

BRIELLE PLANNING BOARD  
TUESDAY, SEPTEMBER 8, 2020

The Regular Meeting of the Brielle Planning Board was held on Tuesday, September 8<sup>th</sup>, 2020 at 6:00 p.m. virtually. Ms. Brisben read the OPMA compliance statement. After a moment of silent prayer and a Salute to the Flag roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, Mr. James Stenson, Mr. James Maclearie, Mr. Glenn Miller, Ms. Madeline Ferraro, Ms. Corrine Trainor, Mr. Christian Siano, and Ms. Karen Brisben

Absent – None

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Carol Baran, Recording Secretary.

A motion was made to approve the Minutes of August 11<sup>th</sup>, 2020, this done by Mr. Maclearie seconded by Mr. Stenson and approved by unanimous vote, all aye.

CORRESPONDENCES: NONE

OLD BUSINESS:

Resolution for approval for Block 18.01, Lot 13,608 Harris Avenue, owned by John & Eleanor Fox, to allow construction of a new home. Minimum Front Yard Setback - 30 feet required, 27.25 feet proposed to the front porch, 24 feet proposed to steps. Maximum Lot Coverage - 20% allowed, 23.36% proposed.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF JOHN AND ELLIE FOX SEEKING SITE PLAN APPROVAL AND VARIANCE RELIEF FOR CONSTRUCTION OF A RESIDENTIAL DWELLING ON THE PROPERTY LOCATED AT 608 HARRIS AVENUE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 18.01, LOT 13

WHEREAS, John and Ellie Fox (the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking site plan approval and variance relief to construct a 2 ½ story residential dwelling with attached garage and other accessories on a vacant lot owned by the Applicants located at 608 Harris Avenue and identified on the tax map of the Borough of Brielle as Block 18.01, Lot 13 (the “Property”); and

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

WHEREAS, the existing use and the proposed use are conforming to the zone, but the principal structure which the Applicants propose to construct will be non-conforming to the zone and will require certain variance relief; and

WHEREAS, specifically, the Applicants are seeking the following variance relief through their application (the variance relief sought is shown in bold type):

(a) Minimum front yard setback—30 feet required; 24 feet proposed (to steps); 27.25 feet proposed (to covered porch);

(b) Maximum lot coverage—20% allowed; 23.36% proposed; and

WHEREAS, the Applicants originally submitted the following documents in support of their application:

(a) survey of the Property prepared by Robert A. Ragan, P.L.S. dated November 25, 2019;

(b) architectural plans (8 sheets) prepared by Atlantic Modular Builders (unsealed and unsigned) dated April 7, 2020;

(c) plot plan prepared by Joseph J. Kociuba, P.E., P.P. dated April 1, 2020; and

(d) an application package which includes a signed application and a Zoning Permit denial letter from the Zoning Officer; and

WHEREAS, after the first hearing on this application, the Applicants amended their plans for the development of the Property to, among other things, remove the separate in-law suite entrance, and to modify the entries, grading, and drainage system, and submitted the following additional documents in support of their application:

(a) architectural plans (8 sheets) prepared by Atlantic Modular Builders (unsealed and unsigned) dated July 28, 2020; and

(b) plot plan prepared by Joseph J. Kociuba, P.E., P.P. dated revised July 28, 2020; and

WHEREAS, the Planning Board held hearings on this application on July 14, 2020 and on August 11, 2020 and considered the following documents presented at the hearings in connection with this application:

a. Exhibit A-1 aerial photo of Property;

b. Exhibit A-2 plans for ½ story showing calculations; and

WHEREAS, the first hearing on this application was presented by the Applicants who proceeded pro se, but they then retained an attorney, C. Keith Henderson, Esq., who represented the Applicants during the second hearing on their application; and

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

July 14, 2020 hearing

Mr. Fox introduced himself and his wife, Eleanor as the Applicants and stated that they were representing themselves. He added that they had the Builder and Engineer on the virtual meeting also. Mr. and Mrs. Fox were having technical difficulties and asked Mr. Kociuba to respond to the letter from Mr. Hilla. Mr. Kociuba agreed to start while Mr. and Mrs. Fox corrected their issues. Mr. Kociuba, Mr. Fox, and Mrs. Fox were sworn in by Mr. Clark. Mr. Clark asked if anyone else would be testifying on their behalf, Mr. Kociuba said yes, Mr. Ryan Myers. Mr. Myers was also sworn in by Mr. Clark.

Mr. Kociuba started by sharing the plans prepared by Atlantic Modular Builders. Mr. Kociuba indicated the property was a non-conforming interior lot in the R-3 zone. He stated 11,250 feet is required 10,000 is provided, it is a 100 X 100 lot with frontage on Harris Avenue. He testified the applicants acquired the lot about twenty years ago and they are looking to construct a new 2 ½ story dwelling.

Mr. Hilla asked to interrupt Mr. Kociuba to straighten out the misunderstanding of the lot. Mr. Hilla stated the lot was oversized for the zone according to the ordinance no. 21-13.2. Block 18 minimum is 7500 sq. ft. and this lot is 10,000 sq. ft. Mr. Clark reiterated Mr. Hilla's interpretation was that the lot was not under-sized. Mr. Hilla replied yes because it is within this overlay zone, it is oversized at 10,000 square feet.

Ms. Brisben read Zoning Officer Ms. Elissa Commins' letter of denial and stated the letter says the lot is undersized.

Ms. Trainor asked Mr. Clark for guidance on how to proceed. Mr. Clark asked Mr. Hilla does this change anything in terms of what is being sought in terms of relief. Mr. Hilla responded the variance was not needed for the lot area.

