

BOROUGH OF BRIELLE
PLANNING/ZONING BOARD MEETING
TUESDAY, NOVEMBER 12, 2019

The Regular Meeting of the Brielle Planning/Zoning Board was held on Tuesday, November 12, 2019 at 7:30 p.m. in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a salute to the Flag, roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, Madeline Ferraro, James Langenberger, James Maclearie, Glenn Miller, Francis Pierciey, James Stenson, Corinne Trainor

Absent - Eric Lapham

Also present were David Clark, Board Attorney, Alan Hilla, Jr., Board Engineer and Karen Brisben, Board Secretary who took the Minutes. There was a full room as far as audience.

A motion was made by Mr. Stenson to approve the Minutes of the October 8, 2019 meeting, this seconded by Mr. Pierciey and approved by voice vote with Mayor Nicol and Councilman Garruzzo abstaining.

CORRESPONDENCE:

A notice was received that there will be a Monmouth County Master Plan public hearing on Monday, December 16, 2019 at 11:00 a.m. at the Monmouth County Planning Board Conference room, Freehold.

OLD BUSINESS:

The Board turned to consideration of a Resolution denying a variance request for Block 72, Lot 1, etc., 836 Riverview Drive, owned by 836 Riverview Drive, LLC, denying use of barrier netting fencing.

As all attorneys involved, as well as the Board members, had received a draft copy and some changes were made, the final Resolution was presented as follows:

WHEREAS, 836 Riverview Drive, LLC (the “**Applicant**”) applied to the Planning Board of the Borough of Brielle (the “**Board**”) for variance relief for a fence which it constructed on the property located at 836 Riverview Avenue and identified on the tax map of the Borough of Brielle as Block 72, Lot 1 (the “**Property**”); and

WHEREAS, the Property is located within the Borough's R-2 Residential Zone ("R-2") and currently contains a two and one half (2 ½) story dwelling, swimming pool with pool house, a detached garage, and boat house; and

WHEREAS, the Property is located adjacent to the Manasquan River Golf Club property; and

WHEREAS, the Applicant constructed a structure approximately sixty-five (65) feet high and one hundred thirty (130) feet long made from barrier netting and wooden poles along its boundary with the Manasquan River Golf Club in order to prevent golf balls from entering the Property; and

WHEREAS, the Borough thereafter issued a Notice of Violation to the Applicant indicating that this structure violated the fence requirements in the Borough Code; and

WHEREAS, the Applicant filed this application (i) seeking an interpretation from the Board as to whether this structure constitutes a fence under the definitions in the Borough Code and, if so (ii) requesting variance relief to allow this structure to remain in place as constructed; and

WHEREAS, Mayor Nicol, Councilman Garruzzo, Mr. Langenberger, and Mr. Miller all recused themselves and did not participate in the hearings on this application; and

WHEREAS, during the hearings on the application, the Applicant conceded that this structure meets the definition of "fence" in the Borough Code and withdrew the portion of its application seeking an interpretation of the Borough Code, but continued to prosecute its application for variance relief for this structure; and

WHEREAS, this application specifically requires the following variance relief (variance being sought is delineated in bold type):

(a) Section 20-40 of the Borough Code requires fences to not exceed 6 feet in height, except for tennis courts, where fence heights can be up to 12 feet in height for open mesh fences; **the Applicant is proposing a fence which is 65 feet high**; and

WHEREAS, the Board held hearings on this application on June 11, 2019, September 10, 2019, and October 8, 2019 and considered the following documents presented at the hearing in connection with this application:

- a. Application package including, but not limited to, survey prepared by Charles O'Malley, PLS dated March 12, 2015 and miscellaneous drawings from Tex Net, Inc.;
- b. Review letter from Alan Hilla, Jr., P.E., P.P., dated March 20, 2019;
- c. Exhibit A-1 old netting;
- d. Exhibits O-1 photo of Property from Manasquan River Golf Club archives;
- e. Exhibit O-2 photo of Property and golf course from Manasquan River Golf Club archives;
- f. Exhibit O-3 photo of former tree line on Property and boat washed up after Superstorm Sandy from Manasquan River Golf Club archives;
- g. Exhibit O-4 aerial photo of Property;
- h. Exhibit O-5 photo of barrier netting at Property taken by Patrick Housen;
- i. Exhibit O-6 photo board containing two aerials dated July 1st, 2018 and September 6th, 2013 and two photos depicting the side view of the net and looking across the water hazards towards the net;
- j. Exhibit O-7 photo board aerial photos dated July 1st, 2018 from a distance of 635 ft and a distance of 969 ft;
- k. Exhibit O-8 historical aerials from 1957, 1963, 1972, 1986 and 2015; and

WHEREAS, the Applicant was represented at these hearings by Keith Henderson, Esq., the objector Manasquan River Golf Club was represented at these hearings by Thomas Hirsch, Esq., and the objectors Thomas Hackett, Patrick Housen, Loretta Lamb, and Andrew Kelley were represented at these hearings by Mark Aikins, Esq.; and

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

June 11, 2019

Mr. Keith Henderson, Esq. came forward to present this application and told the Board the only member of the LLC is Ron Dana, who lives at this property. He referenced a letter from 8/13/18 from Zoning Officer Elissa Commins and asked that the Board accept all the paperwork that was submitted, Mr. Condon said that the Board does.

Mr. Clark brought up the issue of the appeal for the Zoning Officer's determination and, if that is upheld, then there is a variance request. Mr. Henderson said the applicant concedes that the structure is within the Zoning Officer's definition; Mr. Clark asked if that meant they are withdrawing the appeal requesting an interpretation of the fence ordinance and Mr. Henderson said yes, they are only asking for variance relief.

At this time Mr. Thomas Hirsch, Esq. came forward representing the Manasquan River Golf Club and he wanted to put their position on the record, the Board allowed this. Mr. Hirsch said they are dealing with a large netting to stop errant golf balls and he anticipated the testimony will be about golf balls; there is a myriad of case law on this and it is not a zoning issue, it is irrelevant that because something is happening on someone else's land it affects his land. He did not think this should be before this Board.

Mr. Condon felt there should be testimony given, Mr. Hirsch understood this but the point is that the Golf Club should not be at fault, the variance is on the Dana property. Mr. Henderson disagreed with Mr. Hirsch's opinion and said the Board has the right to hear this case.

At this time Mr. Ron Dana came forward and was sworn in, he gave his address as 836 Riverview Drive and said he is the sole owner of the LLC. He acquired this property 3 years ago from the Wesson family which used this as a summer home and did a lot of work on the property. This parcel has been approved for a subdivision but they did not want to proceed with a subdivision. Mr. Dana said his focus was to create a full-time living home and restore this dwelling which was built in the 1920s; the restoration took 2 ½ years and they were finally able to move from the Manasquan beach area. Mr. Dana said he owns homes and has quite a few rentals but his wife has MS and this

motivated him to move as she couldn't use the beach and steps or walk on the beach. This home in Brielle has an elevator and has 3 levels as well as a deck so now his wife can get around. There are two pools here, one is on land and one is not used as it is now underwater at high tide, it is down by the river. Mr. Dana testified that, right from the beginning, they had golf balls coming over into their property and not just 10, many more. He had damage done to a 100 year old stained glass window, he has had balls go right into his home.

He further testified that his wife was not able to go into the pool as a majority of the golf balls went in there and that last week there was a golf ball in the jacuzzi right where his grandkids play and said his one-year granddaughter could have been hit. Mr. Dana said he had made calls to the Manasquan River Golf Club and spoke to the General Manager, Mike Zusack and also spoke to Matt Morrow; they were very cooperative and told him there previously was a 45-foot net there but there wasn't enough left after Hurricane Sandy to use.

He talked to them about putting up a safety net and he was talking about bringing in 40-foot trees. He had a trajectory study done and bought wooden poles from North Carolina, he purchased 6 poles. Mr. Dana testified that he had spoken to the Golf Club and they were cooperative on this and Mr. Dana felt the General Manager was speaking for the Golf Club. He was also told not to bring in trees as the Golf Club was moving a lot of trees and they gave Mr. Dana the name of the Landscaper. The carrier from North Carolina came up Route 70 with the poles, the poles are 75 feet high and they are in the ground 10 feet so they are showing 65 feet high. He explained the Golf Club kept them on their property and helped him move them to his property, they had a machine and he had a machine. Mr. Condon asked who helped him and Mr. Dana said there were two employees from the Golf Club, it was a joint thing. Mr. Condon asked if this was Mike and Matt and Mr. Dana said yes and said he couldn't believe no one knew this. He also testified that the landscaper cleared the area (Mr. Dana paid him) but the Golf Club never did offer the trees, they said they would but did not.

Mr. Dana said he has spent over \$100,000 on this project and that he paid for everything; now 98% of the balls have stopped getting into his yard. He also noted his front yard is still getting golf balls as he only has protection around his pool, but now his wife can use the pool.

