in the Brielle Borough Hall. After a moment of silent prayer and a 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, Board Attorney, Alan Hilla, Board Engineer and Board Secretary Carol McMenamy who recorded the Minutes. There were about 12 people in the audience; Thomas Stuhmann and the Coast Star reporter recorded the meeting.

The Minutes of the March 13th, 2018 meeting were approved on a motion by Mr. Langenberger seconded by Mr. Ms. Montalto and unanimously approved by voice vote, all aye.

OLD BUSINESS:

The Board turned to the vote of the resolution for variance application for Block 48.01, Lots 9, 9.01 & 10, 10.01, 3141/2 & 316 1/2 Fisk Avenue, owned by Michael Vesuvio, to allow construction of a new single-family home.

The following Resolution was then presented:

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING AND ZONING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF MICHAEL VESUVIO FOR PROPERTY LOCATED AT 314 ½ FISK AVENUE AND 316 ½ FISK AVENUE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 48.01, LOTS 9, 9.01, 10, & 10.01

WHEREAS, MICHAEL VESUVIO (the "Applicant") has applied to the Planning and Zoning Board of the Borough of Brielle (the "Board") seeking a variance for the property located at 314 ½ & 316 ½ Fisk Avenue and identified on the tax map of the Borough of Brielle as Block 48.01, Lots 9, 9.01, 10, & 10.01 (the "Property") located within the Borough's Residential Zone 3 (the "R-3 Zone") in order to allow for the demolition the existing dwelling and garage on the Property and for the construction of a new single-family 2 ½ story dwelling with two (2) attached garages and pool on the Property as shown in the site plan application submitted by the Applicant ; and

WHEREAS, this application specifically requires the following variances:

- a. Maximum Building Height (roof ridge) – Pursuant to §21-13.2 of the Ordinance, the maximum height permitted for a Principal Building in an R-3 Residential Zone is the lesser of 2-1/2 stories or 35 feet; the proposed height of the roof ridge in Applicant's plans is 38.42 feet;
- b. Frontage on Right of Way – §21-9.13 of the Ordinance, requires that a lot must front on a right-of-way of at least fifty (50') feet in width; the Property does not have any frontage on Fisk Avenue, but has rights in an eighteen (18') foot wide easement where the driveway already exists and is proposed.
- c. Driveway setback -- §21-31 of the Ordinance requires that driveways be setback five (5') feet from adjacent properties; a three (3') foot side setback is proposed.

WHEREAS, the Board held a hearing on March 13, 2017, and considered the following documents presented at the hearing in connection with this application:

- a. Jurisdictional Packet;
- b. Exhibit A-1— March 9, 2018 Correspondence from InSite Surveying, LLC with height measurements of seven (7) buildings in the subject property's neighborhood;

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

The Applicant's Attorney, Louis Felicetta, Esq., ("Mr. Felicetta") presented this application. Before presenting testimony, Mr. Felicetta provided the following information:

- The application filed by the Applicant included a proposed railing for a widow's walk on the top of the proposed house. If this widow's walk was built, the railing would be 41.42 feet in height and would require a variance under N.J.S.A. 40:55D-70(d)(6). In order to avoid having to seek a "D" variance, the Applicant withdrew this request for variance relief and represented that it will not construct the widow's walk or associated railing shown on its proposed plans.

- The Applicant believe that the application has no negative impact to the Zoning Plan or to the Zoning Ordinance and represents that the ½ story will remain unfinished.

- This Property is still designated as multiple lots on the tax records. The Applicant's attorney was instructed that the lots would have to be merged and he agreed on behalf of the Applicant that this would be done. Patrick Ward, P.E., P.P. ("Mr. Ward"), was sworn in, and the Board accepted Mr. Ward as an expert witness. Mr.

Ward provided the following testimony:

- All existing structures on the Property are to be demolished. There is going to be pavement restoration. There is a proposed twelve (12') foot driveway on the Property. A patio and pool will be built on this Property. This has been approved by the DEP as the Property is on the water.

- The ground floor of the proposed dwelling will be for parking and storage and the dwelling's elevation begins at thirteen (13') feet. The height of the dwelling will be 38.42 feet as there will be no widow's walk built.

- The Property has an eighteen (18') foot wide access easement along with a proposed twelve (12') foot wide driveway.

- The proposed side setback for the driveway is three (3') feet. The gravel will be removed and paved.

- The mechanical and pool equipment will be above flood elevation and will be screened with vegetation along the west side of the property line.

- There is a property utility easement with Jersey Central Power & Light Company ("JCP&L") and JCP&L has indicated it will want a final site plan and will modify the easement. Applicant has been working with JCP&L and will address the modification of the JCP&L utility easement after receiving Board approval for this application.

- The Applicant will comply with all code requirements with respect to fence enclosures.

- As demonstrated by Exhibit A-1 (providing measurements of other homes in this area), the proposed building's height is not unusual for this area.

- The easement and driveway are sufficiently wide for use by emergency vehicles.

- With respect to drainage, the Property is flat and the only way for drainage to work is to have low spots with inlets. There will be small inlets around the yard so rain will be collected by these inlets and will overflow into the river.

- This will not negatively effect neighbors on the west side of the property because the inlets will go into other inlets in the rear and go to the river.

- The Applicant has not proposed installing a generator.

- The mechanical units for the home can be screened though they need interior air space.

- The pool coping will be at 4.5, the pool surface water will be higher than what is on the beach; there is no retaining wall and the pool coping will go from about a foot to 4.5 feet.

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

Architect Dean Andricsak ("Mr. Andricsak") of D2A Architecture and Design, LLC then was sworn in and presented testimony regarding the application. Mr. Andricsak provided the following testimony:

- The ½ story is in attic space and goes from 7.6 feet to 5.3 feet, it does not extend beyond what is shown on the plan and will be used for storage and will remain unfinished.

- The ½ story space will have several closets and a full bath.

The public was then provided with the opportunity to ask Mr. Andricsak questions about his testimony. No questions were presented to Mr. Andricsak by any members of the public, hearing none, the public portion was closed.

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 200 feet, as well as the newspaper, were properly notified.

- b. The variance relates to a specific piece of property;

- c. 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;

d. The variance can be granted without substantial detriment to the public good;  
e. The benefits of the deviation substantially outweigh any detriment; and  
f. 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. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- B. 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.
- C. The Applicant's plans shall be revised to adequately depict the full pool fence enclosure in accordance with the applicable codes.
- D. The Applicant's plans shall be revised to adequately reflect that the widow's walk and associated railing has been eliminated from the plans.
- E. The Floor Area Ratio (FAR) shall be recalculated and if the recalculation results in a different number than the FAR shown on the plans, then the plans shall be revised to reflect the recalculated FAR.
- F. Five (5) sets of the revised plans shall be provided to the Board Secretary.
- G. The Applicant shall submit a drainage plan to be reviewed and approved by the Board Engineer prior to installation of the drainage.
- H. The Applicant shall screen the outdoor mechanical equipment with vegetation in a manner approved by the Board Engineer.
- I. The one half (1/2) story of the new home to be constructed on the Property will remain unfinished.

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

Ayes: Joseph Bonacci, Thomas Condon, James Langenberger, James Maclearie, Charles Sarnasi, James Stenson

Noes: None

Mr. Stenson made a motion for approval of the resolution seconded by Mayor Thomas Nicol and then by the following roll call vote:

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

Noes: None

The Board then turned to the approval of a Resolution for Site Plan application for Block 52, Lots 1-8.01, 622 Green Avenue, known as Waypoint 622 and 608 Green Avenue, known as Hoffman's Marina. All Board members had received a draft copy and, as there were no errors or recommendations, the following was presented for approval:

WHEREAS, the Applicants, WAYPOINT 622, LLC ("Waypoint") and Hoffman's Marina West ("Hoffman's") (collectively, the "Applicants") have applied to the Planning and Zoning Board (the "Board") of the Borough of Brielle for Preliminary and Final Site Plan Approval and variance relief for property located at 622 Green Avenue and identified on the tax map of the Borough of Brielle as Block 52, Lots 1 and 1.01 (the "Waypoint Property") and for property located at 608 Green Avenue and identified on the tax map of the Borough of Brielle as Block 52, Lots 2 and 2.01 through 8 and 8.01 (the "Hoffman's Property"); and

WHEREAS, the Waypoint Property and the Hoffman's Property are both located within the Borough's Marine Commercial Zone (the "C-2 Zone"); and

WHEREAS, the Applicants seek approvals in order to obtain variance relief for alterations already made as well as alterations that are proposed to be made to the Waypoint Property and for the use of the Hoffman's Property by Waypoint for parking for the restaurant on the Waypoint Property; and

WHEREAS, since the Waypoint application and the Hoffman's application (collectively, the "Applications") are related applications filed by entities with common ownership who are represented by the same attorney, they were heard together by the Board; and

VARIANCES

WHEREAS, the Applications require the following variances for the Waypoint Property:

- a. Front Yard Setback – Code Section 21-19.6d requires a thirty (30') foot minimum front yard setback in a C-2 Zone. The restaurant building on the subject property is set back 22.1 feet from the property line in violation of this ordinance. This setback is pre-existing.
- b. Front Yard Setback – Code Section 21-19.6d requires a thirty (30') foot minimum front yard setback in a C-2 Zone. The patio canopy on the subject property is 26.4 feet to the property line in violation of this ordinance.
- c. Side Yard Setback – Code Section 21-19.6e requires all side yards in a C-2 Zone be set back a minimum of 10 feet. The 1-story building on the subject property is set back 9.4 feet from the property line, a pre-existing condition, in violation of this ordinance. In addition the existing/proposed patio canopy is setback is 4.94 feet from the property line, in violation of this ordinance.
- d. Signage (front side of the property) – Code Section 21-27 requires a fifty (50') foot minimum front yard setback for signs in a non-residential district located along a boundary line of any residential district. The sign in the front of the property is setback only thirty-four (34') feet, in violation of this ordinance.
- e. Signage (on side of the property facing water) – Code Section 21-23.7(h) prohibits signs placed on rooftops. The property contains a sign on the roof facing the river, in violation of this ordinance.

f. Curb Cut – Code Section 21-31.11 requires that curb cuts shall be located at least five (5') feet from abutting property lines in all zones. The curb cuts on the property are less than five (5') feet from abutting property lines, in violation of this ordinance.

g. Parking Spaces – Code Section 21-32.2 requires that based on the combination of uses, Waypoint must have a minimum of 131 off-street parking spaces. The Waypoint Property contains 42 on-site parking spaces in violation of this ordinance.

h. Water's Edge Setback – Code Section 21-19.5b(1) prohibits buildings from being located within twenty-five (25') feet of the water's edge. Waypoint has an existing/proposed setback of 17.2 feet and 12.6 feet in the rear deck stairs area back from the water in violation of this ordinance.

i. Docking Berth/Seating Ratio – Code Section 21-53.13 requires that restaurants operated in conjunction with a marine facility shall provide a minimum of one docking berth per four seats. The Waypoint Application lists a seating capacity of 254 which would require a berthing requirement of 64 boat slips, only 23 berths are existing and proposed.

j. Minimum Lot Size – Code Section 21-53.15(b) requires that the minimum lot size for a multi-use marine complex is two acres. The Waypoint Property is 1.09 acres.

k. Maximum Floor Area Ratio (FAR) – Code Section 21-53.15(e) provides that non-residential properties in a Multi-Use Marina Complex are limited to a FAR of 0.25. The Waypoint proposes 0.295.

l. Landscaped Area Required – Code Section 21-37.1 requires a minimum of twenty (20%) percent of the site to be devoted to landscaped areas in addition to all required buffers. The subject property proposed 14.3%.

m. Loading Zone – Code Section 21-33.1 requires the provision and maintenance of adequate space for off-street loading, turning, loading and unloading services in order to avoid interference with public use of streets, sidewalks, and other public right-of-way. The subject property does not currently propose a designated loading space in violation with this ordinance.

n. Parking Area – Code Section 21-31.4 requires that each aisle space shall be not less than twenty-four (24') feet wide for two-way ninety (90°) degree parking. The subject property has twenty-three (23') foot wide aisles existing and proposed.

o. Width of Driveway – Code Section 21-31.10 limits the maximum width of a driveway to thirty (30') feet. The width of the Waypoint driveway is thirty-six (36') feet.

WHEREAS, the Applications require the following variances for the Hoffman's Property:

p. Landscaped Area Required – Code Section 21-37.1 requires a minimum of twenty (20%) percent of the site to be devoted to landscaped areas in addition to all required buffers. The proposed plans for Hoffman's do not comply with this Ordinance.

q. Pavement Markings and Signs – Code Section 21-31.13 requires that off-street parking spaces shall be clearly marked, and pavement directional arrows or signs shall be provided wherever necessary. Markers, directional arrows and signs shall be properly maintained so as to ensure their maximum efficiency. The subject property does not contain any pavement markings for circulation in violation of this ordinance;

r. Drainage and Maintenance of Parking/Loading Areas – Code Section 21-31.5 requires that all off-street parking, off-street loading, and service facilities shall be graded and drained so as to dispose of all surface water accumulation in a safe manner while preventing damage to abutting properties and/or public streets. Said areas shall be surfaced with asphaltic, bituminous cement or other properly bound pavement which will assure a surface resistant to erosion, installed as required by the Board as recommended by the Municipal Engineer and maintained at the expense of the property owner. The parking and loading areas of the subject property are unpaved with no paving proposed, in violation of this ordinance;

s. Parking Area Layout – Code Section 21-31.24 requires that driveways and internal roads shall be separated from parking areas by curbed landscaped islands where possible. The subject property does not have any existing or proposed curb landscaped island in violation of this ordinance.

t. Loading Zone – Code Section 21-33.1 requires the provision and maintenance of adequate space for off-street loading, turning, loading and unloading services in order to avoid interference with public use of streets, sidewalks, and other public right-of-way. The subject property does not currently propose a designated loading space in violation with this ordinance.

u. Curb or Parking Bumpers – Code Section 21-36.2 requires that all buffers and landscaped areas be protected from adjacent parking areas by curbs, or concrete, metal or wood bumpers at least six (6") inches in height and securely anchored into the ground. The subject property does not contain nor does it propose curb and/or curb stops in violation of this ordinance.

v. Trash Storage – Code Section 21-17.5 requires that an enclosed area be provided for the temporary storage of trash and other refuse. The subject property has no existing or proposed trash storage unit in violation of this ordinance.

w. Lighting – Code Section 21-31.14 sets the lighting requirements for commercial properties. Hoffman's proposed lighting plan do not meet the minimum lighting requirements.

x. Screening of Service Areas – Code Section 21-36.3 requires that service areas, parking areas, transformer compounds, and other strictly utilitarian improvements, shall be screened as fully as practicable. Hoffman's proposed plans does not provide for screening consistent with the Ordinance.

WHEREAS, the proper fees were paid, the taxes were paid to date, and all required notices were provided for the Applications; and

PUBLIC HEARING



WHEREAS, the Board held Public Hearings on the Applications on June 14, 2016, October 11, 2016, December 13, 2016, January 10, 2017, July 11, 2017, August 8, 2017, August 15, 2017, August 29, 2017, September 12, 2017, October 10, 2017 November 16, 2017, November 28, 2017, December 12, 2017, January 9, 2018, January 23, 2018, February 6, 2018; and March 13, 2018; and

#### EXHIBITS

WHEREAS, the Board considered the following documents that were marked into evidence at the hearings on these Applications:

- A-1 Memorandum dated February 25, 2016 from Michael W. Palmer, Chief of Police to Tom Nolan, Borough Administrator, Re: Fire Zone Striping Plan
- A-2 Report Re: Noise Issues Related to Preliminary and Final Site Plan Application/Use Variance for 622 Green Avenue, by Brook Crossan, Ph.D., P.E. of Sandstone Environmental Associates, Inc., dated May 26, 2016, revised September 30, 2016
- A-3 Blowup of Figure 1 (from Report marked as A-2)
- A-4 Figure 1: Maximum Noise Levels (from Report marked as A-2)
- A-5 Location Plan and Surrounding Area of Waypoint 622 prepared by Timothy P. Lurie, P.E. of D.W. Smith Associates, LLC dated October 28, 2015
- A-6 Letter dated January 9, 2017 from John Jackson to Brielle Planning Board, and a copy of a notice from 8/5/16 regarding band testing scheduled for September 2016
- A-7 Photographs of the sound recording equipment in place at Waypoint 622
- A-8 Deck Plan from a 2011 survey
- A-9 Preliminary and Final Site Plan and dock area of Hoffman's Marina, prepared by Timothy P. Lurie, P.E. of D.W. Smith Associates, LLC, last revised 11/18/16
- A-10 Amended Site Plan of Union Landing Restaurant from 05/29/1979
- A-11 Preliminary and Final Site Plan of Waypoint 622 dated 10/28/2015
- A-12 Revised Preliminary and Final Site Plan of Waypoint 622 dated 10/11/16
- A-13 Packet of Borough documents dated 1979 to 2011, including Minutes, letters and permits, indicating history of applications made by Union Lane for expansion
- A-14 Chronology of Hoffman's Marina construction plans dated 11/17/14 to 12/30/15 with exhibits
- A-15 Color Rendering 4 of 6 dated 6/26/17 showing relocated property line on Union Lane
- A-16 Aerial Photograph from the Manasquan River showing Waypoint 622
- A-17 Minor Site Plan of Hoffman's Marina dated 9/14/16
- A-18 Preliminary and Final Site Plan, sheet 2 of 6, dated 6/26/17 based off of the 12/8/11 survey
- A-19 Series of 12 photographs provided by Timothy Lurie indicating history of canopy, patio and deck location over time
- A-20 Survey dated 1/20/00 of Lot 1, Block 52 noting property line along center of Union Lane
- A-21 Letter from Richard Kenderian, P.E., P.P. of Maser Consulting, P.A. to Residents of Brielle dated November 4, 2015
- A-22 Permits for the sound walls
- A-23 Photograph of Belmar Marina
- A-24 Photograph of Clark's Landing
- A-25 Photograph of Shipwreck Grill in Brielle
- A-26 Photograph of Manasquan River Yacht Club
- A-27 Photograph of Bay Head Yacht Club
- A-28 Photograph of Martell's
- A-29 Photograph of River Rock
- A-30 Presentation packet of Noise Complaint History and Analysis
- A-31 Three-ring binder with tabs numbered 1-14 provided by Larry Grafas containing photographs and maps of Hoffman's/Waypoint reflecting improvements marina has brought to Brielle community and providing explanation as to various complaints regarding issues such as tenants and trees.
- A-32 Aerial Photograph prepared by Larry Grafas indicating with pins the location of marina, restaurant and homes of people with noise complaint issues and those in close proximity who have not complained
- A-33 Revised Seating Arrangement Plan
- A-34 Minor Site Plan for Hoffman's Property
- A-35 Copy of Amended CAFRA Permit
- A-36 Photograph of Mr. Stuhmann and his girlfriend at the Riverhouse
- A-37 Video of a band playing with more than three instruments and video of people dancing at the Riverhouse
- A-38 Letter dated December 23, 2014 from Anthony Peterpaul to James Langenberger, Code Enforcement Officer, requesting confirmation of CO and no violations
- A-39 Letter dated December 26, 2014 from James Langenberger, Code Enforcement Officer, to Anthony Peterpaul confirming no CO needed and no violations
- A-40 Letters dated December 27, 2015 and August 30, 2017 from Brielle Police Department to Brielle Planning Board
- A-41 2000 Charles O'Malley Survey and 2011 D.W. Smith Survey of Waypoint 622 (Preliminary and Final Site Plan Exhibit)

A-42 Resolutions of the Brielle Planning Board dated April 2, 1986 for property now known as the Riverhouse  
O-1 Boundary Survey Tax Map dated 4/29/14  
O-2 Letter dated 10/02/14 from D.W. Smith to a Senior DEP employee in reference to appearing before the Planning Board  
O-3 Proposed Deck and Canopy Plan dated 1/13/15 and proposed deck/canopy plan date-stamped 01/16/15 by the Zoning Officer  
O-4 Photograph of Union Landing indicating location of canopy  
O-5 Photograph of Union Landing indicating location of canopy  
O-6 Letter dated January 12, 2015 from Zoning Officer Elissa Commins to Larry Grafas  
O-7 Plan by D.W. Smith Engineers dated 10/28/15 indicating Existing and Former Seating Arrangement of Waypoint 622  
O-8 Approved Deck Plan as of 10/28/15  
O-9 Foundation and Framing Plan for the deck canopy  
O-10 August 8, 1978 Resolution approving Major Site Plan Application 78-2 for Union Lane restaurant with conditions  
O-11 Letter dated July 21, 2017 from John Jackson to Brielle Planning Board providing amendment to relief sought by Applicants for operation of marina and restaurant  
O-12 August 8, 2017 Public Notice pertaining to hearing on marina variance approval  
O-13 E-mail dated August 11, 2015 from Fire Official Sandy Ratz to Larry Grafas  
O-14 Photographs taken by Investigator Gamble on 8-19-17, 8-25-17 and 9-8-17 of speakers used by musicians  
O-15 Photographs submitted by Stuhrmann from various websites of Union Landing restaurant pre 2013  
O-16 CD of video files of November 28, 2017 produced by Stuhrmann showing musicians and dancing  
O-17 Noise Sources, Speakers  
O-18 Photograph of Speakers, Wall-Mounted Zone Controller ("ZC1")  
O-19 Photograph of Noise Sources, Sound Wall Speaker, dated May 18, 2016  
O-20 Photograph of Noise Sources, Sound Wall Speakers, dated September 2017  
O-21 Noise Factors, Waypoint Sound Wall Speakers, Featuring the EON615 with the Decibel Chart  
O-22 EON 615 Brochure, 2 pages  
O-23 EON 615 catalog page from separate source (page number 19 in corner)  
O-24 Height information indicating ceiling is 14 feet  
O-24B Resolutions provided by Stuhrmann indicating conditions of use as to prior restaurants, i.e. Harbor Inn, Sandbar and Rella's  
O-25 CAFRA Determinations.  
O-26 DEP documents pursuant to Stuhrmann OPRA request, including D.W. Smith Pre-Application to DEP and emails as to permit requirement for temporary structure  
O-27 Packet of 22 photographs indicating various misuse of property, including enlargement of decking, exit and driveway blocked; garbage outside of bins and lack of permits  
O-28 Ordinance excerpts as to restaurant definition and conditional use standards for restaurant and parking  
O-29 Overlay/comparison of the Union Landing and Waypoint outdoor areas indicating size of expansion  
WITNESSES

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

Applicants' Witnesses:

A Brook Crossan, PhD, PE.; Timothy Lurie, P.E., P.P.; Richard Kenderian, P.E., P.P.; John Rea, P.E. of McDonough & Rea, Manasquan, a Traffic Engineer Specialist; Larry Grafas, principal of Waypoint 622, LLC and

Objectors' Witnesses:

Thomas Stuhrmann; David Gamble; Suzanne Herszdorfer; Don Ziliotto; James Aloj; Christy McDonald; Joseph Kociuba, P.E., P.P.