Councilman Garruzzo asked if the noticing would be incorrect and would there need to be a re-notice. Mr. Clark responded that he did not believe it causes an issue and the reason being the things they noticed and the things they are seeking are consistent.

Ms. Trainor asked if the Board should hear Mr. Kociuba's qualifications. Mr. Clark asked if Mr. Kociuba was testifying as the engineer or the planner. Mr. Kociuba replied he would be testifying in both capacities and added he is licensed in both in the State of New Jersey. Mr. Kociuba stated he has a bachelor's and master's degree in Civil and Structural Engineering from Rowan University, and fifteen years' experience testifying for numerous boards, including Brielle. Mr. Clark asked if anyone had questions of Mr. Kociuba's qualifications and if the Board accepts his qualifications.

The Board agreed to accept his qualifications.

Mr. Kociuba proceeded by saying two variances that were noticed are not required. Mr. Kociuba had the plot plan up for the Board to see. The plan showed the bulk of the dwelling at 30.25 feet, however the porch (27.25 ft) and front steps (24 ft) do extend forward of the 30-foot front yard setback line requiring a variance. Mr. Kociuba stated two of the variances in Mr. Hilla's letter were regarding the west side and rear yard setback. Mr. Kociuba read the ordinance 21-9.11 that references porches or entries uncovered or covered shall be considered part of the principal building and shall not project into the required yard area if they are three feet or more in height. Mr. Kociuba said they were not requesting variances for the side or rear yard setbacks as they believe that they comply and that the railings should not be considered when calculating height. He further stated that if the zoning officer disagrees, they will re-design the project to remove the railings as they are not seeking variance relief for these conditions.

Mr. Kociuba stated they are requesting a variance for the building coverage. They building coverage is 23.17% and 20% is permitted. They are proposing a fully conforming parking area.

They are proposing a drywell system. Mr. Kociuba stated there was a question in Mr. Hilla's letter regarding the drywell system and its adequacy. Mr. Kociuba said they would provide a full-sized drywall system on the design for submission for a plot plan. Mr. Kociuba addressed the questions regarding fencing on the property. Mr. Kociuba stated the fence would be six-foot vinyl surrounding on three sides and small picket fence in front. Mr. Kociuba referenced the question about floor area ratio. He provided some documentation and calculations to Mr. Hilla demonstrating they are compliant with the floor area ratios.

Mr. Kociuba shared the floor plan with the meeting and described the dwelling as a single-family home, first floor elevation, showing the garage, family room, dining room, kitchen, the mud room, laundry room, and in-law suite. The second floor shows the remainder of the home, the four bedrooms, and room over the garage. Mr. Kociuba stated they are compliant with the building height.

Mr. Kociuba addressed the questions with the trees, stating some will be eliminated but they intend to save as many as possible. Mr. Kociuba said they would comply with any road opening requirements. Mr. Kociuba felt the variances could be granted under the C-1 and C-2 criteria. Mr. Kociuba testified the front porch was typical to the area and he shared an aerial photo marked Exhibit A-1.

Ms. Trainor opened the meeting for questions of Mr. Kociuba from the public. Hearing none, Ms. Trainor opened the meeting for questions to this witness from the Board. Mr. Maclearie asked if the height of the building had changed and Mr. Kociuba responded the height of the building was staying the same as it was compliant. Mr. Stenson asked if there was a basement or crawl space and Mr. Kociuba responded they anticipated a basement. Ms. Karen Brisben asked why the room would be unfinished and use of in-law suite in the future. Mr. Kociuba responded that Mr. and Mrs. Fox could respond to the question about the room over garage better and the in-law suite would not be able to be separate. Ms. Brisben asked Mr. Clark if the Board could do a deed restriction. Mr. Clark said the Board could impose a deed restriction as a condition of approval.

Ms. Trainor asked Mr. Hilla if Mr. Kociuba has addressed his concerns and Mr. Hilla said he felt Mr. Kociuba has. Mr. Hilla shared with the Board several proposed conditions regarding the use of the in-law suite. Ms. Trainor asked Mr. Hilla his opinion on the front setback, he felt the surrounding homes had similar setbacks. Mr. Hilla felt the Board should consider the lot coverage; it was a broad home for an oversized lot.

Mrs. Fox stated the property was purchased in 1998 and she bought it from her brother in 2003. She told the Board the house is their dream home. She stated her brother would be living with them in the in-law suite while recovering from a medical condition.

No further testimony was taken. Instead, Mr. and Mrs. Fox decided to carry the application so they may consult with the builder and Mr. Kociuba regarding whether any changes should be made to the application since the lot is oversized and not undersized.

August 11, 2020 hearing

Mr. Keith Henderson introduced himself and indicated that he had been retained to represent the Applicants Mr. and Mrs. Fox with regard to the continuation of this application. Ms. Trainor stated that when the Board had tabled this last month, the Board had already heard some testimony and asked Mr. Henderson how he was going to proceed. Mr. Henderson said he was planning on keeping it very short and had two witnesses. Mr. Henderson stated that as he understands it, there was some issue raised as to whether this house could possibly be used as a two-family house. Mr. Henderson testified that he was not at the previous meeting and he had met with the applicants after the meeting. Mr. and Mrs. Fox had the plans revised, which were submitted, and he believed, reviewed by the engineer. Mr. Henderson stated that he has testimony from Mr. Ryan Myers, from Atlantic Modular Builders and Mr. Joseph Kociuba, the applicant's professional planner and engineer. Mr. Henderson inquired whether these witnesses would need to be sworn in again. Mr. Clark responded that Mr. Myers never testified and that only Mr. Kociuba had testified. Mr. Clark stated that he believed they had both been sworn in but just to make sure, he suggested they both raise their right hands again. Mr. Myers and Mr. Kociuba were sworn in by Mr. Clark.