Mr. Henderson produced a piece of the netting that they took from the trees that was left after Hurricane Sandy and this was marked as Exhibit A-1. Mr. Dana said he saw the poles that were there, took them out and put in his new poles along with new netting and it works. Mr. Henderson asked Mr. Dana if he offered again to put in trees and the answer was yes, but he never heard back from the Golf Club on the trees they offered, he has tried to work with them.

Mr. Henderson asked Mr. Dana about hiring a Golf Club architect from North Carolina to mediate this to eliminate this problem and Mr. Dana said he did but the Golf Club was not interested, they said they could not modify the tee. Mr. Dana added that

Mr. Johnston, the architect he hired, asked the Golf Club if he could go on their property and take pictures and was not permitted to do so. Mr. Stenson asked Mr. Dana if he spoke to anyone else at the Club; Mr. Dana said he thought Mr. Zusack was the General Manager and he thought he was the one to handle this.

Mr. Lapham asked how Mr. Dana got the number for the height of the poles at 75 feet and Mr. Dana said it was from the Trajectory report he had done; he was told he was in the worst position by the golf course. Mr. Lapham asked if they were the tallest poles he could get and the answer was yes, they don't make wooden ones any higher. Mr. Maclearie asked if the net is higher than the trees and Mr. Dana said no, he has some large trees there. Mr. Condon asked Mr. Dana if he had gone to the town to see about permits, Mr. Dana said no. Mr. Condon then commented to Mr. Dana that he had purchased a home next to a golf club and Mr. Dana said he did not expect over 400 golf balls coming onto his property.

As there were no other Board questions the hearing was opened to the public for questions to Mr. Dana and Mr. Hirsch again came forward and asked when he had purchased the home, the answer was 2015 from the Wesson family who had owned it since 1998. Mr. Hirsch asked if he had been told about the risks of living here and the answer was no. Mr. Hirsch asked about the two pools at the property and Mr. Dana said the pool by the river is under water at high tide, it can be seen but is underwater; you can almost walk in it at low tide. Mr. Hirsch asked about them living there and Mr. Dana said he travels a lot, his wife would come over the use the pool so they eventually moved in. Mr. Dana testified that it got so bad his wife couldn't use the pool anymore as golf balls were coming in. The trees there and an existing net stopped about 10-15% of the balls. Mr. Hirsch asked about those trees and Mr. Dana said he removed them as the golf course was going to get new ones. Mr. Hirsch asked how Mr. Dana knew about the 45 foot high net that was previously there, Mr. Dana said someone from the Golf Club told him. Mr. Hirsch asked Mr. Dana if he told the Golf Club he was going to put up a 65 foot high net, Mr. Dana didn't remember. In answer to more questions on trees, Mr. Dana added you can't stop a golf ball with a tree, he planned on putting them in front of the netting.

Mr. Hirsch then asked if Mr. Dana had considered putting a lanai over the pool and Mr. Dana did not feel that is aesthetically pleasing, if he puts up trees on the property it will hide the net. Mr. Hirsch asked if the trees would be on his property, Mr. Dana said no, the trees will be on the Golf Club property in line with the other trees on the course. Mr. Hirsch then asked if the golf course architect Mr. Dana hired ever submitted a proposal to the Golf Club, he had not seen one. Mr. Dana said if the Club would move the 17th tee box it can remedy this and he was willing to put up trees but Mr. Hirsch said the trees would be on the golf course property. He then asked about the statement made about the poles being stored in a golf course shed and then they helped him move them, Mr. Dana said Matt and someone else helped him do this.

Mr. Hirsch asked if Mr. Dana's wife now uses the pool and the answer was yes and he was willing to put up a camera to show the balls there. Mr. Dana also said the

company he used gave him the parameters for the poles, they did a study and told him the type of poles to use. Mr. Hirsch asked if he had shown this study to the Golf Club and was told Mr. Dana had tried to contact them for two months but just got a run-around, finally got the General Manager. Mr. Dana finished by stating his wife has a right to a quality of life and he will give her that.

As there were no other public questions that portion of the hearing was closed and Mr. Michael Johnstone came forward and was sworn in; he is an architect and works under his own name and is a forensic golf club expert, he inspects accidents and issues on golf courses, has a BS in architecture from the University of Cincinnati and became a golf course architect back in 1985. He was accepted by the Board as an expert witness. He went on to say he was retained as a design consultant regarding the golf ball entries on the Dana property and noted he has 4 other cases right now on this problem. Golf Digest says over 40,000 accidents happen per year and 60% are from golf balls.

Mr. Johnstone said that Mr. Dana's home is at "ground Zero" for golf balls, the majority of the balls go right when a ball is sliced, the worse one is by the right white tee for hole 17. Mr. Lapham asked how far it was from the 17th tee to the Dana property and was told 240 yards. Mr. Henderson commented that the golf club and home were built around the same time; Mr. Johnstone added that today's clubs and balls go a longer distance. Mr. Johnstone said he had provided a menu of potential solutions and had asked to speak to a golf club officer but he did not get to speak to anyone. He had also asked permission to take photos and was denied. He tried to avoid nets and had recommended changes for the Golf Club to help the situation but could not propose a proper solution without being allowed on the golf course; he still needs permission from the Club.

Mr. Henderson asked about the lanai that was mentioned and Mr. Johnstone said it can have a roof and it will protect the pool. Mr. Henderson asked him what were kinds of things that can be done to get the golf balls in the right place and Mr. Johnstone said there could be a narrower fairway and they can move the hole as well as putting in a penal bunker. They can put in an aiming pole and signage educating golfers about accidents. They can move all tees forward and away from the Dana property so balls get hit in the other direction and that would eliminate the need for a net.

As there were no further Board questions the hearing was opened to the public for questions to Mr. Johnstone and Mr. Hirsch came forward. Mr. Hirsch asked how does one get to be a "Golf Course Architect" and Mr. Johnstone said there is no legal definition, he has designed gold courses, golf ranges and over 180 holes for safety concerns. Mr. Hirsch then asked about him contacting the Club and Mr. Johnstone said he asked who the architect was and was not given this information, he received this information from phone calls Mr. Henderson made to the Club. Mr. Hirsch asked him about getting on the golf course and Mr. Johnstone said he could not provide specific designs for the hole as he couldn't get on the course, he picked 7 things to improve the hole. Mr. Hirsch commented about him not stating what could be done there and Mr. Johnston said he thought that he had done that. Mr. Hirsch kept on the fact of not presenting an actual

plan and Mr. Johnston again said he couldn't provide a specific plan without getting on the course, he gave 7 options in the letter he did send. Mr. Hirsch then asked how often Mr. Johnstone has been on the Dana property and the answer was once, today; he had not been there before and had to use photos and maps, he gave his opinions on what to do based on aerial photos as he was not allowed on the Golf Club property.

Mr. Hirsch went back to the lanai that would stop balls and asked about other areas, Mr. Johnstone said he was hired to give information on the pool area only. He said a lanai can be used if the screening is strong enough. Mr. Stenson asked if there is a trajectory chart and Mr. Henderson said he had one but it was not shown to the Board. Mr. Johnstone said this will not show what the Board wants to see and he did not have the aerial photos. Mr. Lapham asked if a graph was done to show where the balls go and Mr. Johnson said he did not do this. Mr. Maclearie asked how much it would cost to move a tee box on a golf course and was told about \$20,000 to \$25,000.

Mr. Condon asked about using a lanai, Mr. Johnstone said it can be done but it would need to have a roof. Mr. Condon said they have lanais in Florida all over and they are all screened, there are pools all over Florida; Mr. Johnstone said this could be effective. Mr. Condon then asked for clarification that all recommendations were done by aerial photos and the answer was yes and he was there today for over 2 ½ hours.

At this time there were no more Board questions so the hearing was opened to the public and Andrew Kelly of 636 Oceanview Road came forward and was sworn in. He asked when Mr. Johnstone was first consulted, the answer was 6-8 months ago. Mr. Kelly asked when the aerial photos were done and was told 2016, the golf course was built in 1922. Mr. Kelly asked if he had done a comparison with the golf course of the 1920s and compared it with today's course? Mr. Johnstone answered no.

September 10, 2019

Mr. Clark announced that both Ms. Ferraro and Ms. Trainor had listened to the tape of the June meeting on this matter and were eligible to vote. Mr. Condon said there was a lot of testimony not pertaining to Land Use issues given at the last hearing in June and he wanted to limit any further testimony to Land Use issues; he then asked if the attorneys spoke to each other from June until now. Mr. Henderson said they did but not did not reach a settlement. Mr. Henderson said he had 5 witnesses here tonight and Mark Aikins, attorney for several neighbors, also had witnesses as well as Tom Hirsch, attorney for the Golf Club.