Public Questions/Comments:

Janine Lenhardt, 407 Leslie Avenue, Brielle, NJ; Mel Bennett, 408 Leslie Avenue, Brielle, NJ; Margaret Herman, 208 Homestead Road, Brielle, NJ; Richard Holmquist, 504 Green Avenue, Brielle, NJ; Charlotte Madison, 206 Homestead Road, Brielle, NJ; Melissa Arnott, 621 Homestead Road, Brielle, NJ; Don Ziliotto, 404 Ashley Avenue, Brielle, NJ; Terrence Fearon, 717 ½ Ashley Avenue, Brielle, NJ; Ronald Nowak, Jr., 1009 Forest Road, Brielle, NJ; Tom Bovino, 4 Lebanon Drive, Brielle, NJ; Jane Sigler, 619 Homestead Road, Brielle, NJ; Amy Monte, 47 North Main Street, Manasquan, NJ; Darrell Zaslow, 19 Seven Oaks Drive, Brielle, NJ; Barry Packin, 241 Shore Drive, Highlands, NJ; Kathryn Laurino, 608 Green Avenue, Brielle, NJ; Scott Bellone, 29 Union Street, Matawan, NJ; Peter Gebhardt, 505 Chelsea Street, Forked River, NJ; John Brue, 1802 Boat Point Drive, Point Pleasant, NJ; Colleen Rice, 552D Sheffield Court, Lakewood, NJ; John White, 1112 Front Street, Point Pleasant, NJ; Mary Tkach, 1700 Riviera Court, Point Pleasant, NJ; Tracy Garofalo, 113 Ashley Avenue, Brielle, NJ; John Monteverdi, 921 Riverview Drive, Brielle, NJ; Ken Hager, 22 Orla Court, Tinton Falls, NJ; John Mainero, 704 Evergreen Avenue, Brielle, NJ; and

TESTIMONY AND EVIDENCE PRESENTED

ON BEHALF OF APPLICANTS

WHEREAS, the Board considered the following testimony presented at the hearings in support of the Applications:

On June 14, 2016, John Jackson, Esq. ("Mr. Jackson"), appeared for the Applicants, Waypoint and Hoffman's, and provided the Board with the following information:

- Waypoint 622, LLC is the owner of the restaurant on the Waypoint Property located at 622 Green Avenue.
- Larry Grafas is the principal of Waypoint 622, LLC
- Waypoint is promoting the use of the waterfront and its design is compatible with the area. The proposed use will have no adverse impact on properties in the neighborhood and Waypoint believes that it enhances the area and that there is adequate off-street parking.
- Mr. Grafas also owns Hoffman's Marina which is off-peak in the summer as boats are no longer in dry dock, thus parking is available at the Hoffman's Property.
- Waypoint contends that there is no adverse impact and that it has adequate landscaping.
- Waypoint had a problem in 2015 with bands playing too loud. When Union Landing Restaurant was there they always had bands. Waypoint is popular and neighbors have complained about Waypoint
- Waypoint installed a sound wall on the northeast corner, and has installed a sound system on the premises which is controlled by the house. Any band that plays has to plug into Waypoint's sound system, which is hard-wired by a control system that can only go so high. They have also put a plastic canopy in place to help reduce the noise.
- Steps were put in between the deck and the water.
- Waypoint's engineer met with the Chief of Police and received notice that the Fire Zone Striping plan is approved, it is signed by the Police Chief, Borough Administrator, the Fire Chief and other officials.
- Waypoint feels it has met all of the conditional use criteria, the changes they have made are nominally different than what was there. The changes in the deck were all allowed by the Zoning Officer and built that way, whether it increases seating is not the issue.
- Waypoint is not deficient in parking, because they have Hoffman's East, Hoffman's West and Waypoint, all owned by the same entity.
- The docks were upgraded by Mr. Grafas, the owner, as well as the pilings and this brings in higher end boats which help support the area; this is now one of the jewels of the area – these docks have been part of Brielle's history.
- The outside patio area was a koi pond and they will show photos of this area now; there are no drinks served here and this will be discussed.
- Borough Ordinance, Section 21-53.15(i)(2)(b) is proof that sufficient parking spaces are available within walking distance. This is the only requirement in the Ordinance, a separate application does not have to be done.
- Waypoint's season is from May to September.

On October 11, 2016, Mr. Jackson provided the Board with the following additional information:

- Union Landing had bands play for years before Mr. Grafas purchased the Waypoint Property.
- Waypoint put in a sound wall. Waypoint has put in sound attenuation measures which have resulted in no complaints this summer other than over the Labor Day weekend when they took some sound tests. Waypoint feels these sound improvements have made a big difference.
- Waypoint used a site plan from 1979 as a baseline; there was an area on the side where there was a koi pond and they removed that and put a patio in its place. Mr. Hilla says 18 tables could fit there and this is an issue as Waypoint has tables and chairs there.
- Waypoint has provided additional parking through use of Hoffman's Marina parking area. The Brielle Ordinance says there can be parking on another property if all owners agree to this and the same owner owns both lots.
- This works for Waypoint as there is very little dry dock in the summer, all boats are in the water.
- Objectors have said there needs to be an amendment to the original application to implement this. Mr. Hilla suggested a valet parking system for the Hoffman's lot; Waypoint agrees and proposed valet parking for Hoffman's Marina Lot. This will keep cars from driving around the area and this amended circulation will work.
- The dumpsters which are currently outside will be enclosed.
- Waypoint has been cited for "Expansion of the deck in size and extent beyond the zoning officer approved deck." The stairs and deck on the river side have been reconfigured. Zoning Officer Elissa Commins had written a letter stating the deck could be reconfigured keeping the same footprint, but a deck with an increase in 2 square feet was put in.
- Waypoint was also cited for "Expansion of uses and facilities increasing the off street parking burden." Since Waypoint began use of parking at Hoffman's, the nonconformity has been reduced.

On October 11, 2016, A. Brook Crossan, Ph.D., P.E., of Sandstone Environmental Associates, Inc. (Dr. Crossan) was sworn in, and the Board accepted Dr. Crossan as an expert witness in acoustic studies/sound engineering. Dr. Crossan provided the following testimony on behalf of the Applicants:

- The sound study that he did for Waypoint show it is compliant with the Code.
- He did not perform sound studies for Union Landing Restaurant.
- The State noise regulations for residential property is 65 decibels during daytime hours 7:00 AM – 10:00

PM, the nighttime noise limit (10:00 PM. – 7:00 AM) is 50 decibels.

- Dr. Crossan used sound measurements recorded during a 2015 Monmouth County Noise Inspection to estimate that the sound levels would have been at 64 decibels in the residential neighborhood near Waypoint.
- In February 2016, he was asked to assist in bringing the noise issue under control and to prepare a report in reference to the New Jersey code.
- He saw the temporary wall that was put up in the reconfigured deck/bar area. He noted the construction was all hard surfaces that would reflect noise. The County inspection reports had decibel readings below 65. He reviewed the police reports from the noise complaints. The band played on the east end, which was wide open. He recommended that a wall be installed by Waypoint, and that was done.
- The bands were controlling the sound, which was a problem at times so a sound system was installed with two speakers that cannot be turned up. The sound is controlled by the house in the bar area and it has a governor on it.
- Dr. Crossan has a machine that measures decibels. He prepared a report from inspections done on 2/18, 2/22, 5/22, and 9/4 of 2016. The normal decibel levels are up to 65 from 7:00 AM – 10:00 PM and up to 50 decibels from 10:00 PM – 7:00 AM
- With respect to conditions in 2015, the bands were uncontrollable and louder than they needed to be. If they can be lowered 20 decibels in the bar, it will also be 20 decibels lower in the neighborhood.
- In May 2016, improvements were tested at Waypoint. He took measurements, around 6:00 PM with approximately 60-70 people there.
- He uses a Larson David Model 831 to measure noise. He says that it is the best meter there is and recognized by the State as accurate. It is calibrated before and after noise measurements and gets annual factory maintenance checkup.
- The wind was at 2-4 MPH. The sound of the train passing was 100 decibels and the cars on Green Avenue were in the low 70s. He measured 47-50 decibels in the residential area and said the band was barely audible. A measurement was taken in front of 208 Homestead Road. The band there was heard at 44 decibels.
- On September 6, 2016 there was further testing. The environmental conditions were similar. This was a 5-piece band that used their own sound system. Mr. Jackson stated Waypoint did receive a summons for this band playing. This was Labor Day weekend and between 6:00 PM and 7:00 PM The bar was packed.
- Dr. Crossan took a measurement on the opposite side of Green Avenue and measured 57 decibels versus the 47 decibels in May. It was significantly louder, but still below the state limit. It was very audible. The sound at Leslie and Green Avenue was 57 decibels on the tracks. The band playing at the River House was at 58 decibels and across from the River House was 63 decibels.
- The report showed Waypoint was below state noise limits and that the noise levels dropped to the 40s for decibels.

On October 11, 2016, the Board asked Dr. Crossan questions. Dr. Crossan provided the following testimony:

- Mr. Stenson asked whether the measurements taken were only for the nearest property. Dr. Crossan stated three of the readings were true readings and the rest were estimates.
- Ms. Montalto asked about the September decibel readings of 57, 58, 56 decibels, Dr. Crossan stated those are without the internal sound controls, but with the sound wall being up. The internal controls were not used for the purpose of testing the sound wall.
- Ms. Vitale asked if any readings past the end of the bar were taken and if there were any boats in the boatyard when the readings were taken. Dr. Crossan said he may have taken readings past the end of the bar, but that he did not record them. There were a few boats in the boatyard.
- Ms. Vitale asked if the band that played when the readings were taken in September had used their own amplifiers. Mr. Jackson answered, yes, on that date the band was using their own amplifiers. Mr. Jackson said this was to test the conditions.
- Mr. Condon asked if weather or humidity had an effect on the sound readings. Dr. Crossan said not a large effect but that the water does have an effect on the sound.
- Mr. Maclearie asked if traditionally bands playing would bring their own amplifiers. Mr. Jackson said yes, but Waypoint has implemented a rule where bands performing at Waypoint must plug their equipment into the amplifiers at Waypoint. It is a condition for the bands to perform there.

On October 11, 2016, the Hearing was opened for public questions to Dr. Crossan. Dr. Crossan provided the following testimony in response to these public questions:

- Margaret Herman, 208 Homestead Road, asked what the decibel reading on the noise would be if she could hear the band and the crowd with her doors closed and air conditioner and TV on. Dr. Crossan stated he was unable to answer as he was not present then but if he was outside her home the monitor would have picked up something higher than 44 decibels.

On December 13, 2016, Dr. Crossan was cross-examined by Dennis Collins, Esq., on behalf of the Objectors, Christy McDonald and Joseph Casello, and by Tim Middleton, Esq. on behalf of Objector, Thomas Stuhmann. Dr. Crossan provided the following testimony in response to their cross-examination:

- With respect to the effects in the area that may impact noise, there are different perceptions based on

sounds, for example wind.

- He monitored and identified noise levels around the adjacent community within their parameters.
- He went off the property to take measurements and when Mr. Collins asked, he confirmed, that the days that readings were taken, they were within the permissible noise levels.
- His Report provided an estimate of the noise levels from Waypoint in 2015.
- With respect to noise level emanating from Union Landing in 2013, he did not provide an estimate of same in his Report.
- When asked how he prepared to take measurements at specific points of interest in May 2016, he said he went in February 2016 to walk around the neighborhood, but the sound system had not been installed yet.
- When asked about the capacity of the sound system used at Waypoint, Dr. Crossan said he was told it was at peak operating levels when the measurements were taken, but Dr. Crossan did not personally confirm this.
- When asked about the decibel level by the speakers, he did not take official measurements but states that the decibel level was in the 90s during the September testing.
- When asked to explain the significance of the maximum noise levels marked on Exhibit A-4, he stated they are the maximum readings his instrument read on the dates he took measurements.
- Mr. Collins asked Dr. Crossan if he agreed that it could have been louder at other locations, or other moments, when the readings were not being taken. Dr. Crossan stated that was correct.
- Mr. Collins asked and Dr. Crossan confirmed his Report's conclusion that in his opinion for purposes of the model noise ordinance, if Waypoint used the sound system installed when bands performed at maximum levels the property would be compliant with those requirements.
- Mr. Middleton asked Dr. Crossan about the chart and how he arrived at a 48 decibel reading at 106 Ocean Avenue and he stated those values were by calculating the distance from the point source. A point source decreases six decibels when the distance is doubled.
- When asked about the 2015 estimations in his Report, he stated he did not know the make and model of the amplifier used, the name of the band, or the instruments the band played for the instance he was estimating.
- Mr. Middleton asked about the sound wall, and Dr. Crossan confirmed that was his own recommendation.
- Mr. Middleton asked if another solution could be for bands to play live without amplifications. Dr. Crossan responded that Waypoint has a solution. Waypoint is 18 decibels below the State standard. Although other things could be done to make it 20 or 25 decibels below the State standard, Dr. Crossan questioned whether they would be necessary or reasonable.
- Mr. Middleton asked Dr. Crossan to confirm that his conclusion is that the sound problem has been solved with the sound wall, plastic plexiglass between the roof of the outdoor bar and main structure, and the control of the in-house sound system. Dr. Crossan confirmed this.
- With respect to not having inspected the controls or having checked that the sound system was at maximum capacity when the measurements were being taken, Dr. Crossan stated he had no concerns about the this. Waypoint installed the controls and it would be counterproductive for Waypoint to change the dial systems.
- The measurements in May, 2016 were not at the maximum sound levels in the area and the September, 2016 test was done with a band using their own sound system to show the need for the control of the sound system.
- Mr. Middleton asked about the September reading at 57/58 decibels and whether this was intrusive. Dr. Crossan stated the intrusiveness depends on the observer, but it is intrusive, and above simply background level noise.

On December 13, 2016, the Board asked Dr. Crossan questions. Dr. Crossan provided the following additional testimony:

- Mr. Hilla asked why the properties at Brielle Landing, which is directly next to Waypoint on the western side, and a handful of other properties were not measured in the study. Dr. Crossan stated they were not included in the study as no complaints were received from that area.
- Dr. Crossan measured the closest condo when taking the measurements in September when the band used their own sound system and the reading was 69 which he said meant the reading would be lower when Waypoint used their in-house sound system.
- Mr. Hilla stated that the noise restrictions are in place for all residential neighborhoods, not just the locations that have raised complaints. Dr. Crossan responded stating that with the new sound controls in place, the noise levels will be compliant.
- Mr. Hilla asked Dr. Crossan to confirm that a 69 decibel reading exceeds state law noise levels, and Dr. Crossan confirmed it was 69 on the near end and 63 on the far end of the nearest properties.
- Mr. Hilla asked wouldn't these residences become the control point for how the system will be operated rather than the properties where the complaints originated. Dr. Crossan stated that those higher numbers were during the September readings and that with all the proper controls in place, the decibel readings will be in compliance with state levels.
- In response to Mr. Hilla's questions, Mr. Collins asked why Dr. Crossan did not include the 69 decibel reading in the Report. Dr. Crossan responded that he was focused on the areas where the complaints had been.
- Mr. Collins then asked whether he considered 59 decibels to be intrusive and whether there is a negative

impact from the noise, even when the noise is within the compliant levels. Dr. Crossan responded given the background of the communities from the complaints yes, but the closer condominiums are within the line of sight of the Route 35 bridge which causes noise and in the summer there is noise from the boat activity nearby.

- Mr. Collins asked based on the previous answer, whether Dr. Crossan would be able to opine whether the decibel reading is intrusive to the residents in the nearby condominiums. Dr. Crossan assumed no because they have not complained.

- Mr. Middleton asked if he knew how many anonymous noise complaints were received. Dr. Crossan said he did not know.

- Chairman Condon asked if the reason Dr. Crossan took the sound readings from the places he did was because Dr. Crossan had suggested the wall be built in such a way to lower the sound in the area where the complaints were coming from. Dr. Crossan said yes.

On December 13, 2016, the Hearing was opened for public questions to Dr. Crossan. Dr. Crossan provided the following additional testimony in response to the public questions:

- Janine Lenhardt, 407 Leslie Avenue, asked Dr. Crossan to point out on the map where her property was in reference to where the readings were taken. She indicated that she had made a lot of complaints in 2015 but her property was one of the farthest from the source. Dr. Crossan responded that it would have been 32 decibels in May and 42 in September, but in 2015, it could have been up to 49 decibels because her side of the street is quieter.

- Mel Bennett, 408 Leslie Avenue, asked if with respect to his statement that the issue has been resolved by the plastic plexiglass, sound wall, and in-house sound system, how is it resolved if this was an issue that only originated in 2015 and while it has improved, 14 people in the audience still think it is an issue. Dr. Crossan responded that the noise levels have dramatically improved and just because you can hear it and pick out a sound out of a background, it doesn't mean there is an adverse impact.

- Richard Holmquist, 504 Green Avenue, asked how much of a difference in decibels are caused by the wind coming up out of the river as the noise goes past the boats and up the street. Dr. Crossan said the wind does not carry sound with it over the distance 400- 500 feet.

On January 10, 2017, Tim Lurie, P.E., P.P. of DW Smith Engineers & Planners ("Mr. Lurie"), was sworn in, and the Board accepted Mr. Lurie as an expert witness. Mr. Lurie provided the following testimony on behalf of the Applicants:

- DW Smith originally did the survey for the previous owner and when Mr. Grafas bought the property, DW Smith 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 noted Hoffman's was a marina with 56 boat slips, it consists of lots 3-8 and is bounded in by the railroad. Waypoint had 25 slips and now has 23 slips after it was reconfigured in 2011.

- The parking lot is at elevation 9, the building floor is 7 and the bulkhead is at 5.

- Exhibit A-10 is a site plan of the Union Landing site which was obtained 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.

- 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 properties at Hoffman's and Union Landing were separate; these lots are now owned by the same entity.

- The 2011 survey, Exhibit A-8, is a 2 ½ story building located closest to Green Avenue with a one (1) story frame building 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.

- Comparing the 2011 plans and the 2015 plans, the entrance was made wider due to the reconstruction of a fire hydrant, change to the ingress and egress and they did a new dumpster area. They had 42 parking 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 and outside deck and Mr. Lurie said they are just off by inches of each other.

- Waypoint has approval for the canopy that was put in.

- The deck had a different configuration in 2011 than what is there now, there were stairs in 2011.

- 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.