Mr. Henderson began with Mr. Myers. Mr. Henderson asked Mr. Myers who is he employed by. Mr. Myers responded that he works for Atlantic Modular Builders in Manasquan, New Jersey. Mr. Henderson asked Mr. Myers if he was retained by the Fox's to design a house, on the subject property. Mr. Myer answered yes. Mr. Henderson asked Mr. Myers if based on the Planning Board's comments, were those plans revised. Mr. Myers responded that they were revised, based on comments and some questions from the board, to remove the exterior door that leads to the first-floor bedroom and the wet bar. To further demonstrate that it is a single-family home as opposed to a two family or possible rental. Mr. Henderson asked Mr. Myer if the kitchenette was also eliminated, Mr. Myer testified that it was. Mr. Henderson asked Mr. Myer if there were any other changes made to the plans. Mr. Myers testified that those were the only changes made to the plans. Mr. Henderson stated that he had no further questions for this witness.

Ms. Trainor asked if there were any questions from the public for Mr. Myers. Hearing none, Ms. Trainor asked Mr. Hilla if he had any questions. Mr. Hilla responded that he did.

Mr. Hilla asked about one of the items that has to do with the building and the half story. Mr. Hilla stated that he didn't know how they're planning to address that, if it's through the modular company. Mr. Myer responded that he could address this issue. Mr. Myer testified if you consider the half story calculations, they need at least 50% of the attic to be five feet or less. As per his calculations 56.62% of the area is five feet or less including the area above the second floor and the area above the half story in which a ceiling collar tie attaches to an extra structure, creating storage above that collar tie. Mr. Hilla stated that those calculations need to be replicated for the Board. Mr. Myers asked if he could share his screen. Ms. Trainor responded that he could. Mr. Myers responded that he understood and that the short answer is we will conform to the zoning standards. Mr. Myers then presented an exhibit showing his calculations and how he came to those calculations.

Mr. Clark stated that previously, on the first night of the hearing, the applicant marked an exhibit as A-1 that Mr. Kociuba used. Mr. Clark stated that the exhibit presented by Mr. Myers would therefore be marked as Exhibit A-2. Mr. Clark asked Mr. Myers to explain what is shown on the exhibit. Mr. Myers testified that this is the attic, and the shaded area is less than five feet of

headroom height. Mr. Myer stated when all these areas are added together, you get a calculation of 1077 square feet. When divided by the floor below, you get the percentage of 56.62% of area, that is less than five feet compared to the floor directly below which is conforming by Brielle standards. Mr. Hilla stated that the Board does not have this sheet. Mr. Myer responded that this was made in reference to the engineering letter and is new to the Board. Mr. Clark asked Mr. Hilla if this answered his question. Mr. Hilla stated to the extent that he believes the testimony, yes, until he sees it. Mr. Hilla stated that he needs to confirm the calculations and he would condition anything that's approved, if approved tonight. Mr. Myers stated they will certainly reproduce these calculations and show their math. Mr. Henderson responded that they will accept that as a condition and we will stipulate that it will conform. Ms. Brisben stated to Mr. Henderson the secretary will need three sets of the revised plans. Mr. Henderson stated that he will do that. Mr. Hilla stated that he had no other questions for Mr. Myers.

Ms. Trainor asked if any Board members had questions for Mr. Myers. Mr. Maclearie asked if the lot coverage is still at 23.6%. Mr. Myer responded that the lot coverage is now 23.36 %. No other questions were asked.

Mr. Henderson called Joseph Kociuba. Mr. Clark stated that Mr. Kociuba was sworn in and was qualified at the last hearing on this application as both an engineer and a planner and has already presented evidence on both of those issues.

Mr. Henderson asked Mr. Kociuba if he was representing the applicant in this matter as a professional engineer and professional planner. Mr. Kociuba responded, yes. Mr. Henderson asked Mr. Kociuba if he reviewed the zoning ordinance of Brielle in connection with the definition of family. Mr. Kociuba responded that he did. Mr. Henderson asked Mr. Kociuba if he could explain to the Board what that says. Mr. Kociuba responded the ordinance defines a family as one or more persons living together as a single non-profit housekeeping unit which exhibits the kind of stability, permanency and functional lifestyle and relationships, which is equivalent to that of the traditional family unit, as distinguished from individuals or groups occupying a hotel, club, group home, boarding house or similar arrangement. The foregoing shall not be construed to permit an owner of property in a single-family district to solicit the public at large to rent rooms. Mr. Henderson asked Mr. Kociuba if he also reviewed the definition of a one family dwelling. Mr. Kociuba answered, yes, that states that one family dwelling is a detached building designed for or occupied exclusively by one family. Mr. Henderson asked Mr. Kociuba if the changes in the plans in his mind eliminate the possibility of this proposed structure being used as a two-family house. Mr. Kociuba responded that they do. Mr. Henderson asked Mr. Kociuba what happens afterwards if they make changes. Mr. Kociuba testified that material changes cannot be made to a property without obtaining necessary permits, including zoning permits, and that the applicants could not rent property in the Borough without obtaining a certificate of occupancy for that rental unit. Mr. Henderson asked Mr. Kociuba, in his opinion, would that provide the Borough with adequate protection against that possibility. Mr. Kociuba responded that in his view, it does. Mr. Henderson stated that he had no further questions for this witness.