Mr. Henderson called Mr. James Lukowitz of 3164 Cherry Court, Manchester, to come forward and be sworn in. He is the builder that worked on the restoration of the home at 836 Riverview Drive, he started in July of 2015 and he is just about done. He saw golf balls coming on the Dana property and sometimes collected 20 a day, the majority were in the pool area and walkway to the pool area; they started seeing this on the first day they were there. A painter was working on a window when a golf ball came in and broke the glass, one other window was broken as well as a stained-glass door.

This problem has lessened around the pool area since the barrier net was installed but is still a problem around the garage where there is no netting. He was also there at the meeting with the Club Manager and Landscape person and Mr. Hirsch objected to this testimony as Mr. Lukowitz was not part of this conversation. Mr. Henderson asked Mr. Lukowitz for confirmation he was there and Mr. Lukowitz confirmed that he was there and heard the conversation. Mr. Hirsch wanted to know the names of the Golf Club employees to which Mr. Ludowitz answered a man named Matt and the grounds man, he did not know his name. Mr. Hirsch then stated this is irrelevant as to whether this applies to the Municipal Land Use Law and we are going down this same road again; this does not have anything to do with variances. Mr. Henderson said there will be Planning testimony on the C-2 variance regarding a danger to occupants of the Dana property.

Mr. Condon said the Golf Club can't make it okay for them to put up netting, only the Planning Board can do that; Mr. Aikins added that if they are applying for hardship, this has been created by the applicant and is not allowed under law. Mr. Clark indicated that any testimony should apply to Land Use issues. Mr. Henderson said the Applicant intends to prove that there was a safety net there that pre-existed the Zoning Ordinance, but Mr. Hirsch said this is irrelevant, this is not a pre-existing right. The previous net was taken down due to storm damage so this right is lost by this being removed and there is no basis now for variance relief. He checked with the Borough if the previous netting was allowed to be put up and there were no records on it. Mr. Aikins agreed, the day it came down it became irrelevant. Mr. Clark said the Board can grant a variance on the new netting but it has to be proved that a variance is warranted. There is a code violation on this and the testimony should be given that a variance is warranted.

Mr. Henderson objected and stated that his client should be allowed to present testimony regarding his communications with employees of the Golf Club and regarding the pre-existing netting. Chairman Condon ruled that such evidence would not be permitted, but noted Mr. Henderson's objection to this ruling and agreed that the objection would be included in the Minutes and so noted by the Board.

Mr. Hirsch asked Mr. Lukowitz if he was a General Builder and the answer was a Custom Home Builder who has subcontractors, he had 3-4 workers on this project which consisted of stripping down the interior wood and bringing it back to when the home was built, the home has 5,700 square feet. He also put in an elevator and did some caulking work outside. He pretty much finished this by February of this year and did the work on a time and material basis. He supervised and planned the next steps on this project, worked 7-8 hours a day and has time records on file. Mr. Hirsch asked him about picking up golf balls and Mr. Lukowitz said he did pick them up, he did not make a point to do this.

As there were no other questions for Mr. Lukowitz from the Board or attorneys, the hearing was opened to the public for questions and, as there were none, that portion was closed. At this time Mr. Henderson asked for a brief recess to discuss the Board's ruling with his clients and it was granted, the Board took a 5 minute recess at 8:30 and reconvened at 8:35 p.m.

At this time Mr. Clark asked Mr. Aikins to give the names of those he was representing this evening: they are - Thomas Hackett, Patrick Housen, Loretta Lamb and Andrew Kelly. Mr. Clark said any questions that these individual may have should be directed through their attorney and Mr. Aikins agreed.

Mr. Henderson then called Paul Harnett of 2153 Evergreen Avenue, Sea Girt to come forward and be sworn in, he works for Borab Landscaping and has been working on the Dana property at 836 Riverview Drive for 7.5 years, he was there before the Danas purchased it. He goes there once a week, 10 months a year, on Friday. He said the golf balls are constantly seen, there is a problem at the tee box on hole 17 and the balls come onto the property, he was almost hit by one; he said the net has made a considerable difference and has reduced the balls coming in. Mr. Hirsch asked if he ever had a complaint about the golf balls from the previous owner and Mr. Harnett said yes, there were golf balls during the golf season, he saw them, heard them and picked them up and threw them away or put them in the grass area, this is in reference to the whole west side of the property. Mr. Aikins asked him about the duration of his visits and was told 2 to 4 hours, he maintains all the plant material on the property; Borab does not cut the grass, he said that is done by Reiniger/Dickson Landscaping.

As the Board had no questions the hearing was opened to the public for questions and Peter McGuigan of 2327 Orchard Crest Boulevard, Manasquan came forward and asked if this safety issue caused him to change the way he works and the answer was yes, some workers had to be aware of golf balls and face that way. As there were no other questions that portion of the hearing was closed. Ms. Trainor was curious as to why Mr. Harnett was hesitant when saying who cuts the grass and he said he was here tonight on his own behalf and not on behalf of his company. She then asked him if he has a financial interest in Borab Landscaping and the answer was no.

The next person to come forward and be sworn in was Alison Coffin from James W. Higgins Associates in Ocean Township, she is a Professional Planner and has appeared before the Brielle Planning Board; she has a Bachelor's degree from Boston University, is certified in NJ and has testified before more than 90 communities in New Jersey. The Board accepted her as an expert witness.

Ms. Coffin was retained to look at this issue, the site is a very large lot, 271,648.64 square feet, it is a deep flagged lot from Riverview Drive to the Manasquan River and it is by the 17th tee. She commented that over 100 golf balls have been recovered and Mr. Hirsch objected to this, he said she cannot say 100 golf balls, Ms. Coffin said it has already been testified that over 100 golf balls have been picked up. She said they are asking for variance relief for 130 feet of netting and the property itself is over 700 feet long. The purpose of the Fence Ordinance is for safety and does have a 12-foot allowance for tennis courts. She felt the netting is considered a fence and does need a C variance, a C-1 variance applies to the odd shape of the lot and is a hardship, the C-2 variance is where the benefits outweigh the detriments. She felt the C-2 variance applies here and promotes public health, safety and welfare, this site is next to the 17th tee and

she has hardship testimony on this as this creates a situation that the property is now in jeopardy and the owners cannot use their property, the net has helped them. There is no light, air and open space being affected by this, no noise, odors, traffic or pollution.

This is a unique situation, activity on one lot affects the other lot and a 12-foot high fence is not going to address golf balls as it will for tennis balls and the netting needs to be 65 feet high. Mr. Henderson commented that some say this is not an attractive visual environment and Ms. Coffin felt that was open to interpretation and can be softened by putting trees in. Mr. Hirsch said the purpose of the Municipal Land Use is health, safety and welfare, it was not created to provide remedies to adjacent properties. Ms. Coffin said if relief is necessary to provide safety, the Board can grant a variance. This obviously is a safety problem and the Municipal Land Use Law gives people the right to be given safety. Mr. Hirsch then said Ms. Coffin stated a C-2 variance applies and, in fact, this variance says a Board can find if the benefits outweigh the detriments and that needs to be done. Ms. Coffin said a variance can be granted for safety. Mr. Hirsch asked if a C-2 variance is an opportunity to grant relief for a community and Ms. Coffin said yes. Mr. Hirsch then asked if the height has to be 65 feet? Ms. Coffin said this is the testimony she gave, Mr. Dana got the height from the fence company. Mr. Hirsch countered with the fact that that expert was not here and evidence of this was not produced to the Board and not filed with them. He then asked about the other properties along the golf course and Ms. Coffin said she drove around the perimeter of the golf course.

Mr. Hirsch then asked if a golf ball hits someone, does that mean a variance should be granted for a 65 foot high net? Ms. Coffin said the grounds of having golf balls landing on Mr. Dana's property justifies variance relief; if coming in at a high speed, etc., they may be dangerous, there is not a definite bright line standard. Mr. Aikins spoke of the comment of a visual environment and asked if there are less intrusive ways to lessen the impact here, maybe constructing a lanai or putting in trees, these may make a better environment. Ms. Coffin said she did say trees would help but they were not put in first. Mr. Aikins asked about poles that are 65 feet high and a 130-foot long netting, was this safe construction as no permits were applied for at all. Ms. Coffin said she was a Planner and not an Engineer. Mr. Aikins asked her if she inquired about the cost of this structure and the answer was no. He then asked if the pool can be relocated to another location and the answer was again no. Mr. Hirsch asked her to agree there is an adverse impact and Ms. Coffin said no but there is a subjective opinion, it is a see-through barrier and not a fence. Mr. Hirsch said there is no room on the Dana property for trees and Ms. Coffin agreed but said it is a customary thing to have by a golf course and she worked with this at Deal Country Club. Mr. Hirsch asked if that was to stop intrusion and Ms. Coffin said not in that instance, all the things that could be done here the applicant can't do but he can put up a net; a lanai is not appropriate here as balls are landing all over and lanais are connected to the house but this pool is 75 feet from the house. Mr. Hirsch asked if it can be built, though, and Ms. Coffin said it would not protect people going to the pool; Mr. Hirsch then offered it would be grossly oversized to accommodate this and the answer was yes. Mr. Hirsch then said that the fence was over 65 feet high and she did not feel this was grossly oversized? Ms. Coffin said the Fence Ordinance does not address this. Mr. Aikins asked if the fencing at the Deal Country Club was provided and paid for by that

Club and Ms. Coffin said yes. Mr. Condon said he counted 28-30 homes on the fairway, so would 28-30 nets be aesthetically pleasing? Ms. Coffin said each one would have to be addressed individually. As there was no other testimony that portion was closed.