- Exhibit A-8 shows no Fire Lane but the 1979 plan has a Fire Lane.
- He indicated that this issue has been all worked out and there are signatures by the Fire Department Chief, Borough Engineer and town. The wooden walkway here is also okay and is on the 2011 survey.
- The seating area noted on Exhibit A-8 is south of the restaurant. There was a 300 square feet canopy area closest to and on the Eastern Side of Union Lane. A-8 also notes a 1,975 square feet canopy area along three quarters of the back of the existing restaurant along the easterly side of the restaurant. In 2015 there was a one level deck. 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 stated that there was no agreement made on this at that time.
- Waypoint changed so there was only an entrance on Green Avenue and an entrance and exit on Union Lane. Waypoint did the landscaping to match the 2011 plan.
- The elevations remain the same and he said that 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. 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 before.
- They need 131 parking spaces and they have 42. Waypoint has made arrangements with Hoffman's Marina to use their parking spaces, either valet park or self park.
- The koi pond area is now passive seating, Waypoint tried to match the seating that was there but with more contemporary layout, and no impact or expansion to the square footage or seating capacity.
- With the use of Hoffman's Marina lot, there are now 50 more parking spaces.
- 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 and 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 Waypoint's figures and gave them a permit that said they could stay within those four 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 the deck and it was okay to issue the permit to stay within the four corners, it just came out in a different configuration.
- Waypoint's application now is a Conditional Use application and the Zoning Officer said they expanded due to the steps and koi pond being removed. Mr. Lurie says that the Conditional Use criteria has not been expanded and the changes they have made have helped the parking with offsite parking and spoke of the dock workers using the Hoffman's space.
- Mr. Collins stated that 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 different but by operation as well and he said that the Board has to address this.

On July 11, 2017, Mr. Jackson provided the following information to the Board:

- Waypoint's site plan was revised to reflect the center line of Union Lane as a boundary line of the property. According to a title search, this is still a right-of-way and Brielle Borough still manages it but it is the property of Waypoint.
- With respect to Al Hilla's latest report, Waypoint has tried to comply. There was a 1978 Resolution that defined the hours of operation as 4:00 – 10:00 PM and Mr. Hilla said this should be addressed. Mr. Hilla said, in his report, that the conditions regarding hours of operation are still in effect.
- The 4:00 – 10:00 PM hours of operation has been disregarded for the last 30 years.
- In 1979 they did a small addition to the kitchen and the building was made bigger.
- In 1986 and since then the liquor license has been before Council and it was never stated they have to close at 10:00 PM.
- With respect to a 25x22 patio approved by Council for a deck that was built in 1993. The Zoning Officer has stated they have expanded the deck but Waypoint feels the same configurations are in place now.
- All of the fire zones have been approved on Waypoint's current plan. They had to rebuild the steps due to Hurricane Sandy and had approval for this, as per the State.
- This application also stated that Union Landing had different hours during the summertime according to a 1996 application for the liquor license renewal.
- As recently as 2011, heaters were allowed to be put on the deck. Now all of a sudden Waypoint has to enforce plans from 1978 and asked the Board to look at the whole record fairly.
- In 2014, before Mr. Grafas closed on this property, he applied to replace the deck and this was done on 11/17/14 before the final purchase.

- On 12/14/14 Mr. Grafas received a CAFRA permit that said he did not need to have CAFRA approval as this is a seasonal area and the deck is temporary. Mr. Condon indicated that he could not believe that a steel and cement deck can be considered "temporary."
- Mr. Jackson said this is temporary because it is a seasonal use only. The deck now projects out but is narrower and longer than the original deck. It was later revised so it does not come out as far.
- Mr. Jackson stated that Mr. Langenberger, Code Enforcement Officer, wrote in 2014 that there were no zoning violations on this property.
- On January 12, 2015, the Zoning Officer did a review for replacing the deck and said it can be replaced within the same footprint, the only thing that is different would be the stairs.
- On January 30, 2015, a corrective letter was written saying site plan approval is needed by the Planning Board. On 4/14/15, the Construction Department wrote to Mr. Grafas asking for detail on the steps.
- Plumbing approval was given on 4/21/15 for the outside bar area.
- In August of 2015 there were complaints about noise and they took sound readings which all were within the legal limits and no violations were issued.
- In 2015, Waypoint received a letter from the Zoning Officer, Elissa Commins, stating the permits they were issued were not what was built and listed deficiencies on the site improvements. There is a 1,500 square foot side area (which Waypoint acknowledges and plans to remove) that is not to be used for restaurant use and the rear stairs extend out past the allowed footprint.
- Ms. Commins also said the deck was constructed beyond what was permitted.
- Waypoint contends that the deck is "nominally" different but it really doesn't have an effect here. There was nothing about a 10:00 PM closing or outside bands or limit of tables.
- Waypoint filed an appeal and is now here as a result of that appeal.

On July 11, 2017, Mr. Lurie provided the following additional testimony:

- The relocated property line based on the title search eliminated one variance for setback for the building, there still is a variance needed for the columns on the covered patio.
- The lot coverage is 13.7% and the lot coverage for impervious surface comes up to 43.2%. When the lots are combined, the open space is 56.8%.
- Exhibit A-16 was an aerial photo from the Manasquan River to the shoreline of Brielle showing the Waypoint area and it shows cars parked in the area around Waypoint on the Hoffman's Property. Mr. Lurie presented Exhibit A-17, the Minor Site Plan for Block 52, Lots 2, 2.01-8.01 which shows the parking analysis here; this comes out to a total of 86 spaces required and there are 137 spaces available. Mr. Jackson said that valet parking is possible and that Waypoint is agreeable to having this. They have golf carts to take people to their cars. Mr. Jackson asked Mr. Lurie about access to the docks and Mr. Lurie said it is easy access from Hoffman's gate and boardwalk by the water. Mr. Jackson asked how many boat slips there are here and the answer was 56 and Waypoint has 23, a total of 79 slips. Exhibit A-16 shows that at the end of the dock there are an additional 5-8 slips for transient boats coming to the restaurant, there is no restaurant at Hoffman's but the client owns both properties. Mr. Lurie said the properties share similar amenities, and there is a surplus of parking on the Hoffman's Property; also, the Ordinance is silent on riparian lands being used for coverage. They meet the spirit of the Conditional Use because this is an existing lot that has always been undersized and the use of Hoffman's helps to meet the parking variance for two acres and they have 1.72 acres. Hoffman's has always been used for parking, boats are stored there in the winter and the lot is used by cars in the summer, there is sufficient parking as per section 21:53-15 2b of the Ordinance. Also, people use taxis and Uber to get there safely and an Easement will be provided, Mr. Jackson said this will continue if the restaurant is sold in the future.

On July 11, 2017, Mr. Lurie provided the following testimony in response to Mr. Middleton's cross-examination:

- The boat works building takes up approximately 5,000 square feet. It is a place to work on boats and storage area. Next to that is a mechanic's workspace. The warehouse is not considered part of the gross floor area of the property.
- Mr. Middleton said the Ordinance says gross floor area which would mean everything, and the Ordinance says one parking space per boat.
- It is common for a restaurant to share a parking area with a boatyard. In Point Pleasant Beach, Chef's International shares parking with the fishing boats for the Patio Bar.
- With respect to parking, not all parking will be valet parking.
- Exhibit A-8 was prepared on 12/8/11 for a dredging permit for the docks.
- Survey marked as A-18 was as a requirement for dredging. He sketched this and then went to see the Zoning Officer, DEP and Borough.
- With respect to Exhibit O-2, all it says is Waypoint needs outside approval.
- The proposed deck/canopy (Exhibit O-3) is stamped by the Zoning Officer on 1/16/15.
- The bar by the middle canopy extends from the rear of the building about thirty (30') feet.

On August 8, 2017, Mr. Lurie continued his testimony in response to Mr. Middleton's cross-examination as follows:

- There were 2 deck plans. With respect to whether the plans sent to the DEP were the same as the plans in



2015, a canopy was added and was not on the DEP plan, but as it relates to the deck both plans were identical.

- The existing deck and canopy had a lower patio and an upper patio fit in the footprint, they were combined in the new plan.
- With respect to Exhibit O-3, and the deck being expanded toward the bulkhead, Waypoint and architect laid this out and then the architect gave his company the plan and they put that on the site plan.
- With respect to the difference between the deck that was built and the deck plan that was approved, Mr. Lurie testified that he was told to match the deck to the concrete.
- With respect to the lower seating area, 1,100 square feet and a planter area, the planter area was built on the deck and it separated the upper and lower deck. The lower seating area is 1,100 square feet excluding the planter area. The new deck does cover the planter area.
- The canopy and deck all fell within the limits of the patio on the water side of the property.
- With respect to whether the new deck was built within the footprint Mr. Lurie disagreed with Mr. Middleton's statement that there was a 35% increase in area.
- With respect to the deck configuration, Mr. Grafas and his team met with the Zoning Officer and said they had to revise the deck to stay within the same footprint; they also added the canopy and submitted new building plans.
- Mr. Grafas told Mr. Lurie that Zoning Board approval for the elevated deck was not required to open the restaurant [in 2015].
- The deck is on pilings, DW Smith did the piling plan.
- When the property was Union Landing the koi pond area had a couple of benches and a walkway.
- Mr. Grafas put in tables and chairs there. Mr. Lurie confirmed no permit was obtained for this work. This area will now be a passive seating area.
- With respect to the canopy size, Mr. Lurie explained the photos in A-19 show the main canopy area, a close up of the raw bar canopy area, the band area, the center bar area, the east side of the upper deck, the docks that show the canopy in the background, aerial photos from 2013 that shows the canopies and a 2012 photo of the canopy area. These photos were used to make the new canopy area to match and not be put closer to the water.
- A survey by Charles O'Malley dated 1/20/00, revised 12/21/00 shows a dashed property line along the center of Union Lane and also shows the upper deck area and steps to the patio.
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On August 8, 2017, Mr. Lurie provided the following additional testimony in response to Mr. Collins' cross-examination:

- With respect to the replacement deck, it all became one deck, including the landscape area, which was created on top of the concrete slab and put in after the original deck; he used the concrete footprint for the replacement deck.
- This does increase the seating area as the landscaped area can no longer be used for seating.
- The landscaped area is 100 square feet.
- With respect to the significance between the 2000 and 2015 surveys, the Union Lane property line in the 2000 Survey (Exhibit A-20) shows the dashed line to the center of Union Lane.
- The photos in Exhibit A-19 were taken when Waypoint was doing the dredging permit. These photos show what was there when Waypoint purchased the property.

On August 8, 2017, the Hearing was opened for public questions to Mr. Lurie. Mr. Lurie provided the following testimony in response to public questions:

- Margaret Herman of 208 Homestead Road wanted to know about the deliveries that are made, they are being loaded in the front of the building as they can't get to the back. Mr. Lurie said she would have to ask Mr. Grafas about this; Mrs. Herman said sometimes there are two or three trucks there at one time. Mr. Condon explained that this was not of part of Mr. Lurie's testimony and maybe the Planner can answer this.
- Mr. Stenson asked about the seating plan and Mr. Lurie said he did a lot of research on this and came up with this drawing of the seating plan for Union Landing and Waypoint.

On August 8, 2017, Richard Kenderian, P.E., P.P. ("Mr. Kenderian"), was sworn in, and the Board accepted Mr. Kenderian as an expert witness. Mr. Kenderian provided the following testimony:

- The Waypoint Property is an irregularly shaped site and is 1.72 acres with a 2 ½ story structure and a 2-story commercial structure with marine activities and storage as well as extra bathrooms.
- There are 42 parking spaces with two handicapped spaces. The marina contains 23 boat slips with two additional slips on the side; the restaurant use is the same as Union Landing was.
- The Union Landing restaurant had 265 seats and Waypoint has 209 seats. Waypoint's current owner also owns Hoffman's Marina next door; all of this is in the C-2 Zone.
- The permitted uses in this zone are marine uses, some retail shops as well as restaurants.
- The Application is for a multi-use marine complex and the restaurant promotes the marina use for both residents and visitors and may be the only restaurant in Brielle that offers dock and dine.
- He was familiar with Union Landing and felt the proposed use is compatible with the surrounding environment; Waypoint will have no significant effect on property values in the area. There were concerns

over the sound impacts and complaints were filed when the restaurant first opened but in no case did the sound exceed the Ordinance, however, it was recognized as a nuisance and addressed with sound walls and sound control.

- Waypoint did invite the neighbors to discuss these issues and two people came and a discussion was held with them.
- Union Landing did not provide good parking; that has been corrected and now they have full circulation with no dead ends, they now have a pedestrian drop-off as well as ADA access.
- Waypoint now has the availability of parking at Hoffman's next door and cars will be directed to park there.
- The marina uses the parking lot is during the day and after 4:00 PM the parking lot is open for Waypoint to use. This makes another 50 stalls available for parking.
- In regards to screening both the previous use and this use have the thick hedgerow along Green Avenue which blocks the visibility from the surrounding residences.
- Sound attenuation has been put in place and Mr. Kenderian was there on July 30 and walked around the site and could not hear the band when he was in the area from Green Avenue to the railroad tracks.
- The lighting is sufficient for pedestrians and has no glare.
- With respect to fire protection, there is a vast source of water from the Manasquan River with a standpipe there. There was a paved area that could not support a fire truck and on 2/25/16 Applicant received approval from the Fire Company for a striping plan.
- The Planning Board has to find that this site complies to the requirements of the C-2 Zone and he believes that it does as it meets two of the criteria: 1) the use is permitted in this zone and 2) restaurants are permitted, no drive-ins. Also, this has to be in conjunction with a marine facility.
- With respect to the boat slips in Hoffman's Marina, there are 84 slips in total which means 334 seats would be permitted and they have 209 seats so they meet the Ordinance requirement.
- The 2006 Master Plan Update suggested that development densities are consistent with the pattern of development and this site meets that definition.
- The entire site was renovated with new plumbing and electricity which is more energy efficient and environmentally friendly; the deck is now above flood elevation.
- The old Union Landing decks had steps between the decks and this was a tripping hazard, the exiting is now safer and better identified. This area is manned at all times for assistance and to make sure no one leaves with a drink.
- The actual square footage of the current deck has not changed and this includes the planters that were just put in and easily removed, the gross floor area is measured between walls.
- The outside limits of the previous upper and lower patios is what Union Landing used, there is now an extra 2 square feet which is de minimis.
- According to the Master Plan, twenty percent of Brielle's tax base is Commercial Zone and in this area you have Hoffman's, Waypoint and marinas along with specialty retail establishments.
- There is a story that the Applicants did not get required permits and approvals. This is not true. There was no existing violation in 2014 and the DEP gave exemptions for permits, including the deck, they said it did not need their approval.
- A deck plan and canopy plan was done in 2015 and a permit was issued, the difference was the front stairs which are now further back from the bulkhead. Then a CO was issued and a side patio area, where the koi pond was, had tables and chairs put in and they will be removed as per the Applicant, to comply with the Code.
- Waypoint has put in an audio system with two speakers that it can control.
- The uses here are permitted but they cannot meet all the requirements because this is a pre-existing use.
- Case law gives approval for a Use Variance for a Conditional Use, the applicant's inability to comply need not affect the site for Conditional Use, the use should be relevant to the nature of the zone and the applicant must show that the site will accommodate the proper use.
- Mr. Grafas did his due diligence and has the paperwork to prove this, he did all this in good faith; the site is now more code compliant and meets the purpose and intent of the C-2 Zone.
- The deck is safer, it is a deck that is a single level and is above the flood plain, there is better drainage and there are less combustible materials and better exits.
- Waypoint has removed the oil tanks and there is a better pattern and circulation as well as an improvement to the off-street parking issue.
- Waypoint employs about 110 people, many do not drive, they ride bikes or live nearby.
- Patrons use either Uber or taxis, there are not as many cars as in the past.
- This site comports to the Master Plan and there is no expansion of use, the passive seating area where the koi pond was will be put back in.
- The Conditional Use is a permitted use and this meets the intent of the Zone; whether it be 2 feet or 100 feet difference in the deck it there is no impact on the Master Plan or Zoning Ordinance and the improvements made are consistent with the permits given.
- With respect to the lot size, it is 1.72 acres including the marina as well as riparian area and upland. This is different from the 2 acres that it is required to be but this difference is de minimis and is pre-existing.
- With respect to the patio area, Waypoint applied for and obtained a permit.
- With respect to the setbacks, this is an open structure and the 4.94 foot setback on one side where 10 feet

is required is due to a column.

- As far as Floor Area Ratio there is no change from Union Landing.

On August 8, 2017, Mr. Kenderian provided the following testimony in response to Mr. Collins' cross-examination:

- For a Multi-Use Marina, Waypoint needs a D3 Variance for the deviation from the Floor Area Ratio.
- For a Multi-Use Marina, Waypoint needs a C2 Variance for deviations from the front yard setback, side yard setback, the loading zone, loading spaces, screening requirements, signage, curb cuts, parking spaces, driveway width, landscape, and patio canopy setback.
- With respect to the rear setback this is a pre-existing condition.
- With respect to the height the deck before it was redone, it was at grade, the deck is now higher. The height had a mass effect on the structure.
- With respect to parking at Hoffman's, this does ameliorate the parking issues. Between 50 and 90 spaces will be provided by Hoffman's Marina.
- With respect to parking at Hoffman's, this does not require a cross-access easement, but it can be included in the Resolution.
- With respect to valet parking, it will be offered.
- With respect to seating numbers, Union Landing had 265 and Waypoint has 209, Waypoint did a history study on Union Landing and found 265 seats, 209 is the seating arrangement today at Waypoint, not including the side patio.

On August 8, 2017, Mr. Kenderian provided the following additional testimony in response to Mr. Middleton's cross-examination:

- With respect to sound Mr. Kenderian's site visit on 7/30/17, he had a sound meter but did not record the sound. There are two speakers. Mr. Middleton said the sound engineer said 57-58 decibels causes impact to the neighbors and Mr. Kenderian did not recall.
- With respect to parking at Hoffman's, Waypoint can use 50 to 90 spaces there based on a personal observation, it is a gravel parking lot and is not delineated.
- There are no concerns about the fact that boats are in the Hoffman's parking lot because there is no boat work done in the evening.

On August 8, 2017, Mr. Kenderian provided the following additional testimony in response to the Planning Board's questions:

- Mr. Lapham asked if the parking of 42 spaces with two handicapped is appropriate here and Mr. Hilla answered there is one handicapped space for every 25 parking spaces.
- Mr. Lapham asked about the noise issue and Mr. Kenderian said he had studied this but was not a noise expert.
- Mr. Lapham asked about emergency vehicles and Mr. Kenderian said that during Union Landing, there was continuous pavement and he has seen trucks park at the end of Union Avenue, in looking at heavy vehicles he would have a concern and does not know if this would be an issue with a fire truck, but they do not have to go down there and there is now a walkway there with no vehicle use.
- Ms. Montalto asked when the meeting he spoke about was and Mr. Kenderian said it was about a year ago.
- Ms. Montalto asked if this was after Waypoint received complaints. Mr. Kenderian said yes, they sent letters to the neighbors and invited them and offered food. They had two people show up and the noise and parking issues were addressed.
- Ms. Montalto asked about the traffic circulation in front. Mr. Kenderian said this is now highly desirable due to the better traffic circulation. There is a way in and out the Union Lane side and one way out on Green Avenue, it will be improved.
- Mr. Stenson asked about the measurements of the planters and Mr. Kenderian said they were not permanent, he guessed less than 40 square feet.
- Mr. Stenson asked about the sound wall and Mr. Kenderian said it is totally around where the band sits and goes to the top of the canopy; the speakers point to towards the bar.
- Mr. Bonacci asked for confirmation of the deck size numbers in the notice and on square footage and was told 1,550 square feet originally, 1,570 square feet constructed. The deck was 1,490 and now is 1,492 square feet and is five feet above grade.
- Mr. Bonacci asked if this was better and was told yes. Mr. Bonacci asked if the music stops at 10:00 PM and the answer was yes.
- Mr. Bonacci asked if there is a traffic problem and Mr. Kenderian said it has always been a problem but it is now safer. The site is better now and there is less parking on the side streets, they have a parking attendant and that is functioning fine.
- Mr. Maclearie asked why they are not just combining both Hoffman's lot and Waypoint's lot. Mr. Kenderian felt this was subjective as it is the same owner and the Board should consider this is the same owner; there is a walkway and they are connected but they are two properties, it is owned by one owner but is two sites and he agreed it acts like one.
- Mr. Maclearie asked why not make it one and Mr. Jackson said they cannot be combined due to financing, if

Hoffman's wanted to put a restaurant on their site they would need approval. There will be an easement for parking that will run with the land and he did agree the lots are entangled, boaters come in to use Waypoint and Waypoint uses Hoffman's lot.

- Mr. Sarnasi asked why there are less seats for Waypoint and Mr. Kenderian said the parking will drive this factor, it is a matter of seating and size of tables. Mr. Jackson referred to Exhibit O-7 which shows the layout. Mr. Hilla asked what basis does Mr. Kenderian have to not include the setback for the stairs and he said if there is a setback on a home it usually does not affect stairs but Mr. Hilla said Brielle's Ordinance does have this requirement. Mr. Kenderian said they need a C2 variance. Mr. Condon questioned Mr. Kenderian's statement that he did not think a valet was necessary and Mr. Kenderian said there is no problem now with no valet. Mr. Condon said this is a gravel lot and not much lighting, he thought they may be open to liabilities. Mr. Jackson said that Mr. Grafas had purchased a golf cart to direct people to park and drive them to and from their car. They agree there is a side entrance but it's just for employees only and everyone else will use the sidewalk or boardwalks.