Ms. Trainor asked if there were any questions from the public for Mr. Kociuba. None being heard, Ms. Trainor asked Mr. Hilla if he has any questions. Mr. Hilla responded that he did.

Mr. Hilla stated that he had a concern about the drainage system, the fact that it relies on the overland flow. Mr. Kociuba testified that they had stipulated at the previous hearing that they would design a dry well system, they had to get the plans turned around rather quickly, so they didn't have an opportunity to make that design yet. Mr. Kociuba stated that they want to verify with the soil boring, but they do stipulate that they will provide a full dry well system that will store the water quality storm across the entire roof area. Mr. Hilla asked Mr. Kociuba if it will be piped to the system, at least to the nearest downspouts. Mr. Kociuba responded that the roof drains downspouts will all be piped to that system. Mr. Hilla asked Mr. Kociuba if there was going to be a basement. Mr. Kociuba stated that he believed that Mr. Myers could answer that question. Mr. Myers responded yes, there will be a basement if the soil borings holds. Mr. Hilla responded that what he would suggest to the Board, if there is a basement to have that sump discharge, not to the street, but to the recharge system. Mr. Kociuba stated that they had no objection. Mr. Hilla then asked if the AC, on the west side of the building, is going to be on a platform. Mr. Kociuba testified that they identify it as a platform, stating that he does not know if it is required. Mr. Kociuba asked if it could be a pad on the ground. Mr. Hilla responded that it is only for the nuisance value, if it is elevated, it broadcasts further. Mr. Kociuba answered that they can stipulate that it will be a pad on the ground. Mr. Hilla asked Mr. Kociuba about the existing trees. Mr. Kociuba stated that they had testified last time about the trees, but specifically, the trees in the front, right, which he believes are going to come out in order to install the driveway, there's a large tree at the front left corner of the property that we intend to maintain. Mr. Kociuba testified that the intention is to try and maintain the trees as much as they can. Mr. Hilla asked about the road openings and an enhanced restoration or continued restoration for those. Mr. Kociuba responded that he understood and that they would have no objection.

Ms. Trainor asked if anybody on the Board had questions for Mr. Kociuba. None being heard, Ms. Trainor asked Mr. Henderson if he had any more testimony to present. Mr. Henderson responded that he did not, and that he tried to address the issues that were left on the table at the last hearing, which he believes that they have now done.

Ms. Trainor asked for any public comment about the application, but no members of the public provided any comments.

Ms. Trainor asked the Board if there were any comments with respect to this application. Councilman Garruzzo responded that he thinks it looks beautiful and has no issues or questions. Ms. Brisben stated she would like to thank the applicant for revising the plans, the plan looks very nice. Ms. Brisben asked Mr. Clark if he will have all those requirements in the resolution. Mr. Clark responded that he is going to summarize them before the vote. Ms. Trainor stated that she did not have any comments but would like to thank Mr. and Mrs. Fox for their time and for Mr. Henderson in helping to clean up the application.

Mr. Clark stated he would summarize what the stipulations would be. Mr. Clark stated that the applicant has indicated that they would agree to install a dry well system with recharge in a manner acceptable to the Board engineer with the roof drains going into the system and also with the basement sump system going into that system as opposed to out into the street. The applicant has also indicated that they will agree to make any necessary repairs or restoration of road openings or utility patches, as outlined in Mr. Hilla's letter. The applicant has indicated that they are going to

try to preserve the trees to the extent possible. They have testified about some trees that are coming down, and some that are not on their property, but otherwise, they are going to try to keep trees to the extent possible. The utilities, which are shown on the plan right now, as being on a raised platform, the applicant has agreed that that would be a pad that is on the ground. Mr. Clark stated that Mr. Myers has provided a plan which was not previously submitted to the board that was now submitted as Exhibit A-2. The plans that are on file with the Board are going to be revised by the Applicants to include that plan, which shows the details of these two and a half stories, the top story, and shows the details of that with the calculations.

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 Applicants seek approval to construct a 2 ½ story single family home with attached garage and other accessories on the Property.

c. The Property is located within the Borough's residential R-3 zone within an overlay area which has a minimum lot size of 7500 square feet.

d. This Property is 10,000 square feet and is therefore larger than the minimum lot size requirements.

e. The Applicants have agreed that they will comply with the ½ story requirements of the Brielle Borough Code and have submitted a plan, which was marked at the hearings as Exhibit A-2, showing their ½ story calculations confirming their compliance with these requirements

f. The Applicants are not seeking a variance from the rear yard setback requirements for the porch in the rear yard or a variance from the side yard setback requirements for the stoop and steps in the side yard. It is the Applicant's position that these structures do not violate the setback requirements as they are both under the required height to be considered as part of the principal structure. The Applicants did not include the railings of these structures in calculating their height and contend that the railings should be excluded from the height calculations. The Applicants concede, however, that if the railings were included in the calculations, these structures would exceed the height restrictions and variance relief would be required for them. The Applicants have agreed that if the Borough Zoning Officer determines that the railings should be included in the height calculations, the Applicants shall re-design these structures to either remove the railings or to make such other modifications as are necessary in order for the structures to comply with the Borough's setback requirements.

g. The Applicants are seeking two variances for this application: (i) a variance from the minimum front yard setback, where 30 feet is required and 24 feet (to steps) and 27.25 feet (to covered porch) is proposed, and (ii) a variance from the maximum lot coverage, where 20% lot coverage is allowed and 23.36% is proposed.