October 8, 2019

Mr. Henderson came forward and stated he had one witness to testify. Mr. Frank Accisano came forward and was sworn in by David Clark. Mr. Accisano stated he was an attorney in the State of New Jersey licensed in residential closings. His office located at 2517 Hwy 35 Manasquan, NJ and his residence was 34 A Maple Lane Brielle. Mr. Henderson asked Mr. Accisano if he represented Mr. Dana in the closing of the 836 Riverview property and if the seller had disclosed any off-site hazards or issues. Mr. Accisano responded he did represent Mr. Dana and there were no disclosures, it was a typical closing. Mr. Henderson asked if there was discussion of the golf ball condition and Mr. Accisano responded no.

Mr. Tom Condon opened the meeting to questions of Mr. Accisano, hearing none he closed that portion. Mr. Condon opened to Board members who had questions, hearing none he closed that portion of the meeting.

Mr. Henderson said that concluded the Applicant's case. Mr. Hirsch representing the Manasquan River Golf Club (MRGC) came forward and explained that he had several witnesses. He began with Mike Zusack, COO of MRGC.

Mr. Zusack was sworn in by Mr. Clark. Mr. Zusack, 7 Silver White Road Little Silver, NJ stated he has been the Chief Operating Officer for the Club for 20 years this coming January. Mr. Hirsch asked him his duties. He responded day-to-day operations, overseeing the budget and information gathering for the Board. Mr. Hirsch asked Mr. Zusack if he had attended the other meetings for this application and he responded yes.

Mr. Zusack testified he attended the meeting on June 1, 2018 in which Mr. Dana indicated golf balls were coming on to his property and he wanted to reinstall a protective net. Mr. Hirsch asked if Mr. Dana had informed Mr. Zusack of the height of the net he wished to install. Mr. Zusack responded no. Mr. Zusack explained he relayed that meeting's information to his Board of Trustees.

Mr. Hirsch asked Mr. Zusack if he had heard Mr. Dana's previous testimony in reference to removal of trees and MRGC planting trees. Mr. Zusack said yes, he had heard Mr. Dana's testimony. Mr. Zusack continued that he had not been a part of any discussions about the removal of the trees and MRGC had no intention of planting trees.

Mr. Hirsch asked Mr. Zusack if he had received any complaints about golf balls on the Dana property. Mr. Zusack explained he had received two complaints, one from previous owner regarding a broken window in which the owner did not want the golf club to do anything just a notification to them and one from Mrs. Dana who said a window had

been broken. Mr. Zusack testified he and the superintendent took a golf cart over to the property and tried to reach Mrs. Dana but she was not home.

Mr. Zusack asked if this was a good time for his photos. Mr. Hirsch responded yes. Mr. David Clark marked exhibits O-1, O-2 and O-3 which Mr. Zusack described as photo 1- the Dana property, photo 2 - Dana property and Golf Course and photo 3 – tree line of the Dana property and a boat on Golf Course property after Super Storm Sandy all of which were from the Club's archives.

Mr. Henderson asked Mr. Zusack if he knew the dates of the photos. Mr. Zusack was unable to supply the dates except for the photo after Super Storm Sandy.

Mr. Hirsch asked if Mr. Zusack had helped with the reinstallation of the net as had been indicated in previous testimony by Mr. Dana. Mr. Zusack explained that he had been gone for the weekend in which the installation took place.

Mr. Henderson asked Mr. Zusack if Mrs. Dana had made only one complaint. Mr. Zusack replied one.

Mr. Condon opened the meeting to questions from the public. Mr. Bruce McMoran, 1601 Jordan Way Manasquan, NJ came forward and was sworn in. Mr. McMoran asked if the MRGC removed the trees. Mr. Zusack replied No.

Mr. Aikins, attorney representing several neighbors, asked Mr. Zusack if complaints had been made to other personnel, would those complaints reach Mr. Zusack. Mr. Zusack replied one way or another they would make it to him.

Mr. Condon closed the public portion and opened to Board questions. Ms. Trainor asked if it was mentioned that the previous net belonged to MRGC. Mr. Zusack responded that it did not belong to the Club.

Mr. Stenson asked if the trees were on Mr. Dana's property and was there a pool beyond the trees. Mr. Zusack replied yes.

Mr. Condon asked if Mrs. Dana's call was before the tree removal. Mr. Zusack responded yes. Hearing no other questions from the Board, Mr. Condon closed that portion.

Mr. Hirsch called Mr. Evan Broadbelt to testify. Mr. Broadbelt, of 2072 Allenwood Road, Wall was sworn in by Mr. Clark. He stated he had been a member of MRGC, Professional Golf Rules Official and attorney. Mr. Broadbelt testified he was hired to record his observations of golf balls driven from the 17th hole reaching/or not reaching Mr. Dana's property. He continued it was the weekend of the Riddle Tournament, Saturday and Sunday, his job was to record where the balls went. He tracked left or right rough fairway, bottom of fence, middle of fence, top of fence or over the fence for each of the players. Mr. Hirsch asked how many were driven from the 17th tee. Mr. Broadbelt

responded 180 tee shots on Saturday and 120 on Sunday. Of those shots: three hit the bottom of net and one hit the top of net on Saturday and no balls hit the net on Sunday. Mr. Hirsch asked if the report indicated if any balls went over the net. Mr. Broadbelt responded no balls went over the net.

Mr. Henderson asked what the Riddle Tournament was. Mr. Broadbelt responded members only tournament. Mr. Henderson asked how many balls hit the net and if any balls hit the middle of the net. Mr. Broadbelt answered three hit the bottom, one hit the top and none hit the middle on Saturday, and none hit the net on Sunday.

Mr. Condon opened the meeting to questions from the public. Hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Ferraro asked what type of golfers were in the tournament. Mr. Broadbelt responded the golfers were representative of the members, meaning all levels, normal, highly competitive or better than average.

Mr. Pierciey asked how many feet to the net from the tee. Mr. Broadbelt responded about 135 feet to the net. Mr. Pierciey also asked where the balls hit the net, closer towards the river or towards the pool. Mr. Broadbelt responded he did not specify that information on the report.

Mr. Lapham asked if Mr. Broadbelt made the observations by himself. Mr. Broadbelt responded that he had done Sunday only, and Saturday was done by someone else. Mr. Lapham asked Mr. Broadbelt to share his range finder findings with the Board. Using a range finder Mr. Broadbelt determined from white tee to top of tree line was 160 yards, 160 yards, 175 yards and 182 yards and from the blue tee 190 yards, 190 yards, 200 yards, 213 yards.

Hearing nothing further from the Board, Mr. Condon closed that portion.

Mr. Hirsch asked the Board to allow Mr. Mark Aikins witnesses to testify first and then he would present the planner. The Board agreed.

Mr. Aikins came forward with Dr. Thomas Hackett, 406 Laurel Avenue Brielle. Mr. Hackett was sworn in by Mr. Clark. Mr. Aikins asked Dr. Hackett to indicate the location of his house to Mr. Dana's house. Mr. Hirsch asked Mr. Clark to allow Dr. Hackett to use his planner's aerial to show the Board the location of his property. O-4, an aerial submitted by Mr. Hirsch's Planner was admitted into evidence. Mr. Aikins asked Dr. Hackett how long they have owned their house. Dr. Hackett responded they purchased their property in 1997, tore down the existing home, built new and moved in 1999. Mr. Aikins asked what kind of impact the net was having on Dr. Hackett. He responded he must look at it all the time. Dr. Hackett continued he purchased the property for the views. Mr. Aikins asked if any balls land on his property. Dr. Hackett answered 6-8 golf balls a week land on his property. Mr. Aikins asked if they had done anything to address the issue. Dr. Hackett responded he has added to existing plantings within the bounds of law. Mr. Aikins asked Dr. Hackett if he had alerted MRGC and Dr. Hackett responded he didn't feel he

needed to. Mr. Aikins asked if Dr. Hackett was present for Mr. Dana's testimony and if the Dr. would construct a lanai or protective cover should his plantings not be sufficient, and the Dr. responded he would consider it. Dr. Hackett asked the Board to deny the application.

Mr. Henderson asked Dr. Hackett if he was a member of the Golf Club and he responded yes.