- Mr. Condon asked if a permit was required for the sound wall and Mr. Kenderian said there were walls before so he couldn't answer that. Mr. Jackson said they do have permits.

- Mr. Condon asked if the canopy is a permanent structure and Mr. Jackson felt it was but the DEP saw it as a temporary structure. Mr. Condon asked about the number of boat slips at Hoffman's. Mr. Kenderian said that the 84 slip number includes both properties, there are 56 at Hoffman's and that does not include dry storage. On August 15, 2017, Mr. Kenderian provided the following additional testimony during a re-direct examination by Mr. Jackson:

- Mr. Jackson went back to Mr. Hilla's letter and referred to seating minimum requirement of one docking berth per four seats. Mr. Kenderian said the numbers have changed and they do not meet the standard and need relief from this. Mr. Jackson asked how they meet the spirit of this and Mr. Kenderian said the use is pre-existing, the Ordinance was written around that use and is part of the commercial uses in Brielle and generates revenue. Hoffman's is owned by the same owner so the intent of the Ordinance is met if using those boat slips. Mr. Jackson asked if it is appropriate to count the number of berths/seats at Hoffman's and Mr. Kenderian said that is up to the Board. Mr. Jackson asked what is the reason for the boat slip ratio and Mr. Kenderian said this is for fishing and marina use, this is one of the major industries in Brielle.

- With respect to minimum lot size requirement, the property has .28 acres less, the total property is 1.72 acres and this includes the riparian rights. It is appropriate to count Riparian rights and this is a pre-existing condition.

- The boat slips have no effect on the Master Plan and the FAR does not apply here, it was created to protect overuse of a lot.

- With respect to parking requirements they are hard and fast rules but Waypoint is allowed to use the adjoining lots, that is in the Ordinance and sufficient spaces are available and within walking distance and they have different hours of use. Using Hoffman's lot will ameliorate the parking deficiency.

- With respect to the C variances required, Applicants need both C-1 and C-2 variances as well as the D-3 variance. This property is in the C-2 Zone and the use is permitted here, it is a waterfront property.

- The Master Plan supports the amelioration of the conditions. It is not detailed in the Master Plan but says it this area serves water and boating areas and is important to the town and it encourages revitalization.

- The approval of this application would revitalize this area. It is important for the economy of Brielle and Hoffman's. This is now one of the premier boating locations in New Jersey. It is an exceptional property to provide the boating industry and there are no negatives to the D-3 variance.

- As far as the C variances, the C-1, as defined in the MLUL, deals with the property itself and its shape; the property here is extremely narrow and irregular. It would be very difficult to develop today.

- This is a corner lot so it has two frontages and almost half of the property is water. The C-1 speaks of practical differences and hardship, the Applicants purchased the property, got permits and a CO.

- In addressing the C-2 variances, under the MLUL, the question is if the Ordinances and Master Plan are advanced and whether the benefits outweigh the detriments. This is something the Board can use to grant relief. It also addresses public health and safety. Here the deck is safer, ingress and egress are better, not as many combustible materials, the deck is out of the flood zone and enables patrons to go for a dinner on the waterfront. As far as safety from fire, flood, and the like, this is above flood elevation and is constructed with fire retardant materials. This is open space, it provides general recreation for the public and boating. This is a place to go to relax, enjoy a waterfront view and to be able to dock and dine, it promotes a desirable visual environment.

- As far as the bulk variances, Applicants need them for the boat slips, Applicants have less than two acres of land, need a parking variance (but they are using Hoffman's which gives them at least 50 more spaces), the intent of the Zoning Ordinance is met; the size of the Waypoint property creates a hardship for parking as it can't be expanded.

- With respect to the outdoor band complying with the Ordinance, there is no problem here. Mr. Collins had asked about a dance floor, there is no dance floor but people dance, the bands have not been allowed to use their own amplifiers, numerous protections have been put into effect.

On August 15, 2017, Mr. Kenderian provided the following testimony in response to Mr. Collins' re-cross examination:

- With respect to the D-3 Variance, five affirmative votes are needed for approval for a conditional use

permit.

- Mr. Kenderian confirmed that he had testified as to the D-3 variance and addressed the burden of proof for that variance.
- Mr. Collins asked if Mr. Kenderian understood how the Master Plan is written and Mr. Collins said he wants to make sure Mr. Kenderian understands the Ordinances of Brielle and that they are consistent with the Master Plan. Mr. Kenderian said he did not review the Ordinance in comparing them to the Master Plan.
- The Master Plan is not specific on the C-2 Zone. The Applicants are showing how they are ameliorating the condition and they may get relief. The Ordinances are written with the Master Plan, this is why a variance can be granted.
- Mr. Collins addressed the Floor Area Ratio and Mr. Kenderian said that is not required. Mr. Collins said the dock area is not a restaurant and Mr. Jackson said it has already been addressed and the FAR variance is not needed. Mr. Collins said he wanted confirmation if this is a D-3 variance or not, the law has to be applied.
- Mr. Collins asked about other restaurants in the area, namely the Riverhouse, the Sand Bar and Shipwreck Grill and Mr. Kenderian was familiar with them.
- Mr. Collins asked if the Sand Bar is restricted by the Borough for music outside and Mr. Kenderian did not know. The same question was asked for the Shipwreck Grill and the same answer was given.
- Mr. Hilla asked Mr. Kenderian's opinion on a D3 Variance; if Mr. Grafas did not own Hoffman's, would it be a C-2 variance. Mr. Kenderian said he did not think about this as that is not the case. Mr. Hilla said his point is in ameliorating the issues, they are using a developed site on another property and Mr. Kenderian said the Ordinance allows this. Mr. Hilla agreed for parking purposes and commented the lot area definition states the area of land is determined by the boundary area. Mr. Jackson answered and said that is a legal question, he felt that does include the riparian area, the pilings are under the water here, there is land on the river bed, the four corners are between the metes and bounds; the riparian and uplands are included and this is a fee simple lot. Mr. Hilla stated there was a disagreement and discussion on outdoor music and asked Mr. Kenderian if he was familiar with the definition of a restaurant and the answer was yes. Mr. Hilla noted the definition speaks of eating, with food being consumed by people; he asked if the definition implies that outdoor amplified music would not be allowed.
- Mr. Jackson asked if there is an Ordinance on music and Mr. Hilla said back in 1979 this was approved as a restaurant and he felt the music may be questionable. Mr. Jackson said in 1995 and 1996 the decks were built and a liquor license was granted. Mr. Collins said the definition of a restaurant is binding and outside seating is not listed.

On August 15, 2017, Mr. Kenderian provided the following additional testimony in response to questions from the Planning Board:

- Mr. Maclearie asked how many acres are shown on the surveys and Mr. Kenderian said 1.72 acres.
- Mr. Maclearie asked about the parking at Hoffman's and how a spot is designated. Mr. Kenderian said he used 12-14 feet per stall; Mr. Maclearie said cars can park wide and Mr. Kenderian said he took that into consideration, 9 feet wide is regular and this is where he came up with 50 to 90 spaces.
- Mr. Maclearie asked about the fall and winter when boats are there and Mr. Kenderian said there is less parking then, the liquor license is not in effect and the need for parking is reduced.
- Mr. Maclearie asked if they had inquired from the previous owner, Larry Schmidt, about the seating. Mr. Kenderian said no, they did a study and used a conservative count, seats come out and go in; maybe they should have asked but they took the information from photos. Mr. Jackson referred to Exhibit O-7 which showed the seating. Mr. Condon said the previous testimony was given on seating, there is no scientific proof, there were three men that decided this. Mr. Kenderian agreed and said they did the best they could. Mr. Jackson said they had table and chairs around Union Landing and they can try to contact Mr. Schmidt.

On August 15, 2017, the hearing was opened to the public for questions to Mr. Kenderian, and he provided the following testimony:

- Margaret Herman, 206 Homestead Road, noted Mr. Kenderian said he was at Waypoint at 3:00 in the afternoon and the music was quiet and she wanted to know if he has been there in the evening, he said he had been there when it was so loud that the band sound was reverberating and he told the band and they said they appreciated knowing this. Mrs. Herman asked if he was there when Ted Nugent was there and the music was loud and Mr. Kenderian said he was not there then, he was there two years when the bands had their own sound system and that is not happening now. Mrs. Herman asked about sound coming from the water and Mr. Kenderian said he did not hear Waypoint, but sound travels over water and he has heard music from the Point Pleasant Beach side. Mrs. Herman asked him if he would come and sit on her porch and Mr. Kenderian said no; Mrs. Herman said she has the windows closed, the air conditioner on along with the TV and she can still hear the music.
- Richard Holmquist, 504 Green Avenue, asked if Mr. Kenderian thought he knew as much about the sounds coming from Waypoint as the neighbors who live here. Mr. Kenderian said he measured the sounds and has been around the neighborhood, he suggested improvements, and they were made. Mr. Holmquist asked if he knows the sounds as well as they do and Mr. Kenderian said he did not know Mr. Holmquist's sensitivity as to noise. Mr. Holmquist said he would take that as a "no."
- Charlotte Madison, 208 Homestead Road, asked if a variance is needed to build a drop-off area. Mr.

Kenderian said there is a circle that is shown and is part of the site plan application. Ms. Madison asked about deliveries being made off-hours, there was an 18-wheeler delivery on a Saturday and blocked the fire lanes. Mr. Kenderian had no comment for this. She asked about a parking count and Mr. Kenderian said he did his own. Ms. Madison asked if she could submit photos and Mr. Clark told her at the time of public comment at the end of all the hearings she could do this.

On August 29, 2017, John Rea, Traffic Engineer Specialist, of McDonough & Rea, Manasquan, ("Mr. Rea"), was sworn in, and the Board accepted Mr. Rea as an expert in traffic engineering. Mr. Rea provided the following testimony:

- He has been to the new site four separate times this summer, three times in July and one time in August, he walked around and studied the area with a focus on looking at Hoffman's to see if it gives adequate parking;
- The existing driveway that exits to Green Avenue will be an exit driveway, it is hard to see cars coming from the left so this will be safer; there will be a two-way driveway on Union Lane and there are 42 spaces in this lot with better circulation. It is set up properly and the drop-off area is right by the front door, if passengers are dropped off, then it is an easy way to the Hoffman's lot. If people know they are going to park in Hoffman's they will drop the passengers off first. Everything is designed for traffic principles and meets traffic engineering standards.
- Part of the Hoffman's lot is gravel and part is paved.
- Hoffman's lot was available when it was then Union Landing Restaurant, the parking was not signed or known, they now want to make it known and that it operates the right way with signage and lighting. He did go into the Hoffman's lot and found 35 to 70 vehicles in the lot on the days he was there and stated this shows it is being used by other people along with the people using the boat slips, but he admitted he did not know where people were going, and that they could be walking to other places.
- There could be 137 spaces if it were striped and there was no boat yard. There is an area for boat storage so 15 spaces have to be eliminated which takes it down to 122 spaces and they would lose one more in front of the entrance, so there could be 121 spaces if it was all dedicated to parking. Waypoint requires 91 spaces and there are 42 in their lot so they only need 50 more from Hoffman's.
- When Waypoint is at its maximum, on weekends, the other facilities are not being used, so there is boat use parking during the day and restaurant use during the evening.
- With respect to the Ordinance permitting the Planning Board to approve parking for off-hours use, Mr. Rea agreed that there are different uses for different times of day.
- Mr. Rea said he saw the Waypoint lot full with cars parked on Green Avenue, Homestead Road and Leslie Avenue as well as about 25-30 bikes at the Waypoint bike rack; the Hoffman's lot had 35 to 70 cars depending on the times he visited.
- There is enough parking at Hoffman's to satisfy the demand for Waypoint. With respect to Mr. Kenderian's testimony, 50 to 90 spaces was a conservative figure.
- Mr. Lurie's plan is done very well and 90-100 cars could easily be parked on the Hoffman's lot, the parking is adequate.
- There will always be boat owners at Hoffman's but not at night.
- With respect to Mr. Hilla's letter about lighting, this can be achieved. There is a flood light on one of the poles that faces the Marina and this needs to be upgraded; there is another pole at the east end of the driveway and another flood light can go there.
- With respect to signage, there should be signs directing the traffic. There is a walkway but it needs to be well lit and maybe portable signs can be put in directing people to that area, this is the way he would handle it.
- Belmar Marina uses a gravel lot, it is chock full and seems to be working appropriately; they have employees out there and Waypoint will have this as well.
- With respect to gravel lots being common, it is in this area, gravel seems to be better for runoff. Exhibit A-24 was Clark's Landing which has a paved area for parking as well as a gravel lot used for parking in the summer and boat storage in the winter. Exhibit A-25 was Shipwreck Grill in Brielle which also has a stone and gravel lot. Mr. Lapham asked about the Manasquan River Yacht Club and was told people park on the grass there, that was noted in Exhibit A-26. Exhibit A-27 was the Bay Head Yacht Club which has a gravel lot and Exhibit A-28 was Martell's which also has a gravel lot. Exhibit A-29 was River Rock across the Route 70 bridge which has a gravel lot. Mr. Rea said that as long as there is lighting and signage it is okay and, as far as Hoffman's, the NJDEP says 0.6 parking spaces for Marina use and Brielle says one space for Marina Use, most towns go in line with the State. The 0.6 parking spaces is the standard used by the DEP in their applications.
- Mr. Jackson asked if Mr. Rea thought less people are driving these days to go to a restaurant and Mr. Rea said he saw a lot of bikes there, people today use taxis or Uber, they want to go and have a drink and not drive. Mr. Rea felt this was a good plan for parking with proper circulation, it just needs better lighting and signage; people will still use the street parking as it is legal and convenient, the town can restrict the parking here if they want to. Mr. Jackson commented about the valet service and that a golf cart will be used to have people follow to a parking spot and they can be driven back there again to get their car. Mr. Rea did not feel this is necessary but will be good.

On August 29, 2017, Mr. Rea provided the following additional testimony in response to Mr. Middleton's cross-examination:

- Mr. Middleton referred to Mr. Hilla's report of 10/4/16 indicating that 131 spaces are needed, Mr. Rea said he testified on the other uses for Hoffman's and he did not know how Mr. Hilla got 131.
  - Mr. Jackson offered the testimony was for off-peak hours and Mr. Rea said 91 for off-peak, the actual number may be between 91 and 131, he felt more like 91; he did not consider boat parking and boat works.
  - Mr. Rea visited Waypoint on three dates in July: Friday July 14 from 8:00 – 8:30 PM; Friday July 21 from 8:00- 8:30; Saturday July 22, from 5:00 - 5:30 and 7:00-7:30. Mr. Rea said he did not count the cars July 14. However, on July 21 and 22, there were 65 cars in the Hoffman's lot. On a night that it began to rain, the count dropped down to 35. He also visited on August 26 between 7:30 – 8:00 PM and there were 50 cars.
  - With respect to lighting, Rea went over his testimony regarding the flood lights. Mr. Rea said the Applicants will do better lighting and will comply with the Ordinance.
  - Mr. Middleton asked if it were paved would it be safer and Mr. Rea said yes but he did not advise paving or striping. Mr. Middleton asked if he were concerned about patrons getting back to their cars after drinking and Mr. Rea said there would be no problem with better lighting and he showed Mr. Middleton this area on the site plan.
  - Mr. Rea said there are ways to get to Waypoint, use the lane from Hoffman's, use the entrance on Green Avenue, use the walkway on the water as well.
  - Mr. Rea said the warehouse area is not an issue and he did not count the boat racks. He felt 0.6 parking spaces for marina use was appropriate and when he was there, no boat rack activity was happening.
  - Mr. Middleton asked about the 1978 Resolution and the limited seating and Mr. Rea said he did not read it, but it is not necessary to reduce seating, years back it could have been more difficult for Union Landing.
- On August 29, 2017, Mr. Rea provided the following additional testimony in response to the Planning Board's questions:

- Mr. Bonacci asked if he had taken account of the number of cars at Hoffman's during the day and Mr. Rea answered no but there were only 11 cars there today but the weather was bad.
- Ms. Montalto brought up a parking problem from a few years ago on Green Avenue, as she lives in the area and received two letters regarding restricted parking and did Mr. Rea think this might be safer. Mr. Hilla said this was due to the ingress off Green Avenue to Waypoint, but now the traffic pattern is changed so this is a moot point.
- Mr. Condon asked about the parking in Belmar Marina and if that working out and Mr. Rea answered, yes, it seems to be.
- Mr. Condon asked Mr. Rea if he was aware of meetings on this issue in Belmar and Mr. Rea was, as a result there is a sign that directs boaters to the right and other parking to the left, he admitted the parking is difficult at the Marina. Mr. Jackson said the only reason they showed the Belmar Marina was to show the gravel lot. He asked about River Rock and the percentage of use of that lot; Mr. Rea did not know about the percentage and stated it is not gravel, it is compacted material, not necessarily safer in wet weather.
- Mr. Condon asked if they do offer valet parking and Mr. Rea did not know, but this lot is well lit and signed so that can work either way.
- Mr. Condon asked if the walkway to Waypoint is a continuous level and Mr. Rea said there may be one step and it is narrow, maybe five feet wide; Mr. Lapham felt it was more like three feet, he had used it, Mr. Jackson said they can adjust this.
- Mr. Lapham asked if the other establishments mentioned are all a single entity or are they different. Mr. Rea said in Belmar there are two owners, he thought Clark's may be one. Mr. Jackson commented that Clark's has multiple uses on one lot. Martell's only has the restaurant, River Rock is one entity but has three uses. Mr. Condon felt this is a unique situation here at Waypoint and there is more than one restaurant in the area. Mr. Jackson agreed and said this is what the Marine Commercial Zone encourages. Mr. Jackson said he used these places to show gravel lots needed for boats, there can't be a boat yard on tar and the Ordinance calls for multiple uses. Mr. Lapham saw these as two different businesses and, if one sold, it could be a problem but Mr. Jackson said they will record a document so this has cross parking and if this is changed it would require coming back before this Board, this would be a deed restriction.
- Mr. Condon asked if Mr. Jackson was familiar with the curb cut that has been eliminated, there was another curb cut at Hoffman's and now has arborvitae planted there; Mr. Jackson said that curb cut has been shut down. Mr. Hilla did not know if there is a full site plan on this, a site plan was done on the pool at Hoffman's. Mr. Jackson stipulated that the trees will stay. Mr. Condon wanted to get this done and not use the curb cut.
- Mr. Hilla asked how do they ensure orderly parking on a sea of gravel and Mr. Rea said they have an employee there to direct people, this is what they do in Belmar, they get a pattern going for maximum efficiency. On Green Avenue the site has signs already and there is no problem there. Mr. Jackson said they have put curb stops down, along with signs in the middle of the curb stops to park there and they also have cones; Mr. Hilla felt they were indicators that help. Mr. Maclearie said he has seen people park by the rope there, Mr. Jackson showed him the plan that has the curb stops in place.
- Mr. Hilla asked how they were going to do the lighting at Hoffman's without creating a nuisance and Mr. Rea said there is a floodlight on a pole now by the Marina and they can use more poles for this, he is not a lighting expert but felt Mr. Hilla and Mr. Lurie can work this out; Mr. Jackson agreed and felt they can enhance the area without glare to the area homes. Mr. Hilla again said you don't want a nuisance light and Mr. Rea

again said they can come up with something that properly lights the lot.

- Mr. Hilla asked how ADA access would work as Waypoint does achieve this but Hoffman's does not. Mr. Hilla stated then this Board is being asked to approve something that is less than what the Ordinance requires. Mr. Rea said he is not an expert on this either but Mr. Lurie can handle this. He felt that handicapped patrons will be dropped off in front of the restaurant. Mr. Hilla noted there was a discussion on this being dirt or gravel, will it remain as is, or can more can be done. Mr. Rea said this was not his expertise and Mr. Lurie stated two inches of top grade gravel which will be raked and maintained. Mr. Hilla said that not all marinas have all gravel, some are paved, can some of it nearest to the restaurant be paved. Mr. Jackson said they do not want to stop the Marina from working and this would be putting in impervious coverage, they do not want to over-improve it and disrupt the character of Hoffman's. Mr. Hilla said he has had boats on both and felt something maybe can be done, maybe something for an ADA area.