h. The Applicants presented testimony from a licensed engineer and planner, Joseph Kociuba, who presented reasons why this application satisfies the criteria for variance relief under N.J.S.A. 40:55D-70c(1) and c(2).

i. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicants to comply with the front yard setback and total lot coverage requirements of the Borough Code, and the development being proposed by the Applicant is consistent with other development in the neighborhood

j. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.

k. This application and the variance relief sought therein advances the purposes of the Municipal Land Use Law, does not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, Councilman Garruzzo moved to approve the application with the conditions as described herein; this motion was seconded by Mr. Stenson. At that time the application was approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Ms. Corinne Trainor, Mr. James Maclearie, Mr. James Stenson, Mr. Christian Siano, Ms. Karen Brisben Noes: None

Not eligible to vote: Mr. Glenn Miller and Ms. Madeline Ferraro

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

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

b. The Applicants shall install a drywell recharge system on the Property in a form approved by the Board Engineer. This system shall, among other things, connect all downspouts from the roof leaders and from the basement sump pump into the recharge system;

c. The Applicants shall restore and/or repair road openings and utility patches from the Property to the satisfaction of the Board Engineer;

d. Consistent with Borough's landscaping ordinance, the Applicants shall try to preserve trees and landscaping on the Property to the extent possible;

e. The utilities for the Property will be located on a pad at ground level rather than on a raised structure. The Applicants will submit three (3) sets of revised plans to the Board Secretary reflecting this change;

f. The Applicants shall conform to the ½ story requirements of the Brielle Borough code and shall submit three (3) sets of plans to the Board Secretary showing the ½ story calculations for the house demonstrating their compliance with these ½ story requirements;

g. The Applicants are not seeking, and have not been granted, variance relief for rear or side yard setback requirements. It is the Applicants' position that the porch in the rear yard and the stoop and steps in the side yard do not violate the setback requirements as they are under the required height to be considered as part of the principal structure, but they are not including the railings in their height calculations. If the Zoning Officer determines that the railings should be included in the height calculations, then the porch in the rear yard and the stoop and steps in the side yard will be re-designed so that they are compliant with the setback requirements.

h. 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;

i. All representations made under oath by the Applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above resolution was made by Frank Garruzzo seconded Jim Stenson and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Ms. Corinne Trainor, Mr. James Maclearie, Mr. James Stenson, Mr. Christian Siano, Ms. Karen Brisben. Noes: None  
Not eligible to vote: Mr. Glenn Miller and Ms. Madeline Ferraro

#### OLD BUSINESS:

Ms. Trainor announced that the Board would be hearing the continuation of the application filed by One Ocean Road, LLC. (applicant- Paradise Hospitality). Application for Site Plan/Use Variance approval for Block 54, Lots 1-2 & Block 58.01, Lot 2, 101-103 Ocean & 1 Ocean Avenue, owned by 1 Ocean Road, LLC (Applicant - Paradise Hospitality, LLC) to allow expansion of The River House Restaurant (Note: Third floor Bridal Suite & elevator tower constructed are not in conformance with Zone Plan). Docking berth - 1 docking berth per 4 restaurant seats, exterior seating on deck alone is at least 106 seats. Bridal Suite, pergola over second floor space, island Bar & pergola over Bar & adjacent areas are expansion of a Non-Conforming use. Structure & rooflines differ from previous structure, expansion of Non-Conforming use. Lot Width - 75 feet required; 74.6 feet existing & proposed. Front Yard Setback (Ocean Avenue) - 30 feet required, 15.5 feet existing, 10.8 feet proposed to shed roof overhang, 14.8 feet proposed to the building wall, 11.5 feet to the island Bar and 6.5 feet proposed to the island Bar pergola. Rear Yard Setback -30 feet required; 10.8 feet existing. Water's Edge Setback - 25 feet required; 12.2 feet existing. Side Yard Setback - 10 feet required, 2.8 feet existing, 4 feet proposed to new stairs. Side Setback (accessory) - 10 feet required; 1.3 feet existing. Lot Coverage - 25% maximum allowed; 47% existing & 44% proposed. Building height - 35 feet maximum allowed, 35 feet existing & 38.81 feet proposed (to elevator tower). Unoccupied Open Space - 25% minimum required, about 8% existing. Non-Residential FAR (Floor Area Ratio) - .25 maximum allowed, .68 existing, .71 proposed. 183 off-street parking spaces required (due to the addition of the Bridal Suite), variance required for 3 off-street spaces for Bridal Suite). Ocean Avenue stairs encroach onto Ocean Avenue Right-of-Way. Handicap Parking spaces required, none shown.

Councilman Garruzzo and Mayor Nicol recused themselves from the hearing on this application and the next application.

Mr. John Guinco, attorney for Paradise Hospitality, LLC, was unavailable for the hearing so Mr. John Sarto would conclude the testimony. Mr. Sarto asked to stipulate to a few questions that were raised last meeting. Mr. Sarto asked to show exhibit A12. The question had been in reference to the screening of mechanical equipment. Mr. Sarto stated the duct work which sticks up out of the building would be relocated and the mechanicals would be screened from the property owners from the west with the same material as the ceremony space. Mr. Sarto continued by saying the applicant would stipulate no outdoor live music with this application.