Mr. Condon opened the meeting to questions from the public. Hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Ferraro asked Dr. Hackett what the distance to the netting was from his house. Dr. Hackett answered he never measured it but considering the net is the size of a drive-in movie screen, it isn't that far. Ms. Ferraro asked for an estimate and the Dr. responded 250 yards. Ms. Ferraro then asked if they had any broken windows. Dr. Hackett said none in the twenty years of living there. Ms. Ferraro asked if the balls would be coming the same direction. Dr. Hackett explained he lived near the 12th hole which is the same distance from tee to property as Mr. Dana's is from tee to property.

Mr. Stenson asked if there was netting up on the (Dana) property when the Dr. purchased his property and the Dr. said no and then corrected himself by saying there was different netting in the trees. Ms. Trainor asked if the netting had gone away at any point. Dr. Hackett said it was dilapidated meaning fallen over. Mr. Stenson asked if there were trees. Dr. Hackett responded yes there were trees.

Mr. Maclearie asked what held up the net. Dr. Hackett answered metal tubing approximately inch or inch and a half in diameter.

Mr. Condon asked how visible the netting behind the trees was from the Dr.'s property. Dr. Hackett said he couldn't see from his property. Mr. Condon asked how he knew about the netting. Dr. Hackett said he could see the original netting when playing the golf course.

Hearing nothing further from the Board, Mr. Condon closed that portion.

Mr. Aikins called Patrick Housen forward. Mr. Housen of 412 Laurel Avenue Brielle was sworn in. Mr. Aikins asked Mr. Housen to indicate his residence. Mr. Housen pointed to his property on Exhibit O-4 and stated he is two homes from Dr. Hackett in a northwest direction. Mr. Housen purchased his house in 2001. Mr. Housen said he was impacted by this net. Mr. Housen stated he purchased his home because of the views, the golf course and the river. Mr. Housen asked if he could share a photo, he had taken with his wife. Mr. Housen's photo was labeled Exhibit O-5, a photo of Mr. Dana's fence with Mrs. Housen standing near the fence on the Golf Course property. Mr. Housen stated he took the picture in September of 2018. Mr. Aikins asked Mr. Housen if golf balls typically land on his property. Mr. Housen responded yes about 2-4 per week and it varies per season. Mr. Aikins asked Mr. Housen if they took any measures to stop the golf balls. Mr. Housen responded he hired a landscape architect to look at the property specifically for privacy

and protection. Mr. Housen said the landscaper suggested trees and plantings which would have a significant impact on protecting the property. Mr. Aikins asked if Mr. Housen was present for Mr. Dana's testimony and if he would construct a lanai or protective cover should his plantings not be sufficient, and Mr. Housen responded yes, some of his neighbors have pergolas. Mr. Housen continued by saying he had several 13-foot-wide umbrellas over the sitting area in case the balls made it through the trees. Mr. Housen stated his concern for his property value due to the very large net and asked the Board to deny the application.

Mr. Henderson asked Mr. Housen if he planted trees, if he felt the situations were a little bit different due to the different holes. Mr. Housen answered he planted trees, but he didn't feel the situations were different because both Mr. Dana's property and his own were on the right side of the fairway. Mr. Henderson asked if MRGC allowed trees to be planted in front of the net would that be acceptable to him. Mr. Housen responded no if the trees were planted properly on Mr. Dana's property there would be no need for a net, he is concerned with setting a precedent and the environmental impact.

Mr. Condon opened the meeting to questions from the public, hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Trainor asked Mr. Housen if any neighbors had hurricane shutters and Mr. Housen replied he did not know. Mr. Lapham asked if the picture was taken while standing on his property and Mr. Housen responded he is not on his property; it is from the Golf Course.

Hearing nothing further from the Board, Mr. Condon closed that portion.

Mr. Hirsch asked his planner to come forward to testify. Andrew Janiw, Beacon Planning and Consulting Services, 315 Highway 34 Colts Neck, NJ, came forward and was sworn in. Mr. Janiw listed his qualifications for the Board to accept. The Board accepted him. Mr. Janiw was hired to testify for the MRGC and in preparation, he reviewed the application, Borough ordinances, and the master plan as well as case law related to similar issues. Mr. Janiw presented his exhibits to be marked: Exhibit O-6 photos from google imagery; two aerials dated July 1st, 2018 and September 6th, 2013 and two depicting the side view of the net and looking across the water hazards towards the net; Exhibit O-7 photo, aerial photos dated July 1st, 2018 from a distance of 635 ft and a distance of 969 ft.; and Exhibit O-8 photo, historical aerials from 1957, 1963, 1972, 1986 and 2015. Mr. Janiw explained the earliest historical photo depicted the Dana property before the pool, 1963 depicts the mature tree growth, 1972, 1986 and 2015 depict the pool and tree line, while the 17th hole has not changed since the 1957 photo. Mr. Janiw explained from a planning perspective the variance is a simple issue, a bulk variance would be required for a fence significantly larger than allowed by the Borough ordinance. Mr. Janiw explained a C-1 variance a hardship is required and C-2 is the balance test, three points positive and two points negative. Mr. Janiw cited two cases Kaufman v. Warren Township and Wilson v. Brick Township. Mr. Janiw added it must be a benefit to the community and not just to Mr. Dana and his family. Mr. Janiw reiterated the testimony of others who said there are other alternatives to the net. Mr. Janiw

explained this is not unique to Mr. Dana's property that his neighbors have similar situations.

Mr. Henderson asked Mr. Janiw if his testimony is that there must be a public interest for the C-2 variance. Mr. Janiw responded the application does not qualify for relief under C-2 variance since it must be for public benefit and not solely for the benefit of the property owner. Mr. Henderson asked if Mr. Janiw was a golf course expert. Mr. Janiw responded no he was not, but he heard Mr. Henderson's experts testify there were other techniques for the protection from the golf balls. Mr. Janiw continued by saying when Mr. Dana purchased this property, he knew there were certain risks.

Mr. Aikins asked Mr. Janiw if the date was July 1st, 2018 for Exhibit O-7. Mr. Janiw answered the aerials were from July 1st, 2018 and the photos were from June 7th, 2019.

Mr. Condon opened the meeting to questions from the public, hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Trainor asked Mr. Janiw where the historical photos were from. Mr. Janiw responded purchased from Historic aerials which is a national archive company. Ms. Trainor asked how much the photographs cost. Mr. Janiw responded between \$25 and \$100. He continued that anyone could access the photos if they pay the fee. Ms. Trainor asked if Mr. Janiw knew when the vegetation was removed. Mr. Janiw responded based on the aerials it occurred somewhere between 2015 and July 2018. Ms. Trainor asked Mr. Janiw if he knew if it was before the fence was constructed that the trees were removed. Mr. Janiw responded it was his understanding the net came afterwards.

Mr. Stenson asked if the trees came down after 2015. Mr. Janiw responded yes. Mr. Clark stated for the record that Mr. Stenson was looking at Exhibits O-8 and O-6. Mr. Stenson asked if the net is up in the 2018 photo. Mr. Janiw responded it was difficult to tell because the photo is a direct overhead.

Mr. Maclearie asked if the vegetation was still there after Super Storm Sandy. Mr. Janiw responded yes you can see the vegetation is very vibrant in 2013. Mr. Condon asked if the site costs money to go on or if it only cost money for the pictures. Mr. Janiw responded browsing is free and pictures are free, they only charge you for pictures with better resolution.

With no more questions, Mr. Hirsch was finished with his witnesses.

Mr. Condon opened the meeting to the public for comments. Mr. Anthony Mascia of 610 Oceanview Road, Brielle came forward and was sworn in. Mr. Mascia stated he moved to his property on the 11th fairway in 1979. Mr. Mascia spoke of the golf balls coming on the property, the old net low in the trees was unobtrusive, asked the Board to not allow anybody anywhere in Brielle to install a net and to preserve the views.

Mr. Housen of 652 Valley Road, Brielle came forward and was sworn in. Mr. Housen stated he was a member of MRGC since 1952, he feels the net is an eyesore and it feels like top golf.

Mr. Mark Neuwirth of 606 Oceanview Road, Brielle came forward and was sworn in. Mr. Neuwirth explained he has only lived in Brielle for three years, but it was all about the views. He stated that he sees the net everyday even though he is 600 plus yards away. Mr. Neuwirth stated if he was to construct a large net to stop the 6-8 balls that come on his property then his neighbors would have to look through a net of their view. Mr. Neuwirth said he wouldn't do it to his neighbors and asked the Board to not allow it.

Mr. Condon closed the public portion of the meeting and asked for summations. Mr. Henderson came forward. Mr. Henderson started by saying this is a C-2 variance and the Board must weigh the safety issue against the desirable visual environment and, if it does so, safety should prevail. Mr. Henderson said there is plenty of testimony on the number of balls that come on the property, the net doesn't even protect the side of the property, which is still open to golf balls, only area protected is the pool. Mr. Henderson reiterated testimony that the Dana family can't do anything more unless trees are planted on the MRGC property or the 17th hole design is addressed. Mr. Henderson said the case is going to end up in court if they are forced to take it down. He continued that the trees came down when the net went up and the height of the net was determined due to a geographical study by experts. Mr. Henderson stated Mr. Dana has spent over \$200,000 just to protect his family and friends in the pool area.