- Mr. Middleton asked Mr. Rea if he at any point went to the restaurant and Mr. Rea said he was there but it was crowded and he did not go in. Mr. Middleton asked if other people would park at Hoffman's lot and go to other places and Mr. Rea said yes, he did not know where people went after they parked. Mr. Middleton asked if the Hoffman's lot is used by the Sand Bar and River House, whether it could impact this. Mr. Rea said it could, but there was adequate parking plus more the night he was there. He said that there could be 121 potential new spaces if it is built to the maximum efficiency, he felt it could be 100 if they take out spaces for boat storage, this is an estimate only. Mr. Middleton asked if he did a count during the date and Mr. Rea said he did park in the lot one day at lunch but he did not perform a count.

On August 29, 2017, the hearing was opened to the public for questions to Mr. Rea. Mr. Rea provided the following additional testimony in response to the questions:

- Margaret Herman, 208 Homestead Road said they spoke of including the parking spaces from Hoffman's but that has not yet been approved. Mr. Rea said his understanding was that Hoffman's lot has been used for Union Landing, it has always been there for use, they want to just make it safer and better. Mrs. Herman said it hasn't been approved yet and Mr. Rea agreed and said they are asking for this. He did not know the history of the lot but if the property owner owns two adjoining properties he can do this.
- Mrs. Herman asked why are people parking there and Mr. Jackson said it is approved parking, Mrs. Herman did not think it was approved for restaurant use. She asked about the opening into Hoffman's and was there only one, the answer was yes; she asked if ingress and egress is available on Green Avenue and Mr. Rea said there is an ingress and egress on Union Lane and Green Avenue will be egress on the Waypoint Property. Mrs. Herman thought he spoke of an in and out and Mr. Rea said this is on Union Lane, Green Avenue out of Waypoint will be one way.
- Richard Holmquist, 504 Green Avenue, asked about the traffic flow and didn't think the ingress and egress from Union Lane will work as there is confusion as to who has the right of way, it is a slow process and it's not going to get any faster; he felt this could be a problem. Mr. Rea disagreed and thought it is safer. Mr. Holmquist still did not think this is a good solution, Union Lane is a small street. Mr. Rea felt Union Lane can handle this, there are maybe 20 vehicles an hour, maybe up to three per minute. Mr. Holmquist said the Sand Bar patrons come out this way also and Mr. Condon said they have more exists at the Sand Bar but Mr. Holmquist said they use the Union Lane exit. Mr. Condon explained the Board is going to get a report from the Police Department.

On September 12, 2017, Larry Grafas ("Mr. Grafas"), was sworn in. Mr. Grafas provided the following testimony:

- Mr. Grafas owns Hoffman's Marina, Waypoint, and the River Café on Higgins Avenue. Since he purchased Waypoint he has tried to improve it, it has been there almost a century.
- There was space for 29 boats in 2011 with transient boats. Now there are over 500 transient boats here a year and many of them support the businesses.
- The former owners did not allow people to walk the waterfront and Waypoint does allow people to walk along the marina and docks.
- With respect to the removal of the koi pond, oil tanks were discovered in that location and they were remediated by taking out the tanks and installing concrete over the road. With respect to Section 5 of A-31 about the widening of Union Lane, Waypoint did not do that, a road contractor did that through the town. However, they have put in 60 trees on Green Avenue to block the view of boats, all done with the Brielle Shade Tree Commission and to help with the noise.
- Waypoint submitted paperwork to the DEP, the Army Corp, and the Borough of Brielle and they built what they had and opened in May of 2015. Most bands that came in played when it was Union Landing; they went to the Zoning Officer with a set of drawings and submitted prior to the purchase of the property, they had all permits, he believed he was represented by Keith Henderson at that time. Union Landing had no sound walls or trees.
- With respect to a picture in Tab 7 in A-31, the sound wall that is skimmed with Masonite and it has made a big difference. This works, as well as landscaping, the bar has internal control and the sound will not go past level 5, it has a governor and only the Manager has control of it. Bands have to plug into their speakers that push the sound out and away from the building and it has been successful and is much quieter than it was in 2015. The bands stop at 10:00 pm, sometimes they stop at 8:00 pm.



- There is a concrete patio that people say is a dance floor. Union Landing was difficult to get around, Waypoint is now ADA compliant as shown in the photos. Many of the employees are students and some ride their bikes, some take taxis or Uber. They are not the only restaurant, there are three others in this area and people park in their lot and walk around to other places. He allows it as they want to support the businesses. Green Avenue is a main thoroughfare, the same cars park there every day and the neighbors can see this. With respect to the Hoffman's lot, there are no parking issues. The River Café on Higgins Avenue can use other lots and Du Amici can use their lot at night. He also said there are no issues with boaters at Hoffman's and there is no parking issue. The restaurant is busy from 11:00-noon and then from 3:00 on it gets busier, evenings and weekends are the busiest. The employees pick up debris and clean the street every day, they go right down Hoffman's lot.

On September 12, 2017, Mr. Grafas provided the following additional testimony in response to the Planning Board's questions:

- Mr. Maclearie asked about handicapped parking in the Hoffman's lot and Mr. Grafas said they added another handicapped spot at Waypoint and are ADA compliant. Mr. Maclearie did not think two handicapped spots was enough. Mr. Maclearie felt that perhaps some minor changes can be made to address this and Mr. Grafas said they will work with the Board engineer on this issue.

- Mr. Sarnasi asked for more information on the fuel tanks by the koi pond and Mr. Grafas said they saw two lines and found oil tanks against the koi pond. Mr. Sarnasi asked if there is a lighting plan for Hoffman's and Mr. Lurie spoke and said he will work that out with Mr. Hilla.

- Mr. Bonacci asked about the testimony that live music stops at 10:00 PM, and if there is recorded music after 10:00 PM. Mr. Jackson said there is background music, but no live music or DJ.

- Mr. Bonacci asked when this happens and was told it depends on the crowd, Mr. Grafas also said there is no sound volume on the TVs and it is not a sports bar. Mr. Condon asked if tournaments are held here and Mr. Grafas said yes, maybe a dozen a year. Mr. Condon asked about crowds at fishing tournaments and weigh-ins and Mr. Grafas said that happens at Hoffman's East, not at Hoffman's Marina.

- Mr. Condon asked if one golf cart going to be enough to take people to their cars at Hoffman's and Mr. Grafas felt it is but if they find they need another one they will get one. Mr. Condon asked about valet parking and Mr. Grafas said he does not like to have other people drive a car, that is just him. Mr. Hilla asked about the circulation of a golf cart and Mr. Grafas said they pull out of the lot and into the Marina, they are street legal.

- Mr. Grafas said he went to the railroad tracks and got a report that a train horn is 96 decibels, he has not walked on Ocean Avenue but has been down Leslie, he can sit at Hoffman's East and hear the Patio Bar at Wharfside in Point Pleasant.

On September 12, 2017, Mr. Grafas provided the following additional testimony in response to Mr. Collins' and Mr. Middleton's cross-examination:

- Mr. Collins asked Mr. Grafas if he agreed with the noise expert and Mr. Grafas said he did not remember everything that was said.

- Mr. Collins asked if he disagreed with any of the testimony given by the Sound Engineer and Mr. Grafas again said he did not remember it all.

- Mr. Collins asked if he disagreed with anything Mr. Kenderian said and, again, Mr. Grafas said he did not remember it all.

- Mr. Middleton asked Mr. Grafas if the Zoning permit was obtained before there was work on the koi pond and concrete installed. He noted that food is being served there and Mr. Grafas said no, only alcohol on occasion.

- Mr. Middleton said this area has tables, chairs and umbrellas, it is an area used by patrons. You are now requesting to use the koi pond area as it stands today and the answer was yes.

- Mr. Middleton says this changes the use from a passive sitting area. Permits were not obtained to use this area so why still use it today; Mr. Grafas said it is a place to wait for tables to open up.

- Mr. Condon did not believe they were using that area and Mr. Jackson said the application was amended to be able to use it for passive seating and drinks can be served while waiting for a table.

- Mr. Middleton asked if they got a permit for the sound system and Mr. Jackson said this does not require a zoning application but Mr. Middleton thought this is needed; Mr. Jackson stated the Zoning Officer did not tell him it is needed.

- Mr. Middleton asked Mr. Grafas how many speakers there are and the answer was six for the house system and two for the band.

- Mr. Middleton asked if a professional designed them and Mr. Grafas said yes.

- Mr. Middleton asked if, when the bands play, they hook into the Waypoint sound system and Mr. Grafas said yes.

- He asked if the live music comes out of the other six speakers and Mr. Grafas said no, they are not connected to the six speakers.

- Mr. Middleton asked if the sound is controlled by the bartenders and Mr. Grafas said the system has a governor and stays at 5. Mr. Middleton asked him if he is there to ensure the bands are hooking into the system in the last three months. Have bands always hooked in. Mr. Grafas said yes, he is there as much as he can be but admitted he is not there every time a band plays, but the Manager knows they have to hook

into the Waypoint sound system.

- He said he knows of an occasion when the band did not hook in but does not remember when.
- Mr. Middleton asked Mr. Grafas if he got zoning approval for the bar and Mr. Grafas said yes, he obtained a building permit.
- Mr. Middleton asked if he got a zoning permit and Mr. Grafas did not think so.
- Mr. Middleton asked if the canopy got a zoning permit and Mr. Grafas said it is retractable; Mr. Jackson said there are no zoning permits needed for the bar or canopy, a separate permit is not needed for a bar, this is deceptive questioning.
- Mr. Condon noted the bar is part of the total establishment. Mr. Middleton said the bar has radiant heat and that this is an expansion of the use. He asked if there are insulated panels that are put up around the steel canopy and Mr. Grafas said no. Mr. Middleton said that is what the Waypoint website says and Mr. Grafas said he did not do the website.

On October 10, 2017, Mr. Grafas provided the following additional testimony in response to Mr. Middleton's cross-examination:

- Mr. Middleton asked him about the 1979 Resolution for Union Landing about the hours of operation and seating and Mr. Grafas said he was familiar with this.
- Mr. Middleton showed Mr. Grafas the actual copy of the 1979 Resolution and asked Mr. Grafas if he recognized it, Mr. Grafas said no, he had not actually seen the written Resolution and heard about it a few months ago.
- Mr. Middleton asked if when Mr. Grafas negotiated the sale of the restaurant, he was notified of this Resolution and the answer was no.
- Mr. Middleton asked if the Resolution limits the seating to 72 people and there would be hours of operation from 4:00 pm to 10:00 pm and Mr. Grafas said yes.
- Mr. Middleton asked Mr. Grafas if he was familiar with a letter from Mr. Jackson of 7/21/17 amending the application, this was marked as Exhibit O-11, and he was. Mr. Middleton said the number of seats on Exhibit O-7 had 29 seats but the plan now has 36 seats and he wanted to know if they are asking for 29 seats or 36? Mr. Grafas explained that sometimes there is more seating and sometimes there is less seating and it happens all the time, it could be more or it could be less. Mr. Middleton said Exhibit O-7 shows different seating and seating under the canopy, Mr. Grafas said there is now seating out on the deck. Mr. Middleton said that Mr. Jackson's letter said a total seating for 84 outside and Mr. Grafas said there is less than 84 now, there are 84 seats total and there are no more seats under the canopy. Mr. Condon wanted to go by the letter which stated a grand total of 209 seats for the entire restaurant and Mr. Grafas agreed to that number.
- Mr. Middleton referenced Exhibit O-12, a notice for the 8/8/17 Planning Board meeting. Mr. Middleton said the notice is for 254 seats and questioned this. Mr. Jackson said he did not want the notice to be deficient. Mr. Condon asked Mr. Jackson, is it 209 seats or 254 seats. Mr. Jackson said that Mr. Middleton was reading a catch-all and the plan is what should be considered. Mr. Condon again asked about the total number of seats and Mr. Lurie spoke up and said it is 248, that is a hard number for both outside and indoor seating. Mr. Jackson said that Exhibit O-7 shows 248 seats and this does not include the passive seating area.
- The hours of operation are 11:00 am to 2:00 am. Mr. Jackson said the liquor license says that Waypoint can be open from 6:00 am to 2:00 am, but Waypoint is open from 11:00 am to 2:00 am. He also added he got the figure of 254 for seating from the dock to berth ratio and that is what was in the notice he prepared.

On November 16, 2017, Mr. Grafas provided the following additional testimony in response to on Mr. Middleton's cross-examination:

- Mr. Middleton asked if the tables and chairs on the outside deck will be able to be moved and the answer was yes. He wanted to know if they will be able to move tables and chairs away to make a larger area in the band area and Mr. Grafas said there are no chairs in the band area.
- Mr. Middleton pointed to the band area and asked about removing tables and chairs. Mr. Grafas said there is no need to and added this is not part of the approval being asked for.
- Mr. Middleton asked about the house music and Mr. Grafas said it is not on the deck but is under the canopy area. They do not play it every day but there is no particular schedule for this, it depends on the crowd and type of crowd.
- Mr. Middleton asked if it could be on until 10:00 PM and the answer was "could be".

On November 16, 2017, Mr. Jackson presented the following information to the Board:

- Mr. Jackson said that Applicants are seeking approval from the Zoning Officer's decision, it is asking for approval for a multi-use marina complex; it has docking facilities and a service establishment. He felt the Board should look at this application anew, they have presented their arguments for this use; he said that Mr. Hilla's report says they need a Use Variance but they are not asking for this, they are deficient in the docking condition which needs a D3 variance. The minimum lot size is two acres and they have a little less which means a D3 variance, the ratio is de minimis. The parking requirement is not met and the Board can grant this, they are not seeking a D1 variance, they need a D3 as they do not meet two out of four conditions.
- Under the Marine Commercial requirements, they can meet the standards in the Ordinance, they do offer off-street parking and he did not think they failed this with Hoffman's which the Board can approve, also if they use the Hoffman's boat slips they meet the boat slip ratio. As far as bulk variances, they need Site Plan

approval and this is wrapped into the D3 variance as well as the C1 and C2 variance criteria which the Board can grant. Mr. Jackson spoke of the bulk variances and started with parking; he felt this got a little off-track with the seating issue, they need 131 spaces and have 42 on site but then have the extra parking with the Hoffman's lot. They also require setbacks variances for the front, side and water's edge. As far as signage, they have a sign of 37.4 square feet existing and the requirement is 50 square feet. The parking and drive aisle is covered in Mr. Hilla's report and they need a variance for a loading dock, exterior requirements and landscaping. They do not need variances for the operations and layout except as it relates to the berthing format.

- Bands will be monitored and comply with all codes and noise regulations and Waypoint seeks permission to re-arrange tables and chairs as needed as well as cross-parking. Mr. Jackson mentioned the cross-easement, he said this is binding and etched in stone as much as can be, and he went over some of the details of the easement which will be part of the approval from the Board.

On November 16, 2017, Mr. Lurie provided the following additional testimony:

- Mr. Lurie indicated that he wanted to speak about the gravel lot and boatyard. He hoped to address the conditions for the Board. The Board does have the authority to impose conditions. In reference to Exhibit A-33, the revised seating arrangement resulted in 36 seats at the bar, 89 inside and 84 outside for a total of 209; the west side is a passive seating area. Compared to Union Landing, this is less seats. The passive seating area is not included in the count, people sit there waiting for seats at a table, this is similar to what took place at Union Landing. People will be able to bring a cocktail there, but there will be no eating.

- He went to a revised plan for Hoffman's originally dated 9/14/16 and revised 9/29/17, this was marked as Exhibit A-34. Mr. Lurie said there are items that came up after the traffic expert. Applicants have added two handicapped parking spots, there are 88 spots to the side of the marina building, they added lighting and box lights to illuminate the entrance; they also put in curb stops in the gravel lot and they have an easement that will be in place.

- The gravel will be inspected every year and after any heavy rainfall. Mr. Lurie said the lot was used for parking this summer and noted shared parking is being done up and down the coast.

- Mr. Sarnasi asked what would replace the concrete in the passive seating area if it were to be removed.. Mr. Lurie answered turf grass, not synthetic but real turf grass.

- Mr. Sarnasi asked if a wheelchair would fit between the width of the buildings coming in from the parking lot. Mr. Lurie said they tried to make this area as level as possible and he did not measure but the width for a wheelchair is 36-48 inches.

- Mr. Sarnasi said he has seen tape that pins into the gravel, it is a temporary tape and, at the end of the season, it can be removed. Mr. Jackson added at the Boardwalk they have painted lines and they can do that here, paint lines every summer but he did remind all they did put in curb stops and there are permanent signs. He felt this could be done on the stones. Mr. Stenson asked for confirmation that they can do this and Mr. Grafas said they already have signs and curb stops, but Mr. Jackson said again they could paint the lines in.

- Mr. Hilla asked if all the parking spaces were occupied, would cars back up to where people walk. Mr. Lurie offered to make a drive through area so one can turn around, they can provide a circulation area. Mr. Jackson said they had asked for a technical review from Mr. Hilla but he declined but they are still willing to do this. Mr. Hilla said he declined because he does not know if he can get to where this is a safe arrangement and he did want it to look like Mr. Lurie and himself worked it all out. Some of this he does not agree with and he didn't know if all he would like to see done can be done. Mr. Jackson said they have presented numerous examples of this type of lot and they gave exhibits on this.

- Mr. Condon asked if Shipwreck Grill met its parking requirement with their gravel lot. Mr. Hilla did not remember.

- Mr. Hilla asked Mr. Lurie what would be the capacity of the koi pond area compared to Union Landing. He felt that if people can stand in this area with drinks it may become a problem.

- Mr. Lurie said the whole area was used by Union Landing and he would have to go back and look. Exhibit O-7 showed benches along the east, north and south of the koi pond. Mr. Lurie said the area is bigger now without the koi pond but there was a lot of seating in Union as well; he would have to do some calculations. Mr. Condon said Union Landing did not allow alcohol here and this is now being expanded, one can go to the bar and get drinks and go back to this area. Mr. Jackson said this is regulated by Council and can be handled through the ABC license, they have done this for the last couple of years; he admitted the Planning Board can do this but they felt that the Governing Body should be handling it.

- Mr. Hilla addressed the screening on the gravel lot and he said he would not call it "screening". Mr. Lurie said what is existing is what is being shown but they can add to it, there are 40 cypresses existing along this way. Mr. Hilla said that buildings 1, 2 and 3 are being used as storage but building 2 was a retail establishment not long ago. Mr. Lurie said it is vacant now but Mr. Hilla asked if it goes back to retail, will this affect the parking? Mr. Jackson said that would require a site plan amendment and they would be back before the Planning Board. Mr. Hilla wanted to know how there can be boats in racks and parking there. Mr. Grafas said that boat owners park in this area, they leave their keys in case a car needs to be moved. Mr. Jackson said it is a managed boat yard and they have more parking here than what Union Landing had.

On November 28, 2017, Mr. Lurie provided the following additional testimony in response to Mr. Middleton's cross-examination:

- Mr. Middleton asked Mr. Lurie to bring out Exhibit A-34, the revised parking plan. Mr. Middleton said that on 8/17, Mr. Rea, the traffic expert said, there are 151 spaces required. Mr. Lurie found the plan Mr. Rea spoke of, Exhibit A-17, and showed they have 137 existing and 85 required spaces.
- Mr. Lurie said the warehouse area was not included in the 85 spaces. There was then a brief discussion on using the warehouse spaces and how clear the Ordinance is on this, Mr. Lurie did not feel it was clear. He also discussed "marina" and "marina facilities" and the standards that should be applied.
- Mr. Hilla felt this can be looked in different ways, one space per boat slip is the law but the other standard is one space for 100 feet of gross floor area.

On February 6, 2018, Mr. Lurie provided the following additional testimony under re-direct examination from Mr. Jackson:

- With reference to A-41, the Charles O'Malley survey was prepared in 2000 (the "2000 survey"), the outside area of the property is 3,784 square feet.
- The 2011 survey was prepared by Mr. Lurie of D.W. Smith for Mr. Grafas in preparation of purchasing the property. The 2011 survey shows the outside area of the property as 3,980 square feet.
- The 2015 site plan shows 4,076 square feet.
- The 2015 site plan creates a smaller deck, but with an addition of rear deck stairs, the square footage of the entire outdoor area increases.
- There is an error on the figure showing the 2011 survey with the 2015 site plan overlay in that the rear steps were not demarcated into the 2015 overlay.
- With respect to Exhibit O-29, he opines that it does not work from an engineering/design/surveying standpoint because there is no scaling and it is an estimation.

On February 6, 2018, Mr. Lurie provided the following additional testimony in response to cross-examination from Mr. Collins:

- Mr. Collins confirmed that the blue footprint on the bottom left of A-41 are the as-built conditions and the red footprint is from the 2000 survey. Mr. Collins also noted, and Mr. Lurie confirmed that he made an error on the figure of the 2011/2015 overlay.
- Mr. Collins asked if the new deck is set closer to the edge of the property than previously. Mr. Lurie stated yes in regard to the deck steps.
- The deck steps were supposed to be in a different location, but they had to be moved during the construction process because of a height differential.
- The calculations in A-42 include the rear deck steps, despite the error in the outline of the figure.