Ms. Trainor asked the Board for questions. Mr. Stenson, Mr. Miller, Mr. Maclearie, Ms. Ferraro, Mr. Siano had no questions. Ms. Brisben asked if the sound wall would be on the second floor for the bridal suite. Mr. Sarto responded yes. Ms. Brisben asked if the nine-foot-high wall would block views from the condo owners. Mr. Sarto responded the structure there previously was higher and the view would be improved. Ms. Brisben stated she sent a copy of the liquor license to the Board. Ms. Brisben stated the liquor license renewal had stipulations about the music. Ms. Brisben asked for an explanation of the operable pergola. Mr. Sarto explained the vertical blades of the pergola can be turned flat to shade on a hot day.

Ms. Trainor asked for clarification on the stipulation about outdoor music. Mr. Sarto responded there would be no outdoor music, there would be a microphone during the ceremony and possibly an accompaniment during the ceremony.

Ms. Trainor stated there was concern and questions about the inside stairwell and leaving it up to management to restrict use. Mr. Sarto replied the conditions would be a part of the resolution and enforceable by the Zoning Officer. Mr. Sarto continued by reminding the Board the stairs are for ingress safety purposes. Mr. Condatore reiterated what Mr. Sarto said on the safety purposes of the stairwell.

Ms. Trainor asked Mr. Clark for some guidance on enforcement. Mr. Clark responded the Board could put reasonable stipulations on the approval if they do not violate the Fire Code. Ms. Trainor asked Mr. Hilla if he had any thoughts. Mr. Hilla recapped the statements of Fire Code requires an egress. Mr. Sarto stated they would be happy to work with Mr. Hilla on effective language signage.

Ms. Brisben read a condition from Mr. Hilla's letter, it says that "you have not mentioned soil conservation measures, and we should condition any approval on the applicant cleaning all drainage facilities incident and downstream of their site to ensure proper stormwater flow". Ms. Brisben asked if Mr. Sarto or Condatore could address that. Mr. Sarto responded, "they would agree to that".

Mr. Maclearie asked when the operable pergola is closed where does the water run; Mr. Sarto responded it drains as the existing building drains now, on to the patio then it runs off to the soil around the back area and drain as it does currently without creating additional runoff.

Ms. Trainor asked Mr. Clark for some guidance on the public asking questions. Mr. Clark responded that Mr. Condatore did not give any new testimony, so it was within the Boards right decide whether to allow more public questions.

Ms. Karen Marra, 206 River Mist Way asked what the timeline is for this application. Ms. Trainor explained we could not determine the timeline due to testimony and questions from the public and the Board.

Ms. Trainor asked Mr. Sarto to present his next witness. Mr. Sarto asked the professional planner, Barbara Ehlen to state her qualifications for the Board. Ms. Ehlen licensed professional planner in the State of New Jersey who has qualified before several Planning Boards throughout New Jersey. The Board agreed to accept her qualifications.

Ms. Ehlen began by explaining the property is located within the Borough's C2 zone, Marine Commercial Zone and restaurants are conditionally permitted within the district. Ms. Ehlen testified the renovation work respects the footprint established by the original configuration of the building, with minor modifications consisting of incorporation categorized, elevator, capable of accommodating structure, relocation of a bridal suite and reconstruction of the outdoor bar with a pergola. Ms. Ehlen continued by stating the proposed changes are to better accommodate the operations of the site, operated as a restaurant and banquet hall, changes will not intensify operations, but rather approve operation simulation on site, as well as help mitigate impacts on the surrounding community. Ms. Ehlen added specifically the elevator renovation would better accommodate those with limited mobility. Ms. Ehlen stated the construction of the sound wall would buffer visual and sound intrusions and there is no additional seating proposed in connection with the expanded ceremony deck. Ms. Ehlen added typically weddings ceremonies are around four, cocktail hour at five downstairs and the reception between six and ten. Ms. Ehlen stated parking is provided across the street and valet parking is provided Friday through Sunday throughout the summer.

Ms. Ehlen testified the applicant would continue to use the outdoor bar which has operated on the site without negatively impacting the community. Ms. Ehlen added the application is on point with the goals and description of the Borough of Brielle's 2000 Master Plan. Ms. Ehlen testified the variances requested consists of a D variance to permit a conditional use that does not need all the stated standards of the condition, the second D variance is for the floor ratio and the C variance is in connection with the parking. Ms. Ehlen added the 1984 resolution approval from the committee granted relief to permit 11 docking berths and the balance docks required to be located at the common marina site, the restaurant use was not meant to be exclusively utilized by patrons arriving via boats, as it's evidenced by the inclusion of parking, and the prior resolution of approval.

Ms. Ehlen described the need for the D variances the front yard setback, 30 feet required where 15.5 exists, and 10.8 is proposed to shed roof which provides protection for patrons during inclement weather, 14.8 feet proposed to the wall, 12.4 proposed to the island bar which has operated without detriment and 6.5 feet proposed to the pergola which will provide shade to the patrons. Ms. Ehlen testified the applicant was improving the side yard setback 10 feet required, 2.8 feet exists, and 4 feet proposed and lot coverage 25% is permitted, 47% exists and 44%

proposed. Next Ms. Ehlen spoke of the building height, 35 feet is permitted and 38.6 is proposed due to the proposed elevator.

Ms. Ehlen stated the proposed changes would not intensify the use, it would accommodate the current operations in an improved manner and would not generate additional traffic noise or trash.

Ms. Ehlen added the reconfiguration of the site presents a better alternative as it enhances the customer experience without intensifying the use and provides stability. Ms. Ehlen finished her testimony by stating the last variance for parking, the additional square footage is due to the proposed ceremony space and bridal suite, neither of which is bringing additional patrons to the site.