Mr. Hirsch thanked the Board for their time and patience. Mr. Hirsch stated that at the outset of the application hearing it was said buckets of golf balls were landing on the property therefore a variance should be granted for a 65ft net and as he stated in the beginning, he feels that is irrelevant to the zoning variance for the height of a fence. Mr. Hirsch continued by saying the applicant was trying to convince the Board he had a hardship, but his planner knew he could not file under C-1 variance(hardship). Mr. Hirsch then read the Land Use C-2 variance definition. Mr. Hirsch continued by saying Mr. Dana suggests he has done everything he can by taking down mature trees that have stood for decades and erecting a 65 ft net on his property line which prevents him from planting trees on his property. Mr. Hirsch stated Mr. Dana suggests a study was done by experts, but the report has never been presented to the Board secretary or at a meeting. Mr. Hirsch said the MRGC is concerned about safety, they have 20 homes along the course and have operated all this time without being sued. Mr. Hirsch continued by saying Mr. Dana bought the property for the beautiful views and there is an assumption of risk when buying on a golf course. Mr. Hirsch closed by saying the benefits don't outweigh the negative impact on the neighbors and MRGC has offered to work with Mr. Dana because they are neighbors. He finished by asking the Board to deny.

Mr. Aikins told the Board the neighbors are grateful they could be a part of the hearing. Mr. Aikins finished by saying they hope this doesn't go to court and they ask the Board to deny the application because the applicant has not proven that the positive impacts of granting the variance being sought outweigh the negative impacts.

Mr. Condon asked for comments from the Board. Ms. Trainor thanked everybody for the thoughtful argument and time. She indicated that she agreed with the MRGC argument. Ms. Trainor said her job was to consider the elements of a C-2 variance and she did not believe the 65 foot high fence could be there without substantially harming the public good in the town and it is an eyesore.

Mr. Stenson stated he did not feel the applicant proved a C-2 variance and the benefits to the community. He finished by saying they bought a house on a golf course, knew the risk, installed a fence without a permit and there are other alternatives.

Mr. Condon said he was sympathetic to the wife's health issues but it has nothing to do with a C-2 variance. He felt they did not meet the requirements for a C-2 variance. He finished by saying other homes would be affected and it is not benefiting the public just the applicant.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicant bought the Property approximately three years ago.
- c. The Applicant was aware when he purchased the Property that it was located next door to the Manasquan River Golf Club (the "MRGC" or the "Golf Club"). The Board finds that people who purchase properties adjacent to golf courses should reasonably expect that some golf balls from those golf courses may enter onto their properties.
- d. The Golf Club has been in this location since approximately the 1920's and its configuration has not substantially changed since that time.
- e. The house on the Property has also been there since approximately the 1920's.
- f. The Property is located within the Borough's R-2 Residential Zone ("R-2") and currently contains a two and one half (2 ½) story dwelling, swimming pool with pool house, a detached garage, and boat house.
- g. Mr. Dana testified that when he moved into the Property, golf balls would frequently land in his back yard and pool area. Although there was

contradictory testimony from different witnesses as to the number of golf balls that went into the Applicant's back yard and pool area prior to the installation of the fence which is the subject of this Application, the Board accepts and finds that prior to the installation of the fence, golf balls from the Golf Club did land in the Applicant's back yard and pool area, and that fewer golf balls entered the Applicant's back yard and pool area after the Applicant installed the fence which is the subject of this Application.

- h. That being said, there was testimony from the owners of other homes adjacent to the Golf Club that golf balls also land in their back yards. The Board finds that the Applicant has not proven that the number of golf balls entering the Dana Property is significantly different from the number of golf balls entering any other properties abutting the Golf Club.
- i. To limit the golf balls landing in the back yard and pool area of the Property, the Applicant installed a fence along his property line approximately sixty-five (65) feet high and one hundred thirty (130) feet long made from barrier netting and wooden telephone poles.
- j. In order to install this fence, the Applicant removed a row of tall trees from the edge of the Property next to the Golf Club which had previously provided some protection to the Property's back yard and pool area.
- k. The Applicant did not seek or obtain either a zoning permit or a construction permit from the Borough prior to constructing this fence on the Property.
- l. The Borough issued a Notice of Violation to the Applicant indicating that the fence which he constructed violated the height requirements for fences set forth within the Borough Code.
- m. Section 20-40 of the Borough Code requires fences to not exceed 6 feet in height, except for tennis courts, where fence heights can be up to 12 feet in height for open mesh fences.
- n. The Applicant thereafter filed this application with the Board (i) seeking an interpretation from the Board as to whether this barrier net structure constitutes a fence under the definitions in the Borough Code and, if so (ii) requesting variance relief to allow this fence to remain in place as constructed.
- o. On the first day of the hearing on the Application, the Applicant's attorney conceded that this barrier net structure on the Property meets the definition of "fence" in the Borough Code and withdrew the portion of the Application seeking an interpretation of the Borough Code. Thus,

the sole issue before the Board was whether the Applicant was entitled to a variance for the fence which had already been constructed by the Applicant on the Property.

- p. The Applicant presented some testimony at the hearings regarding communications between Mr. Dana and representatives of the Golf Club regarding the placement of the fence on the Property. There was contradictory testimony from witnesses regarding whether authorized representatives of the Golf Club were or were not aware of the scope and extent of the proposed fence and whether representatives of the Golf Club participated in the installation of the fence and/or promised to install trees on the Golf Club Property near the Dana Property. After hearing some testimony on these issues, the Board excluded any further testimony regarding these issues, finding that such testimony was not relevant to the land use issue before the Board (which is whether the Applicant can show that the Property qualifies for variance relief under the MLUL and that a variance should be granted to allow the fence constructed by the Applicant to remain on the Property).
- q. The Applicant also presented some testimony indicating that there was a previous barrier net structure on the Property that was significantly smaller in size than the fence which is the subject of this Application and that was held up by iron pipes rather than by wooden telephone poles. The previous net structure was damaged and was no longer in active use at the time that the Applicant purchased the Property and it was suggested by some witnesses that it may have been damaged during Superstorm Sandy. After hearing some testimony regarding the existence of the previous barrier net structure on the Property, the Board excluded any further testimony on this issue, finding that such testimony was not relevant to the land use issue before the Board (which is whether the Applicant has shown that his Property qualifies for variance relief under the MLUL and that a variance should be granted to allow the fence constructed by the Applicant to remain on the Property).
- r. The Board did not make any determination regarding whether the previous barrier net structure on the Property was a pre-existing non-conforming condition which gave the Applicant a right to have a similar fence at that location because that issue was not before the Board. Rather, the only relief sought by the Applicant herein was a request for a variance for the fence, and that request assumed that the Applicant had no pre-existing right to have a fence on the Property. The Board notes, however, that (i) the use of the previous barrier net structure had been discontinued and abandoned before the Applicant purchased the Property, and that (ii) the fence constructed by the Applicant was a significant expansion of the previous barrier net structure on the Property.

- s. There was testimony from neighbors that the fence on the Property is an eyesore that is unattractive and which negatively impacts people's views and the character of the neighborhood.
- t. There was also testimony from a number of witnesses that there are alternatives that the Applicant could pursue to protect golf balls from entering the Property, including but not limited to the installation of a lanai or other type of covering protective material over the pool area, the use of landscaping and the planting of trees to protect the area, and/or the use of umbrellas and screens. Indeed, the Applicant removed a row of tall trees from the Property when the fence was installed and those trees may have provided some protection from golf balls entering the Property. While not directly related to the issue of whether variance relief is warranted, the Board finds that these alternatives would have less of a negative impact upon the neighborhood than the fence installed by the Applicant.
- u. The variance being sought by the Applicant relates to a specific piece of property.
- v. The Applicant conceded that it is not seeking variance relief under N.J.S.A. 40:55D-70(c)(1) as there are no special extraordinary physical characteristics of the Property warranting variance relief under this provision. The Board agrees and finds that there are no special extraordinary characteristics of the Property which would warrant granting a C(1) variance.
- w. The Applicant testified that it is seeking variance relief under N.J.S.A. 40:55D-70(c)(2) which provides, in pertinent part, that a variance may be granted where the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriments. There was testimony presented at the hearings and the Board finds, however, that relevant case law provides that the benefits of the deviation must be benefits to the general public and not just private benefits to the person or entity seeking the deviation.
- x. The Board find and concludes that the purposes of the Municipal Land Use Law would not be advanced by a deviation from the zoning ordinance requirements regarding height restrictions on fencing because, among other things, there are no public purposes being advanced by this Application. Rather, the only purposes being advanced are the private purposes of the Applicant and its guests.