On February 6, 2018, the hearing was opened to the public for questions to Mr. Lurie and he provided the following additional testimony:

- Charlotte Madison, 206 Homestead Road, asked explained that the area from the deck steps to the water was a fire lane, she asks if two cars can be parked side by side in that area, she also asked what the previous setback dimensions were. Mr. Lurie said the setback dimension is 12.6 feet to the stairs. The previous setback was 16.1 feet.

#### TESTIMONY AND OTHER EVIDENCE PRESENTED ON BEHALF OF THE OBJECTORS

WHEREAS, the Board considered the following testimony presented at the hearings on behalf of the Objectors:

On July 11, 2017, Tim Middleton, Esq., on behalf of the Objector, Thomas Stuhmann, presented the following information:

- In 1978 there was a concern about traffic and hours of operation and it was settled by establishing hours of operation from 4:00 PM to 10:00 PM and Waypoint can submit an application to ask for relief from this.
- In 1978, the liquor license said if the hours change they need approval. Any approval comes from the Planning Board and not Council pursuant to case law.
- Waypoint should have filed an application for a Use Certificate which would give Waypoint knowledge on the history of Union Landing, this is done all the time.
- There are issues here, five issues from the Zoning Officer and this is the law of the case; the Zoning Officer gave approval of changing the deck from timber to asphalt, not a change of the deck area.

On November 28, 2017, Mr. Middleton on behalf of the Objector, Tom Stuhmann, presented David Gamble, a private investigator of DLG Investigators ("Mr. Gamble"), to provide testimony, Mr. Gamble was sworn in and provided the following testimony:

- Mr. Gamble had been hired to go to Waypoint and see if bands were using their amplifiers or Waypoint's.
- Mr. Gamble was there on three occasions and saw band speakers in use. The first time was 8/19/17 at 6:15 PM when Reverend Funk & The Groove were playing with mounted speakers. Mr. Gamble's ten photos from his site visits were collectively marked as 0-14 (13 pages), the first set was taken 8/19/17 and showed a tripod mounted speaker and speakers on the floor; the second set was two photos together showing two speakers and the third set was three pictures of speakers. Mr. Gamble said that when the band took a break canned music was played but not from these speakers. Going back to the photos, there were more pictures of speakers on both sides of the stage.
- Mr. Gamble then went back to Waypoint on 8/25/17 at 6:22 PM, the band playing was called Enjoy, and he

presented more of Exhibit O-14, 2 photos of a pipe speaker with a box on the bottom, music comes out of the top of the pipe from the speaker and Mr. Gamble testified that this is where he heard the music from. Mr. Gamble had more pictures of the speakers and wiring for them. On 9/8/17, at 6:00 PM the band Me and Bobby D. played with two tripod speakers that had sound coming out from them, he had several photos of these. Mr. Gamble again said there was canned music coming out from the speakers on the wall, not on the band speakers, when the band took a break.

On November 28, 2017, Mr. Gamble provided the following additional testimony in response to Mr. Jackson's cross-examination:

- Mr. Gamble was retained by Mr. Middleton's clients; Mr. Jackson asked who these clients were and Mr. Gamble said he did not know.
- Mr. Jackson asked if Mr. Gamble knew of any condition that required the bands to play through house speakers and Mr. Gamble was not aware of any.
- Mr. Jackson asked him if he was aware the Police were called on 8/19/17 and Mr. Gamble said no.
- Mr. Jackson said the Police felt the noise complaint came from a nearby party and not Waypoint, he asked Mr. Gamble if he could confirm that the band played through the house speakers as well and Mr. Gamble did not know.
- Mr. Jackson asked him how many years he was with the Prosecutor's office and was told 22 years.
- Mr. Sarnasi asked if the speakers were loud when Mr. Gamble walked by and the answer was "average".
- Mr. Bonacci asked how long he was there and Mr. Gamble said he was there from 45 minutes to an hour each night. Mr. Bonacci noted he was not there after 9:00 PM.

On November 28, 2017, Objector Tom Stuhmann, ("Mr. Stuhmann"), was sworn in and provided the following testimony on direct examination by Mr. Middleton:

- He resides at 106 Ocean Avenue and has lived there for 18 years on a one-way street. He is a retired Engineer from the Army Research and Development Dept.
- In relation to Waypoint, he is 650 feet northeast, he can see Hoffman's and can cut through Riverhoint, across the railroad tracks to get to Hoffman's.
- He had objections to the amplified music, yelling and singing, this started in 2015 and got very loud. Mr. Stuhmann said he could feel the bass sounds all over his home, even with air conditioning on, it could be felt; on weekends he would just leave and during the week there was live music every day but Monday – the weekends were crazy.
- Mr. Stuhmann said 2016 started out quiet and the music stopped at 10:00 PM In early July, you could start to hear it and as the weeks went on you could hear the words to the songs; there was no live music on the weekdays and it was better than 2015. In August of 2016 it got a little worse and one night in September, on 9/4/16, it was as loud as in 2015.
- Mr. Stuhmann felt 2017 was louder than 2016 and did not start out quiet, some days were quiet and some days were loud. If he was on his front lawn it was loud, mostly on the weekends. He was also disturbed on 7/27/17 by the house music, he got out of bed it was so loud and it was coming from Waypoint; he went there and it was still loud, he was at the dead end of Union Lane and disco music was coming out of the ceiling speaker.
- Mr. Middleton asked about music coming from the Riverhouse which is about 350 feet from Mr. Stuhmann home, closer than Waypoint. Mr. Stuhmann said Riverhouse has outdoor music and it is no problem and there is no impact from them; there are three houses between him and Riverhouse.
- Mr. Stuhmann said he has never heard music from Wharfside, on Crescent Drive one can hear it. He was also familiar with Union Landing and went there, as well as all the restaurants in this area.
- Mr. Stuhmann presented a notebook with photos of Waypoint and this was marked as Exhibit O-15. Some of the photos had scenes from Waypoint dock on October 2015, with comments.
- He had more pictures of Union Landing and Mr. Jackson asked the dates of the pictures. Mr. Stuhmann said the website Marina.com is where he obtained the pictures from and dates can be obtained there, he said these dates were from 2005 and 2006.
- More pictures were shown, lower seating area, along with a picture of the Union Landing 15 seat bar and the Waypoint 40 seat bar. Other pictures were shown of the bar, canopy area and deck of Waypoint, the bar is 900 square feet the awning is bigger than what Union Landing had.
- The next photo was the Waypoint increase in the waiting area, as well as the original Union Landing deck and a 2017 revised site plan, he said these were part of an exhibit and show 35% more coverage. Mr. Stuhmann said there are two site plans and he put them side by side, this is from Exhibit O-7.
- Mr. Stuhmann addressed the seating and showed a picture of a seating area for Union Landing, 1,100 square feet and he again said Waypoint has 35% more here. Waypoint has added 380 square feet which is an increase of 35% and this has been testified to. He showed some more pictures of different areas, along with one side by side of Union Landing and Waypoint. Mr. Jackson asked him if they were the same scale and Mr. Condon had the same question, it looks like the picture on the right, of Waypoint, is done on a larger scale. Mr. Stuhmann did admit they were taken at different angles and is not scaled exactly. Mr. Condon said in one picture the canopy stops in the middle and in the other it goes straight across, it can't be seen which is more.
- Mr. Jackson still had an objection to not dating the pictures and not having them to scale. He had Exhibit A-19 and said there was another canopy that covered the whole area. Mr. Condon said the entrance to Union

Landing was not covered and he wanted to see where it was covered; there were two sets of stairs to the lower level and two canopies. He agreed that the pictures submitted by Mr. Stuhmann were not to scale. Mr. Middleton commented that Mr. Jackson had said, in August, that 380 square feet was made as additional square footage.

- Mr. Stuhmann presented another picture from 2015 of dance crowds and one that shows rows of crowds, this in an area that was not used before and is being used now.
- Mr. Stuhmann said he had videos from 2017 (6/24/17 and 7/28/17) which were taken off the musicians' website. Mr. Clark asked if he had seen them play and the answer was no. Mr. Middleton said this is to show their case, they want to prove that Waypoint is not operating as a sit-down restaurant. Mr. Jackson asked where the Ordinance says that and Mr. Middleton said they are operating as a night club and not a sit-down restaurant and the videos will show this, it would be prejudicial if they can't as this is critical to their case. Mr. Clark asked if this is what Waypoint is like every night and Mr. Collins answered and said no and again stated the dates are only relevant to the proceedings and the fact that this does not happen every night is irrelevant.
- Mr. Jackson said Mr. Stuhmann was not there and this cannot be authenticated, their investigator could have taken videos and did not, the Zoning Officer never said it is prohibitive to have a band here, other places have bands and no variance approval is needed for live music. Mr. Clark felt the dates were important and the dates given were weekend dates; Mr. Condon said the Board has the right to put conditions on whatever they want. Mr. Jackson said variances are different than conditions.

On November 28, 2017, Suzanne Herszdorfer of Staten Island, New York ("Ms. Herszdorfer"), was sworn in and provided the following testimony in response to Mr. Middleton's direct examination:

- She is Mr. Stuhmann's girlfriend. She took a video as she heard loud music and Mr. Jackson said this was the night that Waypoint had their sound testing.
- She said she went to Waypoint and saw a 6-piece band and recorded it and she showed the video taken on 9/4/16. There was another video on 9/4/16 taken by Mr. Stuhmann from the Sand Bar and a video taken from a band website, the band was the Counterfeiters.
- Mr. Stuhmann said he had tried to investigate the sound system wattage, there are three sets of speakers and all of this had been marked as previous exhibits. Mr. Stuhmann explained the noise source/volume control, he said this is like a Governor on a car.
- Mr. Jackson questioned his expertise and Mr. Stuhmann said he worked with advanced weaponry in his job and this was not hard for him to understand the sound system. He presented another sound wall speaker which is about 10 off the ground. Mr. Clark marked this as Exhibit O-18, another picture of the speakers was marked as Exhibit O-19. Mr. Stuhmann had another picture of the company that makes these speakers, he took this with a zoom lens on 9/12/17 from across the street; this was marked Exhibit O-20. Mr. Stuhmann said the features can be seen and he found this to be a EON615, the largest one and has a wattage of over 1,000 watts with a 90 degree spread with 127 decibels. This was marked as Exhibit O-21.
- His next picture if the catalog page for the EON615 and its description, this is two pages and was marked as Exhibit O-22. He commented that there is nowhere in Brielle that has speakers this high. The third page of the catalog, which was marked as Exhibit O-23, shows Bluetooth Integration. The next picture was the height information at 14 feet from the foundation, plans for Union Landing done 12/29/14 by DW Smith.

On December 12, 2017, Mr. Stuhmann provided the following additional testimony on direct examination:

- Mr. Stuhmann has lived in Brielle for 17 years and has gone to Union Landing restaurant several times.
- Mr. Stuhmann wanted to discuss the restrictions and stipulations in resolutions on restaurants in the area as a lot of Board members may not have been aware of these.
- Mr. Stuhmann proceeded to state he had the various resolutions for restaurants in Brielle and he wanted to do a comparison with the parking at Hoffman's and the Harbor Inn, in 1994 Harbor Inn added 12-13 spaces to put in a deck.
- Mr. Stuhmann said the Harbor Inn was paved and they have 40 spots for the restaurant and another 20 for the slips, so they now have 60 paved spaces. For the conditions of approval (when it became Shipwreck Grill) one was no music on the outside deck except from 4-6 PM and it would be non-amplified; two years later they came back to ask for relief.
- Mr. Stuhmann said in 1995 the Sand Bar was told, as a condition of their application, no speakers on the outside deck and no live music on the second floor, only the first floor with all doors and windows closed.
- Mr. Stuhmann addressed the DEP process and did not think the record is complete on this; Mr. Middleton said there has been a representation on a waiver by the DEP and all maps provided to the Zoning Officer. It is clear that Waypoint totally misled the DEP and misled the Zoning Officer. Four or five documents were submitted by Waypoint and this should be looked at, it's important because they are incomplete.
- Mr. Stuhmann said there was a waiver for the CAFRA permit and, prior to the waiver there was an earlier determination (10/28/14) from Andrew Gale of the DEP Land Use Regulations that was sent to DW Smith, this was marked as Exhibit O-25. Mr. Lurie emailed the DEP and they said a CAFRA permit was needed, there were emails back and forth. Mr. Condon saw this and noted these were done by Larry Schmidt, the owner of Union Landing. Exhibit O-26 was marked, letters from DW Smith along with other documents.
- There is an email that states Larry Schmidt no longer owns the property and Larry Grafas does, a revision

of the drawing was submitted with the title of "Temporary Deck"; the DEP emailed back on 11/5/14 asking what "temporary" means and DW Smith said it will be temporary and the DEP wanted to know the months of the time it would be used. There were more emails and the DEP said the deck is not "temporary" and they need a permit. DW Smith wrote back explaining the deck is seasonal and the DEP said that was okay. Revised plans were sent and on 11/24/14 this was completed. What is now on the plan is a "temporary" deck and the plan says it is in use from 5/1-10/31. In December DW Smith asked for a CAFRA ruling stating no permit is need and the DEP said a permit is not required.

- Mr. Stuhmann read part of the compliance statement that he has highlighted about this being a temporary deck due to the reconstruction of the restaurant.

On December 12, 2017, Mr. Stuhmann, provided the following additional testimony in response to Mr. Jackson's cross-examination:

- Mr. Jackson asked if an OPRA request was sent to CAFRA and the answer was yes, he asked how many times Mr. Stuhmann had been to Borough Hall for OPRA requests and Mr. Stuhmann said over 50 times.
- Mr. Jackson asked if he was a patron of Waypoint and Mr. Stuhmann said no.
- Mr. Jackson asked if he filed an objection to the Liquor License renewal and called the Police more than twelve times in 2015 and Mr. Stuhmann said yes; Mr. Jackson asked if summonses were issued as a result of these calls and the answer was no summonses were issued.
- Mr. Jackson asked about other OPRA requests and Mr. Stuhmann said yes he had asked for OPRA information.
- Mr. Jackson asked about the parking lot at Shipwreck Grill and if a large portion of that is gravel; Mr. Stuhmann agreed it was but part of it is paved.
- Mr. Jackson asked if Mr. Stuhmann goes to the Riverhouse and the answer was yes. Mr. Jackson noted he did not use Riverhouse in his exhibit on Resolutions of different restaurants and Mr. Stuhmann said he didn't because they don't have any restrictions. Mr. Jackson submitted a photo of Mr. Stuhmann and his girlfriend at the Riverhouse, this was marked as Exhibit A-36.
- Mr. Jackson asked if the Riverhouse has a small marina, dramatically less than Waypoint and Mr. Stuhmann said yes but disagreed with the word "dramatic", he felt it was maybe half of what Waypoint has.
- Mr. Jackson asked if the Riverhouse is in a Residential Zone and Mr. Stuhmann said yes.
- Mr. Jackson said his home is in direct line to the Riverhouse and Mr. Stuhmann went to Exhibit A-32 and pointed to his home.
- Mr. Jackson said if Mr. Stuhmann goes to Waypoint he has to go through Hoffman's and Mr. Stuhmann commented there are no boats at Hoffman's in the summer; Mr. Jackson asked if there is a public part and trees and Mr. Stuhmann said there is a row of trees by the railroad tracks.
- Mr. Jackson asked if there are other trees on the other side of the tracks and Mr. Stuhmann said yes but you can see through them. Mr. Jackson confirmed that Mr. Stuhmann has to go across the railroad tracks, through the park and then through Hoffman's and Mr. Stuhmann agreed with this, it's about 650 feet.
- Mr. Jackson asked if the Riverhouse is closer and is an open shot and Mr. Stuhmann said there are two large homes between him and the Riverhouse.
- Mr. Jackson asked Mr. Stuhmann if he had any videos of bands playing at the Riverhouse and Mr. Stuhmann said no, he is not disturbed by them.
- Mr. Jackson asked if he hears bands and singing there and the answer was no. At this point Mr. Jackson said he would like to show a video, which was taken off the internet; it was a video of different bands and singing at the Riverhouse.
- Mr. Stuhmann said he was told the bands were using speakers and his attorney hired an investigator.
- Mr. Jackson asked Mr. Stuhmann if he lives near the Route 35 bridge and Mr. Stuhmann said not really, he hears it in the summer and sometimes in the evening but he does not hear sirens or boat horns.
- Mr. Jackson asked if he lives by the marina and he said yes but did not know about what equipment they use, sometimes there is noise. Mr. Jackson asked about party boats and Mr. Stuhmann said he does not hear them, he does hear the train bridge siren but it's only a few seconds. Mr. Jackson asked if cars make noise when they go over the tracks and Mr. Stuhmann said no, only trucks.
- Mr. Jackson asked Mr. Stuhmann if he was a CAFRA expert and the answer was no.
- Mr. Jackson asked Mr. Stuhmann if he was involved with anything with the DEP and Mr. Stuhmann said no, he just addressed the wording of a temporary deck. Mr. Jackson referred to Exhibit A-34 which the Board had received that says they can have a permanent deck and issued a permit.
- Mr. Stuhmann said the word "temporary" was used. Mr. Jackson asked him if he was aware that the plan he referred to tonight is for a different plan? Mr. Stuhmann said he was not being clear, it was labeled as Hoffman's. Mr. Jackson asked him if we are aware that the original plan was created to replace the entire restaurant and Mr. Stuhmann said he did not know that. The DEP said they need a CAFRA permit.
- Mr. Jackson asked if people have a right to change a plan as they are going along and Mr. Stuhmann said they had a blueprint they submitted. Mr. Jackson said they did issue a permit.
- Mr. Jackson asked if circumstances have become better since 2015, and whether the sound greater in 2015 than in 2016 and 2017. Mr. Stuhmann said it has improved but has not been resolved.
- Mr. Jackson noted he had called the Police 12 times in 2015 and they did not issue violations. He asked if the Police came to his home and checked things out? Mr. Stuhmann said yes.

- Mr. Jackson asked, when he heard that Mr. Grafas want to put up a parking lot he started an email list? Mr. Stuhmann said he notified other people and Mr. Jackson asked how many; the answer was 8, maybe more, by 2015 it may have gone up to 20.
- Mr. Jackson asked if he did a petition to Council and Mr. Stuhmann said yes. Mr. Jackson asked about other complaints, such as complaints about recycling. Mr. Stuhmann said he heard glass breaking and he called the Police, there was a dumpster next door and there was the sound of smashing glass.
- He asked Mr. Stuhmann if he had any sound recordings from his home in regards to noise from Waypoint and the answer was no. The Police have come and sometimes they could hear the music but they do not have any way to measure the noise.
- Mr. Jackson asked if Police had come to his home and not heard sounds and the answer was yes.
- Mr. Jackson asked if the music was changed at Union Landing or was it consistent to 2014 and Mr. Stuhmann did not know. Mr. Jackson said they did have bands and rock and roll and Mr. Stuhmann said they were not loud.
- Mr. Jackson asked him if he had videos of Union Landing bands and he said no but there was not a dedicated band area. Mr. Jackson showed a video of Union Landing bands, on 8/20/2011, the Blue Highway. Mr. Stuhmann knew this band, when they played at Union Landing it was a big deal and it was not a regular event. Mr. Jackson noted they have multiple guitars and multiple singers.
- Mr. Jackson had a photo, taken on 6/23/14, at night; it was Blue Highway at Union Landing and the band was on the corner of the property with a home next door, Mr. Condon said the home was not visible due to it being night. Mr. Stuhmann said the home was taken down before 2014 and he again said he never heard the music from Union Landing. There was another video of the Glimmer Glass band in 2013, they had speakers and amplified music and drums. There was another video at Waypoint on 7/19/16 with children singing and this shows the sound wall.
- Mr. Stuhmann had made a total of five complaints in 2016, with two having been made on the same day.
- Mr. Stuhmann said in 2017 he thought he had made three complaints. Mr. Jackson asked him if he agreed the condition had improved after the sound wall was put in and Mr. Stuhmann said after 2015 he did not hear the bass in his home but could clearly hear words from a song as well as drums.

On January 9, 2018, Don Ziliotto of 404 Ashley Avenue in Brielle ("Mr. Ziliotto") came forward as a witness on behalf of Objector, Thomas Stuhmann. Mr. Ziliotto was sworn in and provided the following testimony:

- Mr. Ziliotto 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.
- The year 2015 was unbearable due to the noise from Waypoint; 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 six to eight 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 PM He had no problem with the restaurant and the new parking will be great, it's the noise problem.

On January 9, 2018, James Aloï of 108 Ocean Avenue in Brielle ("Mr. Aloï") came forward as a witness on behalf of Objector, Thomas Stuhmann. Mr. Aloï was sworn in and provided the following testimony:

- Mr. Aloï has lived in Brielle for 19 years with his wife and two children.
- He was concerned with the music noise; back in 2015 he felt compelled to make complaints, on 7/5 and 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.