Ms. Trainor asked Mr. Hilla if the witness has answered the questions raised in his letter. Mr. Hilla asked for clarity on the height, Ms. Ehlen responded the applicant has stipulated they will make sure they are below the standard 10% and Mr. Sarto stated reduction of header testimony was given last month.

Ms. Trainor opened the hearing to the public for questions of the Planner. Ms. Trainor called on Mr. Donald Gordon, 206 River Mist Way. Mr. Gordon was sworn in by Mr. Clark. Mr. Gordon stated he was having difficulty understanding the proposal from the pictures. Mr. Gordon asked when he could see the plans. Mr. Clark interjected to help clarify Mr. Gordon's concerns about plans not filed with the Planning Board, he stated plans have been given with the application and are available for anyone to review. Mr. Gordon asked how the seats would be considered when the restaurant does not own the docks. Ms. Ehlen replied the 1984 resolution had tied the number of seating with the number of docks and parking. Mr. Gordon's last question was the hours of operation and Ms. Ehlen responded 10 pm and Mr. Sarto added the sound wall proposed would buffer the noise. Mr. Gordon asked if the ceremony would end at nine and the bar open until 12 and strictly ceremony. Ms. Ehlen stated strictly ceremony and typical hours are four o'clock ceremony, five o'clock cocktail hour and six to ten o'clock reception. Mr. Gordon asked if liquor would be on the deck and Ms. Ehlen responded patrons might bring a drink outside while having their picture taken. Mr. Gordon asked if the Board agreed. Mr. Sarto responded food on the deck is not proposed.

Ms. Trainor asked the Board if they agreed to give the applicant another twenty minutes. The Board agreed. Ms. Trainor asked Mr. Callahan if he had questions. Mr. Clark stated Mr. Callahan is still under oath. Mr. Callahan asked Ms. Ehlen if she has stated there is no intensification of the property or its use. Ms. Ehlen replied yes. Mr. Callahan stated the upper deck has been extended to the edge of the existing building which has a setback of less than three feet and asked if that is correct. Ms. Ehlen asked which deck Mr. Callahan was referring to. Mr. Callahan asked about the ceremony deck and Ms. Ehlen responded the footprint has remained the same. Mr. Callahan asked if there was an island bar up against the building at ground level. Mr. Sarto stated his objection to the same line of questioning asked of the architect at the August meeting. Ms. Trainor acknowledged Mr. Sarto's objection but allowed Mr. Callahan to continue. Mr. Callahan asked if over the second bar area on ground level, is a second floor there. Ms. Ehlen responded yes; the roof has been converted to a deck. Mr. Callahan asked if the conversion intensifies the use of the

property. Ms. Ehlen answered not in this instance because it does not provide additional seating. Mr. Callahan asked if the proposed wall would infringe upon the 10-foot setback. Ms. Ehlen responded the wall that is proposed will respect the setback that was established by the previous building, not a new intrusion. Mr. Callahan asked if the demolition of the structure part of the original permit and Mr. Sarto responded yes, and the construction of the wall was in response to Mr. Callahan's request. Mr. Sarto continued the idea was to have a better ceremony area in the existing footprint with appropriate standard measures that could be managed in an effective way for the owner and the patron. Mr. Callahan stated his appreciation of the offered enclosure for the mechanicals and exhaust fans. Mr. Callahan asked what the material would be. Mr. Sarto responded the ceremony area would be the same material and consistent color designed to match. Mr. Callahan asked the Board if they would require the plans be submitted to Mr. Hilla for approval. Ms. Trainor asked Mr. Sarto intentions for submitting the documentation. Mr. Sarto responded if approved, they would submit something for Mr. Hilla's review, and it would be part of the final plans submitted for compliance.

Ms. Trainor asked Mr. Dubinett if he was ready to ask questions. Mr. Dubinett said he would wait for another time. Ms. Marra stated Mr. Callahan had represented the group very well and she had no questions.

Ms. Trainor stated it was Mr. Stuhmann's turn to ask his questions. Mr. Stuhmann stated he lived at six Ocean Avenue and was sworn in by Mr. Clark. Mr. Stuhmann asked if there would be live outdoor entertainment or music even at the patio area. Ms. Ehlen responded that there would be no music except an officiant and possible violinist or similar.

Ms. Trainor asked if any other member of the public had a question. Mr. Dubinett, 100 Ocean Avenue, already sworn in at last month's meeting, asked about the planner's testimony on the boat slips. Ms. Ehlen responded the original 1986 approval effectively allowed the configuration as it exists today, as it did not tie the number of seats to the dock slips directly associated with the restaurant and it allowed dock slips to be counted. Mr. Dubinett asked if people could come up to the restaurant by boat. Ms. Ehlen stated the restaurant would be open to boaters and walk-up or drive-up patrons.

Ms. Trainor stated the Board would be carrying the application until October 13<sup>th</sup>. Mr. Sarto thanked the Board.

#### OTHER OLD BUSINESS:

Continuation of the application for Site Plan/Use Variance approval for Block 85, Lot 1, 722 Ashley Avenue, Bogan's Basin and Block 85, Lot 2, 720 Ashley Avenue, Shipwreck Grill, owned by Payton Enterprises, to allow a portion of Brielle Basin to be used as a restaurant/patio Bar to serve as an accessory use to the Shipwreck Grill. Bogan's Basin site: Lot Width - 50 feet required; 15 feet existing. Side Yard Setback - 10 feet required, 4.7 feet existing, 7 feet proposed to new covered Bar area. Side Yard Setback (sheds) - 10 feet required; .9 feet existing. Side Yard Setback (refrigeration) 10 feet required; 8 feet existing. Unoccupied Open Space - 25% required, 5.4% existing. Water's Edge Setback - 25 feet required, .1 feet existing, 9 feet & 20 feet proposed. Boat Dockage - 1 slip per 4 seats required (15 slips required), 4 slips existing, 60 seats proposed.