- y. The Board also find and concludes that the benefits of any deviation from the zoning ordinance requirements regarding height restrictions on fencing would not substantially outweigh any detriments. There are numerous detriments caused by this deviation because the fence on the Property is substantially higher than the limits allowed in the Borough Code, the fence is unattractive and not aesthetically pleasing, the fence is not consistent with the characteristics of the neighborhood, the fence has a negative impact on the neighborhood where this Property is located, and allowing a deviation from the fence requirements would frustrate the purposes of the zone plan and zoning ordinances. The Board has not identified any public benefits to this deviation.
- z. Thus, the Board finds that the Applicant has failed to meet its burden of proof to demonstrate that it is entitled to a C(2) variance for the fence which it constructed on the Property.

WHEREAS, Mr. Stenson moved to approve the application; this motion was seconded by Mr. Maclearie. At that time the application was denied by the following roll call vote:

Ayes: None

Noes: Thomas Condon, James Maclearie, James Stenson, Corinne Trainor, Francis Pierciey, Eric Lapham and Madeline Ferraro

Not Eligible to Vote: Mayor Nicol, Councilman Garruzzo, Mr. Langenberger, and Mr. Miller

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applicant's application for variance relief is hereby denied.

A motion was made by Mr. Maclearie to approve the above Resolution denying the variance request, this motion seconded by Mr. Pierciey and then by the following roll call vote:

Ayes: Thomas Condon, James Maclearie, Francis Pierciey, James Stenson, Corinne Trainor, Madeline Ferraro

Noes: None

Not Eligible to Vote: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Langenberger, Glenn Miller

NEW BUSINESS:

The first item was an application for variance relief for Block 56, Lot 4, 404 Leslie Avenue, owned by Quincy Homes, LLC, to allow an elevated rear yard deck. Lot Coverage – 20% maximum allowed, 23.83% proposed. Confirmation on driveway location and curb cuts needed.

The taxes are paid to date and the property owners within 200 feet, as well as the newspaper, were notified properly. Mr. Michael Rubino, Esq. came forward to present this application, he told the Board the two driveways that the Board engineer questioned are going away so that is not part of the application, they are here for the deck only. He then presented Exhibit A-1, a photo board with multiple photos of the area, taken yesterday. He also had two witnesses to testify, Paul Grabowski, Architect and Jack Wojton, a partner of Quincy Homes; they were both sworn in at this time.

Mr. Grabowski was accepted as an expert witness as he is known to the Board and he stated he was the architect on this project which is located in a Flood Zone, thus the need for an elevated home with parking under the building as well as a storage area. The first floor is at 10 feet above grade so they are asking for permission to build an elevated deck but this affects the building coverage as it will be 17.5 feet by 14 feet. It will be a composite deck with $\frac{1}{4}$ spaces so this is a pervious surface as water will go through it. Mr. Hilla asked about the surface below the deck, Mr. Rubino said the client wants to cover some of the area under the deck with landscaping. Mr. Wojton said that right now there are just stones but they may want to put in pavers, this is a low area and the deck will never be enclosed. Mr. Hilla commented that a hardscape will negate any pervious area, the drainage is not addressed on the plans so he was concerned. Mr. Wojton said the building that was demolished had more impervious coverage. Mr. Condon asked if he had any idea of how much they decreased this coverage and Mr. Wojton was not sure but felt it would be a couple of hundred square feet.

At this time the hearing was opened for Board questions and there were none so it was opened to the public for questions only to Mr. Grabowski. Lynn Evans of 109 Lake Avenue came forward and was sworn in but went back to her seat after being reminded this was questions only at this time. She said she would come back for comments.

As there were no questions from the public that portion of the hearing was closed and Mr. Wojton told the Board he has figured the square footage that was reduced for impervious coverage, it was 286 square feet; Mr. Hilla asked him if this was with the deck included and the answer was no, this was before the deck.

Mr. Wojton continued and said Quincy Homes brought this property to develop it, the old home there was in poor condition and in a Flood Zone, they are asking to put the deck right off the kitchen, otherwise one would have to go down steps to go outside. Mr. Maclearie asked about the square footage of the deck and was told it is 245 square feet. At this time Mr. Rubino asked Mr. Wojton to confirm the pictures he presented,

Exhibit A-1, were of the property in question and Mr. Wojton said yes and identified the photos.

At this time the hearing was opened to the public for questions to Mr. Wojton and, hearing none, that portion was closed. Mr. Hilla said he felt there was a conflict with the application and the plans presented and Mr. Grabowski said the old circular driveway was taken down and there is a new driveway from the street on the right side, Mr. Rubino showed him one of the photos in Exhibit A-1.

Now the hearing was opened to the public for general comments or questions and Lynn Evans came back. She said the back yard of the property goes across her back yard and the second floor deck is in her face, this is what she sees from her house. She objects to the size of the deck and felt it will ruin her piece of mind. She is 9 inches above Flood Level and felt the deck can be made lower, she was concerned about the height. She said her property is only 50 feet deep and 75 feet across the front. She showed, on Exhibit A-1, where her home is and finished her comments by stating this is a quiet neighborhood.

Next to come forward was Susan Schreck of 111 Lake Avenue who was sworn in. Her concern is the closeness of the deck to her home as well as privacy issues, they will be able to look down into her back yard and she will lose all her privacy. Her second floor is their first floor, she realized she can't object to the home built but she objects to the deck as it infringes on her privacy.

As there were no other comments, that portion of the hearing was closed and the Board went into discussion. Mr. Hilla had no further comments and Mr. Langenberger commented that, since Hurricane Sandy, this street is one of the last to be done. He felt the new deck will fit in and said that most homes here have been changed. Mr. Maclearie felt that perhaps some trees can be put in, Councilman Garruzzo agreed with it being elevated and he did not see too many issues here. Mayor Nicol agreed with Mr. Maclearie that landscaping would help and suggested putting in 8 to 10 foot trees that will grow. Mr. Rubino said they can plant 6 foot high trees that will grow but Mayor Nicol felt that 8 foot trees can be installed and the Board Engineer can review this. Ms. Ferraro was okay with the application and had no further comments, Mr. Condon said this is a new home and the first floor is elevated so it makes sense to have a flow to the deck and agreed landscaping should be put in. Mr. Wojton said they will put in the landscaping as suggested by the Board.

At this time Ms. Evans came back to speak but Mr. Clark told her the public portion was now closed, she just wanted to say, in reply to Mr. Langenberger comments, that this is the first home in the middle of the block to be done.

Mr. Clark then summarized up the application and said the Board will grant the variance with 2 conditions, 8 foot trees to be installed pursuant to a plan to be approved by the Board Engineer and the space under the deck will never be enclosed. Mr.

Stenson then made a motion to approve the application with the conditions noted, this seconded by Mrs. Trainor and then approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, James Maclearie, Glenn Miller, Francis Pierciey, James Stenson, Corinne Trainor

Noes: None

Not Eligible to Vote: Madeline Ferraro (Alternate member)

The final application was for a Major Subdivision for Block 64.06, Lot 11, 619 Rankin Road, owned by Bojac Realty, to create 5 buildable lots. Minimum Lot Width: 100 feet required, 90.34 feet proposed for Lot 18.02; 88.52 feet proposed for Lot 18.03, 88.52 feet proposed for Lot 18.04. Minimum Lot Depth: 125 feet required, 70 feet proposed for Lot 18.05. Environmental Impact Statement needs to be provided. Residential Site Improvement Standards are inconsistent or deficient. Stormwater Management Report is incomplete. Sanitary Sewer Information is needed as per Engineer's report. Soil & Grading impact is needed. CAFRA/DEP applications/approvals needed.

Taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. C. Keith Henderson, Esq. came forward to present this application on behalf of the applicant and said he had two witnesses, Jack Van Horne, one of the owners of Bojac Realty and Jeffrey Carr, Engineer. Before going any further, Mr. Bernard Reilly, Esq. came forward as an objecting attorney, he is representing Kenneth & Hope Olenyik of 821 Scott Road. He said there are a number of deficiencies with the application and he did not see why the Board should go forward; there is no lighting plan along with a whole host of other deficiencies; he said the application is not complete and why would the Board even hear this? He submitted that the applicant should be made to conform. Mr. Condon said this is going to be a multi-month meeting and the applicant will have to address these things as the hearings proceed; the Board will go from there.

Mr. Henderson agreed with the Board Chairman, this property has been vacant for a number of years and they want to see what the Board might want to have here as far as lot coverage. They have a couple of ideas on what to present and have gone from as many as 6 lots to as little as 4 lots in deciding on plans. The original Rankin Road Farm was done by the Goldthwaites and they want to save the home, if they reduce this application to 4 lots the home will have to be taken down.