On January 9, 2018, Christy McDonald of 609 Leslie Avenue in Brielle ("Ms. McDonald") came forward as a witness. Ms. McDonald was sworn in and provided the following testimony in response to direct examination:

- Ms. McDonald has lived in Brielle for 18 years with her husband and three 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 there 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 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 in 2017.

On January 9, 2018, the Hearing was opened for public questions to Ms. McDonald. Ms. McDonald provided the following additional testimony in response to the questions:

- Charlotte Madison, 206 Homestead Road, asked if the music was okay in 2016 but got louder in 2017 and the answer was yes.
- Melissa Arnott, 621 Homestead Road, asked if Ms. McDonald 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 asked her if she thought the parking was worse at Waypoint and Ms. McDonald said yes.

On January 23, 2018, Joe Kociuba, P.E., P.P. ("Mr. Kociuba"), was sworn in, and the Board accepted Mr. Kociuba as an expert witness in engineering and planning. Mr. Kociuba provided the following testimony in response to direct examination by Mr. Middleton:

- Additional relief was needed with this application and said the Applicant has testified this is a D3 variance, however, a D-1 variance is needed, a Use Variance; there are also the bulk variances added to this. Not enough proof was given for the use of the Hoffman's Marina lot for parking and the Board should deny this Application.
- The conditional use Waypoint is requesting is a greater burden and the deviation here is so substantial they need a D-1 variance approval instead. Applicant is asking for a Multi-Use Marine Complex and restaurants are subject to different sections of the Ordinance.
- He defined the restaurant under the Conditional Use section and said it must be conducted within the marina facility, which this is and this is where the docks come in. The key here is the use has to fit in that box, it needs to be a sit-down restaurant and referred to Section 21:19-4. The use must promote use of the waterfront and this does, the uses must be compatible with uses in the area and the Board has to find this, the Board has to ask how is this compatible with other structures in the area. Mr. Kenderian testified he did not feel there will be an effect on property values but neither he, Mr. Kociuba, or Mr. Kenderian can verify this.
- In regard to traffic congestion, Waypoint attempted to alleviate this by using Hoffman's, and the ordinance says, at Section 21:31-17 that neighboring uses may be common parking spaces and there shall be compliance with all other provisions of the Ordinance. Waypoint does not intend to comply, there is no paving or striping, so it is up to the Board to decide this. Mr. Kociuba said there has been no testimony that they have been given permission to share parking and the Marina needs to be closed at night and on Sunday, they have not requested relief. Mr. Kociuba added that Hoffman's already needs a variance for parking.
- He referred to Mr. Hilla stating he did not think he could get to the correct parking numbers here and the Applicants did provide examples of areas that use shared parking, but they were not in Brielle, other than Shipwreck Grill. The Ordinance says the parking lot has to be lighted and is safe and the Board has to address this; the Applicants did speak about this but not the glare on additional properties.
- As far as adverse impacts, they have to submit a standard of proof that they do not create an adverse impact, but there has been testimony about adverse impacts due to the noise levels and the maximum seating allowed.
- For a D3 the property has to fit in the box that defines this by virtue of standards; does this property meet the criteria? If someone came in with a sit-down restaurant but does not have enough docking berths, it is ok? Once the requirements are exceeded by so much it goes into a different use and now the need for a D1 variance arises. The substantial deviation here takes it from a D3 to a D1. He said they also need to comply with the C2 variances, off-street parking, loading, and landscaping. These are all requirements for the C-2 Zone and the question is, has enough testimony been given on these. Is there enough screening, the building must be 25 feet from the water and they do not meet that. They built closer to Union Lane and Hoffman's and the water than permitted; did they provide more screening and put in plantings and railings to comply with the C-2 Zone criteria.
- They need 2 acres and do not have that, they use the riparian grant and Hoffman's and they are not allowed to do this, the Riparian Grants are separate; 64 slips are required and they have 23. The lot is 1/4 of what is needed and 35% of what docking is required as well as parking.
- He disagreed with Mr. Kenderian referencing the Coventry Square case and did not feel the use is appropriate here. The standard of proof is by Ordinance and the Board will have to find that the site is suitable for a Conditional Use; there is ample detriment to the public good and this is not what the Ordinance intended. The Ordinances were made to constrain the uses of the waterfront and not intended to expand use of properties, the Ordinances were intended to stop crowd noise.
- The Board can address the D1 use and this is paramount. There are different uses in buildings and here you have canopies and a bar and that is different from restaurant use. Approving this under D3 would require that everything they are doing at this site is compatible with this zone and complies with the definitions in the Ordinance. If the Board finds that music and amplifiers are okay then other places may apply to have this, he did not think the Board has heard any other testimony that these are accessory to the restaurant use. The Board has to ask what is the Use, is it D1 or D3? Brielle has two types of food establishments, restaurants and taverns; tavern is not defined in the Ordinance but taverns are not permitted in the C-2 zone, only in the C-1 zone.
- Mr. Kociuba stated that the Board engineer, Mr. Hilla, said a D1 variance is required, and the Applicants said they are not asking for a D1 variance. He went on that the Board has not heard testimony on the size of the kitchen or the number of tables at Waypoint, only testimony on the rear deck and canopy. How does a 35-40 seat bar with a sound wall relate to a sit-down restaurant and is all this use permitted on this property? What the Board sets down here is what will apply.
- With respect to accessory uses, the bar is an accessory use and is added to the principal use, it is not a major part but supports it; as to the outside bar is it an appropriate use, the applicant has to explain why this

is accessory and he didn't think they can do this.

- The outdoor use here should be looked at as the principal use and again referred to fitting in the box created by the Ordinance. He also said this includes the band area which sometimes makes this more of a tavern use and not a restaurant use, when the weekend is here and bands play to a packed house, this is not the definition of a restaurant. He has seen the videos and he did not see a sit-down restaurant and felt this needs to be discussed. He said that Mr. Grafas may not always be the owner and the Board has to take this into account in regard to the operation of this site.

- With respect to Exhibit O-29, Mr. Kociuba said the yellow lines are the expansion areas, the gray lines are what Union Landing was and the Red is what is there now. Applicant expanded this decking area by 930 square feet, going by what has been provided and this was only his estimate.

- The concrete patio was extended and now looks to be 2.5 feet from the property line, there was a 6-foot area for the canopy but now that has extended to Union Lane and the whole line down is now six feet.

- The stair front was at 20.5 feet and is now at 12.6 feet, the water edge was 19.5 feet and now is 17.22 feet. The side by Hoffman's went from 8.2 feet to 4.29 feet. He noted they did ask for bulk variances for parking, front, side and rear yard setbacks, water edge, floor area ratio, signage, curb cuts, loading zone, exterior illumination, 5-foot buffer request for landscaping; these are C1 or C2 variances.

- The C1 is a hardship due to the shape of the lot or unique situation and he felt this does not apply in this case. The application had testimony about an extraordinary situation because they did get a CO, but Mr. Kociuba did not agree with this and felt they have a self-imposed hardship.

- The C2 criteria states the benefits must outweigh the detriments. Mr. Kociuba stated that the Board should consider whether a larger deck benefits the public or just the Applicants, and why the deck need to be expanded; there was testimony on raising it for safety and flood. Mr. Kociuba did not agree with this, there is no law on this and it is not necessary, and he did not think this was better planning; the detriment to the public good and zone plan was not addressed either.

- The deck could have been built to the proper setbacks. The current use of the property is more intense than what is called for and he felt this exceeds what the Ordinance calls for as well.

- With respect to the parking, Waypoint is not using the right numbers, their traffic engineer said 151 spaces needed and it was closer to 224, the parking lot should be paved at Hoffman's.

On January 23, 2018, Mr. Kociuba provided the following additional testimony in response to Mr. Jackson's cross-examination:

- Tom Stuhmann and Anthony Knapp hired Mr. Kociuba.

- Union Landing has been in existence since 1978 and received a liquor license in 1985. In 1992 they applied for a deck permit.

- Mr. Jackson asked Mr. Kociuba if he was familiar with the River House and whether it also has outside seating area. Mr. Jackson said there is a restaurant at the River House and asked if they were required to get a D1 variance. Mr. Kociuba did not know and commented other restaurants do have outside seating.

- Mr. Jackson reminded Mr. Kociuba he said that, in the definition of restaurants, they have to be indoors and Mr. Kociuba said yes. Mr. Jackson said that a restaurant that allows seating outside needs a D1 variance and Mr. Kociuba said no, his testimony was that they are accessory uses.

- Mr. Jackson asked for the part of the Ordinance that defines that outdoor seating for restaurants is allowed as accessory use and Mr. Kociuba said that is not defined in the Ordinance.

- Mr. Kociuba read Mr. Langenberger's to Applicant dated 12/26/2014. Mr. Kociuba said the letter says there are no violations at this time and Union Landing complies with the zoning requirements. Mr. Jackson said the letter said there were no zoning violations, Mr. Kociuba said no existing code violations and it conforms. Mr. Kociuba said his testimony was outdoor seating is an accessory use, but no testimony has been given on this. Mr. Jackson said they went over the seating and tables for the outdoor area. Mr. Kociuba agreed but the "accessory use" was not addressed. Mr. Jackson noted it is attached to the building and Mr. Kociuba said being attached and the use are not one and the same.

- With respect to Exhibit O-29, Mr. Jackson asked Mr. Kociuba if he was aware of the square footage increase the Board identified and Mr. Kociuba asked if the Board calculated their figures. Mr. Jackson stated Mr. Kociuba had testified that he had read the transcripts and Mr. Kociuba said he did but he did not do so for the appeal hearing.

- Mr. Jackson spoke of the 1/10/17 transcript and Mr. Kociuba said he was present at that time and heard Mr. Lurie's testimony. Mr. Jackson read from page 58 of that transcript regarding the removal of the planters which took up 380 square feet, therefore, this increases the usable square footage by 380 square feet; he said nowhere else is it stated more than 380 square feet. Mr. Kociuba said his understanding was the Board was given this figure but there was more expansion when the planters were removed and said that Exhibit O-29 represented the variance relief needed.

- Mr. Jackson said this all has been reviewed and discussed in past meetings, Mr. Kociuba said he had used the surveys from the DW Smith surveys, 4/19/14 and 2/23/17. Mr. Jackson asked if he did his review on the existing approved deck versus the as-built deck and Mr. Kociuba said yes. There is a difference between what the Zoning Officer approved and what was built, what he did was compare Union Landing and Waypoint. Mr. Jackson noted the Zoning Officer said timber decks could be built and issued permits, did Mr. Kociuba agree and the answer was yes.

- Mr. Jackson asked if he disagreed with Mr. Lurie's survey, and Mr. Kociuba said he did not know, he can't do

an analysis by eyeing it and referred to the Zoning Officer's letter, it did not give permission for the deck to be expanded. Mr. Jackson said the difference in square footage, as per Exhibit O-8, is 2 square feet, from 1490 to 1492 square feet. Mr. Kociuba said his figures were based on pre-existing conditions, there was a drawing presented and the deck was to be replaced.

- Mr. Kociuba had the letter and approved stamped plan from Elissa Commins, the Zoning Officer.
- Mr. Kociuba had the drawing that was given to Ms. Commins, the drawing has limited dimensions with no setbacks shown on the east side and some single dimensions and a letter saying the deck can be replaced in the same footprint.
- Mr. Jackson asked if he did see the area that was increased by 2 square feet and Mr. Kociuba said he did but the letter states "within the same footprint".
- Mr. Jackson asked Mr. Kociuba to go over the criteria for a D3 variance and he did so.
- Mr. Kociuba said the use of the waterfront should be compatible with no impact on property values and restaurants are subject to these conditions.
- Mr. Jackson asked if this use supports the Marine Commercial district and making the docks more attractive and attract people and Mr. Kociuba said yes.
- Mr. Jackson asked if this amenity is good for fishing tournaments and the answer was yes. Mr. Jackson asked if Mr. Grafas made these improvements and the answer was yes but he disagreed if the design was compatible and said the Board has to make this determination.
- Mr. Kociuba said he estimated 930 more square feet on the deck; Mr. Jackson noted that would be about the size of the Council room and Mr. Kociuba agreed.
- Mr. Jackson said bands were at Union Landing and the outdoor seating was packed, Mr. Kociuba agreed but still said more than 900 square feet has been added.
- Mr. Jackson asked if adequate parking is nearby and Mr. Kociuba said yes and agreed the comments made about marina parking at night were unreasonable.
- Mr. Jackson asked if another 900 square feet would amount to 10 more parking spaces and Mr. Kociuba said yes;
- Mr. Jackson asked if Hoffman's can accommodate 10 more cars and Mr. Kociuba asked if it was in pavement or gravel but did say the space exists when the marina is closed.
- Mr. Jackson said if the Board approves this use of Hoffman's lot then a variance is not needed, and Mr. Kociuba disagreed, bulk variance relief is still needed in reference to Ordinance Section 21:53-15i (parking).
- Mr. Jackson said this can be added to the D variance relief and Mr. Kociuba said okay, it does say "may include" in the Ordinance, but this does not alleviate the variance need but it can be granted.
- With respect to the screening issue for landscaping Mr. Jackson said they provided information on the trees along Union Lane and Green Avenue and Mr. Kociuba agreed this was done but he did not know if it was adequate, the screening at Hoffman's was less than at Waypoint.
- Mr. Jackson asked about adequate utilities, fire and safety and Mr. Kociuba felt this was adequate but he did not know about glare and spillage on lighting, it was not his burden to address. Mr. Jackson said no objections have been made on this and Mr. Kociuba said the Ordinance does talk about it.
- Mr. Jackson asked Mr. Kociuba if he had reviewed the Master Plan and the answer was yes, the Master Plan does provide information on the area that serves the marina and encourages re-development.
- Mr. Kociuba agreed that the Master Plan says it is encouraging development in the Marine Commercial area.
- Mr. Jackson addressed the use of Riparian lands and Mr. Kociuba felt they were separate.
- Mr. Jackson said to Mr. Kociuba that they can use the boat slip ratio but not the riparian grant and Mr. Kociuba said yes.
- Mr. Jackson asked him about the base flood elevation and Mr. Kociuba did not know but this applies to structures that are not flood proof, using a patio and deck under this does not apply.
- Mr. Jackson asked if boating facilities are encouraged under the Master Plan and the answer was yes;
- Mr. Jackson asked if Waypoint has a variety of uses for the waterfront and the answer was yes.
- Mr. Jackson asked if the Board has to consider this for the community as a whole and the answer was yes.
- Mr. Jackson said the Zoning refers to community wide resource, the MLUL talks of sufficient spaces for different uses in order to meet the needs of the citizens.
- Mr. Bonacci asked Mr. Jackson about Exhibit O-29 and if O-29 is what they are asking for. Mr. Jackson said no, they have shown what they are asking for and do not agree with Exhibit O-29.
- Mr. Maclearie asked if Mr. Lurie can look at this Exhibit and do a comparison so the Board knows which is accurate.
- Mr. Condon wanted to know what was at Union Landing and what is there now and Mr. Kociuba said that is what Exhibit O-29 shows.

On January 23, 2018, the hearing was opened to the public for questions to Mr. Kociuba, as there were no questions, this part of the hearing was closed.

#### GENERAL PUBLIC COMMENTS

On January 9, 2018, the hearing was opened for comments from the public and the following members of the public spoke:

- Richard Holmquist of Green Avenue came before the Board. He reminded the Board that Waypoint was before the Board because building permits were violated which has resulted in all these hearings. They overbuilt, and no one planned for this; it's 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.

- Margaret Herman of 208 Homestead Road, 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, said she 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 she feels that her quality of life has been affected, there are cars driving up Homestead Road the wrong way and she has 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 does 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 that she submitted were marked as Exhibit O-27.
- Melissa Arnott of 621 Homestead Road came forward, she said she lives across the street from Mrs. Herman and Ms. Madison. She said she spoke 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 2:00 AM, and that 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, and that Mr. Grafas has donated to the school and other charities.
- Don Ziliotto came forward 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 2:00 AM and noted that on Sunday night they were dead.

On January 23, 2018, the hearing continued with the following additional public comments regarding the Application:

- Terrence Fearon of 717 ½ Ashley Avenue in Brielle, attended to support this application, he saw Mr. Grafas re-do Union Landing into Waypoint and he enjoys what is there. He said Union Landing had music, as well as the River House and Sand Bar and Waypoint has the area landscaped better, he is in support of this application.
- Ronald Nowak, Jr. of 1009 Forrest Road in Brielle. He is here as a resident and a musician. He has a duo called the Salt Brothers. Mr. Grafas gave them a chance and they are now solidly booked. He has seen the thousands of dollars Mr. Grafas put into the sound system and they use the Waypoint sound system rather than their own sound system. Many Brielle residents come to Waypoint, it is a special and classy place.
- Tom Bovino of 4 Lebanon Drive, the establishment draws the kind of people Brielle wants as well as employing the residents of the area and their children.
- Jane Sigler of 619 Homestead Road, said the music did get louder when Waypoint first came in but since that time this has been addressed and she does not hear the music she used to; parking and late-night noise has stopped as well. Changes have been made and Waypoint is continuing to benefit the town and residents. She finished by stating this is better than condos being built on the waterfront.
- Amy Monte of 47 North Main Street, Manasquan. She worked at Union Landing for 10 years and now works at Waypoint. The quality of guests has improved, there are families. She is a seasonal employee, a bartender, the music is on Friday, Saturday and Sunday. She ended by stating the place is cleaner now and she is not tripping over beer bottles, it is quieter.
- Daryl Zaslow of 19 Oaks Drive, Holmdel. He doesn't like to hear music and does not hear it on the dock. He has been all over the east coast and has stayed at nice places but none are cleaner than Hoffman's. He did not think there was any way someone can say their home values have been depreciated by being in this area, everything is kept clean.
- Gary Packin of 241 Shore Drive in Highlands, also Orion Drive in Brick is in a band that plays at Waypoint, he said that Waypoint is one of the finest establishments they play in. The type of people that come would make any town proud to have and he noted that Waypoint is well controlled, and he did not understand the complaints that have been made, there are no "head bangers" here. He even comes to Waypoint on his nights off because he enjoys it so much.

- Kathryn Laurino of 608 Green Avenue, Brielle, lives in an apartment at Hoffman's. She said the first summer the music was loud, she is northeast of Waypoint, and she loved it; since then the music has become so quiet she doesn't hear it anymore.
- Scott Bellone of 29 Union Street, Matawan owns the business that installed the house sound system to monitor the bands. There is a unit upstairs to control the sound system and the bartenders have a button as well to control the sound, there is no loud music through this system.
- Peter Gebhardt of 505 Chelsea Street, Forked River, said at Waypoint they control the sound and there is more of a mature crowd, this is a great place.
- John Brue of 1802 Boatpoint Drive in Point Pleasant. He is a musician and plays in a band called the Brue Crew and has worked at Waypoint since it opened, he also had played at Union Landing. He asked the Board to support Waypoint and all their employees as well, live music is vital to the Jersey Shore.
- Colleen Rice of 552D Sheffield Court in Lakewood, she was hired by Mr. Grafas for Waypoint, since she has been at Waypoint there has not been a problem, she is very conscious about noise control.
- John White of 1112 Front Street, Point Pleasant. His band plays at Waypoint and they usually video their performances; when they play at Waypoint their volume is always checked. After review the videos, he noticed that the audience was louder than the music, they get comments of "we can't hear the band" and they answer they have to play soft. If they did not play this way they would not be called back. He said Waypoint was one of the classiest places and safest environments for everyone.
- Mary Tkach of 1700 Riviera Court in Point Pleasant, said Mr. Grafas really gives back and helps them, they bring their dogs there and they would freak out if the music was loud. Waypoint is a wonderful place and Brielle should be proud.
- Tracy Garofalo of 113 Ashley Avenue, Brielle, said Mr. Grafas has updated the Waypoint property. When she walks her dog she doesn't hear loud music, if she does its from a boat. She agreed with others that the area is safe.
- John Monteverdi of 921 Riverview Drive, Brielle felt Mr. Grafas has done everything he could, the place is better and cleaner, the doors have been opened to the town.
- Ken Hager of 22 Orla Court in Tinton Falls, went to Union Landing when he was younger and enjoyed the loud music and crowd, now there is an older crowd and, as he is older, he enjoys it. He also has a boat at Waypoint and has seen the sound wall, since it has been up the difference is like night and day.
- John Mainero of 704 Evergreen Avenue, Brielle said Waypoint is the quietest bar in the area and is a great place; and

WHEREAS, the hearing on the Applications concluded on January 23, 2018 and counsel for the Applicants and for the Objectors were advised that they would be provided with an opportunity to provide oral summations to the Board at the next Board meeting and would also be provided with an opportunity to provide written submissions to the Board in accordance with a schedule to be determined by the Board; and

WHEREAS, at the February 6, 2018 Board meeting, Dennis Collins, Esq. provided an oral summation on behalf of Objectors Joseph Casello and Christy McDonald, Timothy Middleton, Esq. provided an oral summation on behalf of Objector Thomas Stuhmann, and John Jackson, Esq. provided an oral summation on behalf the Applicants; and

WHEREAS, at the February 6, 2018 Board meeting, counsel for the Applicants and for the Objectors were advised that the Board would accept written submissions from counsel regarding the Applications pursuant to the following schedule: (i) simultaneous exchange of merits briefs on February 13, 2018; and (ii) simultaneous exchange of reply briefs on February 20, 2018; and

WHEREAS, the Board received timely merits briefs and reply briefs from counsel for the Applicants and for the Objectors; and

WHEREAS, at the March 13, 2018 Board meeting, the Board discussed and ultimately voted on the Applications; and

#### FINDINGS OF FACT/CONCLUSIONS OF LAW

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

- The Applicants are the owners of the Waypoint Property and the Hoffman's Property.
- The Waypoint Property currently has: (i) a 2 ½ story frame structure containing a restaurant and associated offices; (ii) a 1-story frame accessory garage (supporting restaurant use); (iii) a 2 ½ story masonry and frame structure containing a marine motor works company; (iv) a marina; and (v) miscellaneous site amenities, such as parking, lighting, landscaping and fencing.
- The Hoffman's Property currently has: (i) a marina with 56 slips; (ii) a marine store and marina offices; (iii) indoor and outdoor boat storage; (iv) several residential apartments; and (v) miscellaneous site amenities.
- Waypoint was cited by the Borough for a number of alleged violations of the Borough's zoning code. Waypoint appealed these violations to the Board. After hearing the appeal, the Board upheld the following four violations: (i) expansion of the former landscape area at the westerly side of the restaurant building (immediately adjacent to Union Lane) to active restaurant seating and service area (through landscape/koi pond removal and concrete patio construction); (ii) expansion of the rear stairs of deck (waterward) beyond

the Zoning Office approved deck limits; (iii) expansion of the deck in size and extent beyond the Zoning Office approved deck limits; and (iv) expansion of uses and facilities increasing the off-street parking burden for the compendium of uses at the site.

- Waypoint subsequently filed this application seeking variance relief for the improvements which were the subject of these four violations and for other relief (including, among other things, approval for using the Hoffman's Property for parking for the Waypoint restaurant).
- Hoffman's also filed an application seeking variance relief for the use of the Hoffman's Property for shared parking with Waypoint.
- Restaurants are permitted as conditional uses in the C-2 Zone on properties with marinas.
- The Waypoint Property was the subject of site plan approvals by the Board in 1978 and 1979 wherein, among other things, the Board approved the development of the property with a restaurant, but placed conditions on the approvals limiting the seating capacity of the restaurant to 72 people and limiting the hours of operation for the restaurant to 4:00 p.m. to 10:00 p.m.
- These conditions have not been amended or waived by this Board and are still in full force and effect.
- The Waypoint Property is the former location of the Union Landing restaurant.
- The Union Landing restaurant operated for many years on the Waypoint Property without complying with the seating capacity and hours of operation conditions placed upon the Waypoint Property through the Board approvals.
- Waypoint has operated a restaurant on the Waypoint Property which does not comply with the seating capacity and hours of operation conditions placed upon the Waypoint Property through the Board approvals.
- The Applicants are requesting that the conditions limiting the seating and hours of operation of the restaurant on the Waypoint Property be lifted and/or modified by the Board.
- The Board finds that there are changed circumstances and good cause warranting reconsideration of the seating capacity and hours of operation conditions placed upon the Waypoint Property through previous Board approvals. Specifically, with regard to the seating capacity, the historic use of the property as a restaurant with a higher seating capacity has demonstrated that the Waypoint Property can safely accommodate a restaurant with a higher seating capacity and any negative impacts relating to the increased seating capacity can be ameliorated through the placement of conditions upon the Board's approval of these Applications. With regard to the hours of operation condition, hours of operation are already regulated by the Borough Code and the Board finds that there is no need to regulate them herein or to impose conditions on them which may be inconsistent with those imposed through the Borough Code.
- Waypoint is open year-round with only a seasonal liquor license which is active during the spring and summer months.
- The parking lot on the Hoffman's Property is used less frequently by the marina patrons in the spring and summer because the boats that are stored on the property during the winter months are primarily kept in the water during summer months. Thus, the busiest seasons for Waypoint will coincide with the less busy seasons for the marina patrons on the Hoffman's Property.
- Permitting the use of the parking lot on the Hoffman's Property by Waypoint customers will alleviate traffic congestion which provides a benefit to local residents.
- Testimony has shown that people are already using the parking lot on the Hoffman's Property to park and attend the Waypoint restaurant and other waterfront uses. Approving these Applications and granting variance relief to allow the use of the Hoffman's Property for parking for Waypoint will allow the Board to regulate and place conditions upon the Hoffman's Property in order to control and better regulate uses of the Hoffman's property which are already happening.
- The Applicants are seeking D(2) and D(3) variances for the following deviations from the Borough Code: (i) one marina docking berth per 4 marina restaurant seats (the requested seating capacity of 254 seats would require 64 boat slips, but only 23 are proposed); (ii) minimum lot size for multi-use marine complex (2 acres required; 1.09 acres proposed); (iii) maximum non-residential floor area ratio (.25% required; .295% proposed)(Applicants are seeking a D(4) variance for this deviation as well); and (iv) minimum off-street parking requirements (131 spaces required; 42 spaces proposed). The Board finds that there are particular features of the Waypoint Property that ameliorate or offset the failure to meet these requirements and that there are conditions that the Board can require which would offset the impact of these deviations. The Board also notes that the minimum lot size deviation has always existed at this site and was not exacerbated by the improvements made by Waypoint to the property. The Board also finds that granting these variances will not cause substantial detriment to the public good and that the variances will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
- The Applicants are also seeking numerous "C" variances for the Waypoint Property and the Hoffman's Property. The Board finds that, except as otherwise noted herein, by reason of the shape of the properties, their topographic conditions, and/or their physical features, the strict application of the Borough Code requirements noted herein would result in peculiar and exceptional practical difficulties to and/or exceptional and undue hardship upon the Applicants and the benefits of allowing these deviations outweigh any detriments.
- The Board generally finds that granting the Applications with the conditions set forth herein will benefit restaurant patrons, visitors to the area, and Borough residents and that the potential negative impacts caused by the proposed variances can be ameliorated by the conditions placed upon these approvals

(including, but not limited to, the limitation upon the seating capacity of the Waypoint restaurant, the prohibition upon outdoor amplified music, the requirement that the former koi pond area be landscaped in a manner approved by the Board Engineer, the requirement that the outdoor dance floor area will be removed and replaced with seating, and the requirement that the Hoffman's Property only be used by Waypoint for valet parking as defined herein).

- These Applications and the proposed variances will further the goals and improve the vitality of the Borough's C-2 Marine Commercial Zone, whose goals are to promote expanded and upgraded recreational boating and sport fishing facilities and to provide an area for a variety of uses that capitalize upon and enhance the unique community wide resource of the waterfront.
- The proposed variances are consistent with the Borough's Master Plan and will not damage the character of the neighborhood.
- The proposed variances will increase access and enjoyment of the river and surrounding neighborhood to the Borough's residents and visitors.
- All applicable fees and taxes were paid for the Waypoint Property and the Hoffman's Property and all applicable notices were provided for the Applications.
- The variances relate to specific property.
- The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the variances encourage 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.
- The variances can be granted without substantial detriment to the public good.
- The benefits of the deviations substantially outweigh any detriments.
- The variances will not substantially impair the intent and purpose of the zone plan and zoning ordinance;

and

#### APPROVALS

WHEREAS, based upon these findings of fact and conclusions of law, and based upon all submissions, testimony and evidence provided relating to these Applications, the Board voted on the Applications at the Board's March 13, 2018 meeting as follows:

#### FRONT AND SIDE YARD SETBACKS

WHEREAS, Mr. Bonacci made a motion to approve the application for variance relief as to the front and side yard setbacks; this motion was seconded by Mr. Stenson. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application for variance relief as to the front and side yard setbacks is hereby approved and granted subject to all conditions set forth in this Resolution.

#### LOADING SPACE/ZONE

WHEREAS, Mr. Lapham made a motion to approve the application for variance relief as to the loading space/zone for the Waypoint Property and the Hoffman's Property subject to the provision of adequate screening; this motion was seconded by Ms. Montalto. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application for variance relief as to the loading space/zone is hereby approved and granted subject to all conditions set forth in this Resolution including, but not limited to, the following conditions:

- Applicants shall shield/screen the loading space/zone in a manner approved by the Board Engineer.

#### SIGNAGE

WHEREAS, Ms. Montalto made a motion to approve the application for variance relief as to the sign on the front of the Waypoint restaurant (facing the street); this motion was seconded by Mr. Stenson. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application for variance relief as to the sign on the front of the Waypoint restaurant (facing the street), is hereby approved and granted subject to all conditions set forth in this Resolution.

WHEREAS, Mr. Sarnasi made a motion to approve the application for variance relief as to the 60-foot sign in the rear of the Waypoint restaurant (facing the water); this motion was seconded by Mr. Bonacci. At that time the following roll call was taken:

Ayes: Joseph Bonacci, Charles Sarnasi

Noes: Eric Lapham, James Maclearie, Stacey Montalto, James Stenson,

Thomas Condon

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application for variance relief as to the 60-foot sign in the rear of the Waypoint restaurant (facing the water), is hereby denied, and the Applicants are hereby directed to remove the 60-foot sign in the rear of the Waypoint restaurant within thirty (30) days of the effective date of this Resolution.

#### PARKING

WHEREAS, Mr. Lapham made a motion to approve the application for variance relief as to the number of parking spaces, size of curb cuts and aisles, and gravel parking lot on the Waypoint Property and the Hoffman's Property; this motion was seconded by Mr. Maclearie. At that time the following roll call was taken:  
Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto,  
Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the applications for variance relief as to the number of parking spaces, size of curb cuts and aisles, and gravel parking lot on the Waypoint Property and the Hoffman's Property are hereby approved and granted subject to all conditions set forth in this Resolution including, but not limited to, the following conditions:

- Hoffman's shall grant Waypoint a permanent easement, in a form to be approved by the Board Engineer and Board Attorney, allowing Waypoint to use the Hoffman's Property for valet parking. Said easement shall be filed and recorded by the Applicants, with a copy provided to the Secretary of the Brielle Planning Board.
- Hoffman's parking lot shall be used by Waypoint solely for valet parking. For purposes of this condition, the term "valet parking" shall mean a valet that meets customers at the Waypoint Property, takes their keys, and then once they have exited their vehicles transports their vehicles to the Hoffman's parking lot, and a valet that meets customers departing the Waypoint restaurant and retrieves their vehicles from the Hoffman's Property and brings it to them at the Waypoint Property. Using golf carts to transport Waypoint customers to and from the Hoffman's lot is not valet parking and shall not be allowed.
- Prior to using the Hoffman's parking lot for parking for Waypoint's restaurant, the Applicants shall install concrete bumpers in the portion of the Hoffman's parking lot used for Waypoint valet parking in a manner approved by the Board Engineer.
- Prior to using the Hoffman's parking lot for parking for Waypoint's restaurant, the Applicants shall install lighting improvements in the portion of the Hoffman's parking lot used for Waypoint valet parking in a manner approved by the Board Engineer.
- The portion of the Hoffman's parking lot used for Waypoint valet parking will contain 90 degree angle parking
- The traffic flow to enter and exit the Waypoint Property will be as follows: Access shall permitted via Green Avenue driveway and Union Lane driveway. Egress shall be permitted via Union Lane driveway only.
- The Applicants shall remove the gate system between the Waypoint Property and the Hoffman Property and shall replace it with solid fencing in a manner approved by the Board Engineer.

#### WATER'S EDGE SETBACK AND LANDSCAPED AREA

WHEREAS, Mr. Sarnasi made a motion to approve the application for variance relief as to the water's edge setback and the landscaping area; this motion was seconded by Mr. Bonacci. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the applications for variance relief as to the water's edge setback, and variance application with respect to the landscaping area is hereby approved and granted subject to all conditions set forth in this Resolution including, but not limited to, the following conditions:

- The Applicants shall, no later than June 15, 2018, convert what is referred to as the "Koi Pond Area" to landscaped space in a manner approved by the Board Engineer.
- The Applicants shall, no later than May 1, 2019, demolish the "new" rear deck stairs and build them into the deck so that the setback is 17.2 feet from the water's edge to the deck and so that the rear deck stairs are flush with the deck.

#### AMPLIFIED OUTDOOR MUSIC

WHEREAS, Mr. Stenson made a motion to restrict the use of the Waypoint Property by limiting outdoor outdoor music to non-amplified music only and eliminating the dance floor area; this motion was seconded by Mr. Maclearie. At that time the following roll call was taken:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto,  
James Stenson, Thomas Condon

Noes: Charles Sarnasi

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the following conditions are imposed upon the Board's approvals of these applications:

- The Waypoint Property may only have non-amplified outdoor music and amplified outdoor music shall be prohibited on the Waypoint Property. This prohibition shall include both live musicians and DJs.
- The dance floor area shall be eliminated and replaced with seating. The seating arrangement shall remain



fixed and not be moved by staff or patrons during operating hours. The Applicants shall submit four (4) sets of an amended site plan showing this change to the Board Secretary.

#### MAXIMUM SEATING CAPACITY

WHEREAS, Mr. Bonacci made a motion to approve the application for relief from the conditions imposed by the previous Board approval for the Waypoint Property imposing a condition that the restaurant has as maximum seating capacity of 72; this motion was seconded by Mr. Lapham. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application for relief from the condition imposing a maximum seating capacity of 72 is hereby approved and granted, and the condition is hereby lifted subject to all conditions set forth in this Resolution including, but not limited to, the following conditions:

- The restaurant on the Waypoint Property shall have a maximum seating capacity of 208 seats.

#### MINIMUM LOT SIZE AND F.A.R.

WHEREAS, Ms. Montalto made a motion to approve the application for variance relief as to minimum lot size requirements, floor area ratio requirements, and D2, D3, and D4 variances; this motion was seconded by Mr. Stenson. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the applications for variance relief as to minimum lot size requirements, floor area ratio requirements, and D2, D3, and D4 variances is hereby approved and granted subject to all conditions set forth in this Resolution.

#### GENERAL SITE PLAN APPROVAL/VARIANCE RELIEF, AND RELIEF FROM HOURS OF OPERATION CONDITION

WHEREAS, Mr. Lapham made a motion to approve the application for variance relief as to general site plan relief and from the condition imposed by the previous Board approval regarding hours of operation; this motion was seconded by Mr. Stenson. At that time the following roll call was taken:

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

Noes: None

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the application for variance relief as to general site plan relief and for relief from the condition imposed by the previous Board approval regarding Hours of Operation is hereby approved and granted subject to all conditions set forth in this Resolution, including, but not limited to, the following conditions:

- The hours of operation condition in the previous Board approval is hereby waived and the hours of operation of the restaurant on the Waypoint Property shall be governed by the requirements of the Borough Code and the restaurant's liquor license.

#### GENERAL CONDITIONS

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applications are approved subject to the following general conditions:

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

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

C. To the extent that other time periods are not set forth herein, the Applicants shall meet all conditions set forth herein in a prompt and timely manner.

Mr. Stenson made a motion for approval of the resolution seconded by Ms. Montalto and then by the following roll call vote:

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

Noes: None

#### NEW BUSINESS:

The Board turned to an application for variance relief for Block 60, Lot 4.01, 7 Crescent Drive, owned by Peter & Mary Petracco, to allow construction of a detached garage, in-ground pool and hardscape improvements to the rear yard. Minimum Lot Width — 75 feet required, 60 feet provided. Building Coverage — 20% allowed, 22.45% proposed. Pool Patio — 5-foot setback required, 3-foot setback proposed (south side).

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. Michael Rubino, Esq. came forward to represent Mr. and Mrs. Petracco. Mr. Rubino presented the applicants request to build a new garage with an upstairs cabana and porch. The coverage is a touch under 20% and with the existing house and new proposed garage it would be 22.45%. He stated they are no longer asking for the variance. He added the fence would conform.

Mr. Clark clarified the applicant was not asking for the variance. Mr. Rubino confirmed. Four poster boards were submitted. A1(8 photos) & A1A (2 photos), A2 architectural layout, A2A real pictures, A3 two drawings proposed front and rear perspective and A4 engineering drawing.

Mr. Petracco was sworn in by Mr. Clark. Mr. Rubino asked Mr. Petracco do you own the property and his response was yes. Mr. Petracco added they had moved in 2013. Mr. and Mrs. Petracco had a house built keeping with the rest of the neighborhood. At the time, they did not replace garage. Mr. Petracco continued with the family growing and the addition of the pool, they are now ready to replace the existing garage. They hope to add storage and a play area for the children. Also, a bathroom to be used with the pool. They currently would need to go the front of the house to use the bathroom. The Petraccos hope to have a grill area on the porch.

Mr. Condon asked the Board for questions. Mr. Langenberger asked if the upstairs would have heat and air conditioning. Mr. Petracco answered yes. Mr. Hilla then asked about the mechanical equipment. Mr. Petracco responded they would be using a ductless system. Mr. Hilla added concern over the space for a regular heating and air conditioning system. Mr. Sarnsi asked Mr. Hilla about the height and setback formula. Mr. Hilla was ok with the height. Mr. Maclearie reiterated the bathroom needing to be upstairs. Mr. Rubino confirmed due to the flood plain requirements it must be upstairs. All other members of the Board had no questions at this time.

Mr. Condon opened the meeting for public comment. Mr. Siano of 5 Crescent Drive came forward and was sworn in. Mr. Siano began to give his opinion of the project. Mr. Condon informed him that if he didn't have questions of Mr. Petracco then he would need to wait until the end of the testimony for the public comment portion. The public portion was closed.

Mr. Melillo, architect for the applicant was sworn in and gave his credentials. The Board accepted his qualifications. Mr. Melillo started his testimony with the requirements of being in the flood zone and their effect on the placement of the bathroom. He referenced a conversation he had with Zoning Officer Elissa Commins where they agreed. Mr. Melillo answered the question of the Hvac system by saying they would place the small unit in a conforming spot.

Mr. Rubino asked Mr. Melillo to testify to his part of the project. Mr. Melillo stated that the deck coverage is most of the overage in which they are asking for the variance. He continued with the bottom floor would be covered porch area and space for cars and upstairs would be recreation area, bathroom and deck. Mr. Rubino asked Mr. Hilla if a variance would be needed. Mr. Hilla read the ordinance and indicated that a variance would be needed for the bathroom. Mr. Petracco agreed if approved that space could be restricted and would not become living space.

Mr. Condon opened to questions from the Board. Mr. Sarnsi asked if it was necessary to have a shower. Mr. Rubino interjected if approved they would be willing to agree to Code Enforcement of the ordinance. And issue a summons if it is violated. Mr. Condon opened to questions of the public. No one came forward. The public portion was closed.

Mr. Kociuba was sworn in by Mr. Clark. Mr. Kociuba stated his qualifications. The Board accepted them. He stated that the only variance they are seeking is for the lot coverage. He added that the property is in a flood zone, so the home has no basement for storage. Also, the new garage would be more pleasingly aesthetic and has no impact on the neighborhood. Mr. Kociuba presented an exhibit showing over homes in the area with similar coverage.

Mr. Rubino asked Mr. Kociuba to respond to a couple of Mr. Hilla's concerns in the letter. The first was about the driveway, which will be moved slightly to match the garage. Second, was about the retaining wall. Mr. Kociuba explained the retaining wall is necessary to installation to the pool. Mr. Kociuba turned back to the neighbors that have been granted approval from this Board. He finished with the hardship of no basement for storage due to the flood zone.

Mr. Condon opened to questions from the Board. Mr. Langenberger asked if an apron would be put in with the driveway. The response was yes. Then he asked how the fence will protect pool. Mr. Kociuba answered the fence will wrap around the pool. It will not affect site triangle. It goes back 15 feet from the curb line and will have two gates. Mr. Sarnsi asked if the roof water will drain into the drywell. Mr. Kociuba said they would work that into the plan. The rest of the Board having no questions, Mr. Condon opened the public portion for comments to the planner. The public portion was closed.

Mr. Condon opened the public portion for comments. Mr. Siano 5 Crescent Drive came forward to give his opinion on the nice addition to the neighborhood. Mr. Farinacci 11 Crescent Drive was sworn in. He agreed that the garage was a good addition to the neighborhood. The public portion was closed.

Mr. Condon opened to Board comments. All agreed the garage was a nice addition.

Councilman Garruzzo made a motion to approve the application, seconded by Mr. Stenson and then by the following roll call vote:

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

Noes: None

As there was no other business to come before the Board a motion to adjourn was made by Mayor Nicol, seconded by Mrs. Montalto and unanimously approved by the Board, all aye. The meeting was adjourned at 8:17 p.m.