At this time Mr. Van Horne of Bojac Realty spoke and said they have been working on this matter for 1 ½ years and have looked at different configurations; this is a beautiful property and a lovely old farmhouse. They thought of dividing this up into 6 smaller lots and they wanted to save a lot of trees, then they thought if they make 5 lots they can save more trees. If they can have 5 lots they will relocate the existing home

and have looked into the costs of this relocation; he said it would be cheaper to demolish the home but if they can have only 4 lots the home would have to be taken down. Mr. Henderson asked if they have plans for construction of the homes and Mr. Van Horne said one of the partners wants to buy one lot and build on it, the rest will be sold.

Mr. Langenberger was concerned about the existing farmhouse, it had water damage and he wondered if it was even feasible to consider moving it. Mr. Van Horne said the water leak was repaired as well as mold remediation done so the existing home is now habitable and is can be moved. Councilman Garruzzo asked if the home cannot be kept for economic reasons for 4 lots, Mr. Henderson said it is easier and cheaper to demolish; Mr. Van Horne added if they divide the property into 4 lots they would have larger homes that would be built and he did not think they would fit in the neighborhood, if there are 5 lots the homes that will be built will fit in with the area.

Mr. Reilly asked where the farmhouse would be relocated to; Mr. Van Horne showed him, on a colored rendering of the site, it would be relocated to the rear of one of the lots and commented it will cost about \$100,000 to move. Mr. Reilly asked if there was a written estimate and Mr. Van Horne said no, he was verbally told this estimate by a partner who got this from an expert on moving homes. Mr. Reilly asked if there was a written estimate on this and the answer was no. He then asked when the last time was the home was inhabited and the answer was 2-4 years ago, it has been vacant since Mr. Goldthwaite died. There are caretakers there, Mr. Van Horne believed they have quarters above the barn/garage area, that is where they were living when he was there 4-5 months ago. Mr. Reilly asked if Bojac will be building the homes or just selling the vacant lots and Mr. Van Horne said both, Mr. Perry Boquel, one of the partners, would like to construct a home and they may market the other lots as vacant lots or they may build homes on the other lots and then sell them. Mr. Reilly asked about the price range for the lots and Mr. Van Horne said the vacant lots would be priced from \$550,000 to \$700,000 as they are different in size, if there are homes built on the lots then the prices would range from \$950,000 to \$1.2 million. Mr. Reilly asked if the farm house was going to be restored and Mr. Van Horne said yes. Mr. Reilly then questioned if the home can be moved at all and was told one of the partners looked into it and said it can be moved. Mr. Reilly asked if a structural engineer looked at whether the home can be moved and the answer was no. Mr. Reilly asked if Bojac Realty has developed any other properties and Mr. Van Horne said yes, although not of this size.

Mr. Kenneth Lackey, Esq. then came forward as another objecting attorney, he is representing Emily Lackey and had questions as well on the existing home. Mr. Van Horne said they hope to save the entire home but they may have to lose the patio. They plan to build a new foundation on another lot then lift the existing home and move it, he did not know if it would be moved by crane or not but said his partner, Perry Boquel can testify better on this as he will be the General Contractor; the work will be sub-contracted out and added they will have insurance on this for whatever amount it makes sense to have.

Mr. Reilly asked if there are underground tunnels on this property and Mr. Van Horne said no but there are extensive rooms in the basement, he has not found any tunnels. Mr. Lackey asked if there are underground storage tanks and have they been removed, Mr. Van Horne did not know.

At this time Mr. Henderson said Mr. Lackey is representing his wife and, as Mr. Boquel will have to testify to answer his questions, he wanted Mrs. Lackey to be available to testify. Mr. Henderson said this is standard and again commented he is an attorney representing his wife. Mr. Clark felt that attorneys can represent objectors without producing the objectors to testify and it is up to the objectors if they want to testify or just want to question the applicant's witnesses.

Mr. Robert Houseal of the Environmental Commission then came forward and he asked if Mr. Van Horne read the Environmental Commission report and the answer was yes, Mr. Van Horne read it then called his engineer and asked him about it. Mr. Houseal asked if they were aware the stream that runs through this property is known as Rick's Run and Mr. Van Horne was not aware of that name. Mr. Houseal then asked about the concrete structures in the stream and Mr. Van Horne was not aware of that either but said they have applied to the DEP and will comply with their requirements.

At this time the hearing was opened to the public for questions to Mr. Van Horne and Faith Jones of 812 Schoolhouse came forward and was sworn in, the side of her home is on Rankin Road and asked what size the lot is that the home will be moved to? Mr. Van Horne answered 31,652 square feet or 7/10 of an acre. Ms. Jones said her lot is 100 x 125 and would the home being moved fit in, Mr. Van Horne said the lot they will create is more than double the minimum required. She then asked why they are making lots less size than required and Mr. Van Horne explained they are creating a cul-de-sac so the lots are narrower in the front. Ms. Jones said there is no cul-de-sac there now so why are they asking for less; Mr. Van Horne said the Engineer can address this but it has to do with the way the lot depth is measured.

Next to come forward was Jeniene Stango of 620 Rankin Road, who was sworn in, and questioned the statement that they can only save the home & barn if they have 5 lots; Mr. Henderson corrected her and said they are not saving the barn. She then asked for clarification of not having only 4 lots and Mr. Van Horne said it is not economically feasible to make only 4 lots, if there are larger lots there will be larger homes. Mrs. Stango felt that more homes will mean more money and also questioned the lot sizes. Mr. Van Horne showed her the configuration of the lots on the colored rendering on the easel and said the engineer can testify on this; he agreed the lots are an odd shape. Mrs. Stango asked again for confirmation that 4 lots are not financially feasible and Mr. Van Horne said yes.

Mr. Richard Curran of 826 William Drive came forward and was sworn in. He wanted to know if any other applicants are going to occupy a home here and Mr. Van Horne said yes, Perry Boquel will. Mr. Curran then asked if a traffic study was done and the answer was no.

Mr. Kevin Carton of 826 Scott Road then came up to the front and was sworn in. He wanted to know why they were going to eliminate the trees in back of Scott Road, they are holly trees that provide a buffer. Mr. Van Horne said they are 100 feet from the property line and are inside the lots. Mr. Carton did not agree and had an aerial photo, from Google maps, that showed the tree line, this was marked as Exhibit O-1. He asked why position the road where the trees are and not on where the grassy area is that is open space? Mr. Van Horne said he would defer this answer to the Engineer; they want to save as many trees as they can but he couldn't address this question from Mr. Carton. Mr. Carton wanted to know if the berm that that buffers his property will be taken away and Mr. Horne could not answer that either. Mr. Carton then asked if there is asbestos in the existing home and Mr. Van Horne said he did not know.

Next to ask questions was Danial Burzon of 828 William Drive who was sworn in. he asked about the 50 foot trees by William Drive and will they be removed? Mr. Van Horne answered they would be taken down, they are 100 feet in on the property and are where the homes will be built. He then asked if the greenhouse is being taken down and the answer was yes; Mr. Burzon then asked for the reason that is being razed and Mr. Van Horne deferred that answer to the Engineer or Mr. Boquel, the builder.

Marybeth Kelly of 823 Post Road was next to be sworn in and wanted to know the cost per pupil for Brielle; Councilman Garruzzo answered and thought it was \$13,000 or so per child for Manasquan High School. Ms. Kelly then wanted to know how much of an impact these homes will have on kids coming in; Mr. Van Horne said the taxes on these new homes will cover this. Ms. Kelly then wanted to know if a traffic study is going to be done, the traffic now is absurd; Mr. Van Horne said that is up to the town. Mr. Condon commented the Planning Board has not yet heard from the Engineer on this project as yet. Ms. Kelly felt that traffic has a lot to do with this application and Councilman Garruzzo said the Board is not there as yet; Mr. Condon said her question was noted.

Tom Beaton of 623 Rankin Road came forward and was sworn in. He wanted to know how large is the site and was told 3.9 acres; Mr. Beaton wanted to know how much is wetlands. Mr. Van Horne said there is a 50 foot buffer from the stream and he would defer any other information about wetlands to his Engineer. Mr. Beaton commented they are taking one lot and making it five lots, do they need a CAFRA permit? Mr. Van Horn again deferred to his Engineer.

As there were no other questions to Mr. Van Horne that portion of the hearing was closed. Mr. Henderson said his next witness is the Engineer, it was discussed and decided to close the hearing for this evening and continue it at the next Planning Board hearing scheduled for Tuesday, December 10th at 7:30. Before adjourning the colored rendering of the site that was referred to during the evening was marked as Exhibit A-1 and Mr. Condon reminded the entire audience that the plans and maps are available for inspection at the Borough Hall during the business day.

As there was no other business to come before the Board a motion to adjourn was made by Councilman Garruzzo, seconded by Mr. Maclearie and unanimously approved by voice vote, all aye. The meeting was adjourned at 8:55 p.m.

Karen S. Brisben, Secretary of the
Board

Approved: December 10, 2019