Proposed use is Non-Conforming, Use Variance required. Shipwreck Grill site: Front Yard Setback - 30 feet required; 29.8 feet existing. Side Yard Setback - 10 feet required; 1.8 feet existing. Side Yard Setback (shed) - 10 feet required; 2.4 feet existing. Side Yard Setback (walk-in Refrigerator) - 10 feet required; 7 feet existing. Side Yard Setback (trash enclosure) - 10 feet required, 6 feet existing, 6 feet proposed. Unoccupied Open Space - 25% required, 6.8 feet existing. Water's Edge Setback - 25 feet required; 8.9 feet existing. Boat Dockage - 1 slip per 4 seats required (estimated 30 slips required, 120 seats), 17 slips existing Variance relief needed for off-street parking deficit. Use is Non-Conforming, Use Variance required.

Mr. Keith Henderson started by indicating Mr. Clark had sent a copy of the stipulations which were agreed upon at the last meeting. Mr. Henderson stated one stipulation was the termination of the variances if the leases for the adjoining property were not renewed. Mr. Henderson stated they were ready for Mr. Hilla's questions. Mr. Hilla went over his concerns in his letter. Mr. Hilla asked about emergency service access down by the riverfront. Mr. Fichter, Engineer Planner for the applicant, responded they had spoken to the Fire Official while putting the plans together. Mr. Fichter stated the Fire Official had one comment, painting up the fire zone. Mr. Hilla asked if this was sufficient access to the restaurant for First Aid or another emergency service. Mr. Fichter stated the focus was on lot two, the Shipwreck property and nothing was asked of for lot one, the Bogan property. Mr. Fichter continued the new layout of the parking lot provides ample space to circulate and get emergency vehicles right down by the waterfront. Mr. Hilla asked about handicap parking spaces. Mr. Fichter responded as per ADA regulations, they are required to have five ADA parking spaces on the site and we are proposing six, three by the Shipwreck, two on Bogan's lot and barrier free access from the one ADA parking space, right to the anchor bar deck, each use having its own ADA spaces.

Mr. Hilla asked about the testimony in reference to hours of operation, live or amplified music and enforcement. Mr. Fichter responded Mr. Cleary testified to the operations. Mr. Henderson stated the applicant has agreed to the stipulation of no live music except a possible single instrument. Mr. Hilla asked about the ticket shed. Mr. Henderson stated it was being relocated to a dump. Mr. Fichter stated the ticket shed is being removed. Mr. Hilla asked about the CAFRA application or any other required DEP permits. Mr. Fichter responded they have CAFRA approval from DEP, and as stated last month some of the features were altered to satisfy the DEP. Mr. Henderson stated they have provided proof regarding the D3 variance.

Ms. Trainor opened the hearing to questions from the public. Hearing none, Ms. Trainor turned to the Board. Mr. Stenson asked if parking lot two is paved. Mr. Fichter responded correct. Mr. Stenson asked for an explanation as to the parking and getting emergency vehicles down to the bar. Mr. Fichter responded the reorganization and painting of the parking lot. Mr. Fichter added they have a circulation aisle that is around the perimeter and it is two-way aisle. Mr. Stenson clarified his question was about lot one. Mr. Fichter stated their changes are to lot two not lot one and the current access would stay the same.

Mr. Miller had no questions. Mr. Maclearie asked about the music issue. Mr. Henderson responded no amplified music. Mr. Maclearie asked about fencing along the east side. Mr. Henderson stated they had an exhibit which would show the fencing around that area. Mr. Maclearie asked the

elevation of the new deck. Mr. Fichter responded the elevation is six and that is set by existing building. Ms. Ferraro and Mr. Siano had no questions.

Ms. Brisben asked about the diesel tank. Mr. Fichter responded there are no plans to remove the tank. Ms. Brisben asked about walkways between the Shipwreck and the bar. Mr. Fichter responded a barrier free hard surface walkway is proposed. Ms. Brisben asked how they would paint parking lines on the gravel parking lot. Mr. Fichter responded the Shipwreck lot would be paved and the Bogan lot is beyond their decision making. Ms. Brisben asked Mr. Clark if it is possible to put in the resolution. Mr. Clark responded the applicant is proposing to use the Bogan lot so the Board could put a condition as to signage, markings, or bumper stops. Mr. Fichter testified the parking on the Shipwreck property is sufficient to support the bar.

Ms. Trainor had concerns and questions about the safety of the bathrooms and monitoring them. Mr. Fichter responded the restroom is intended for the Anchor Bar and the restrooms can be locked when the bar is closed, and they have options to monitor the use. Ms. Trainor asked about the lighting plan around the bathroom. Mr. Fichter responded the walkway up to the bathroom trailer will be lit up and the trailer will have its own lights, sufficiently lit. Ms. Trainor asked if it would be removed in the off season. Mr. Fichter responded yes. Ms. Trainor asked if the bathroom was part of the stipulation as currently drafted. Mr. Clark responded the language of the draft given to Mr. Henderson was about the joint use of the two properties and nothing specifically about the bathrooms. Ms. Trainor asked as it currently operates is there space for a unisex ADA bathroom to be constructed. Mr. Fichter responded he did not know as there are some limitations on usage of the building between the two owners but there may be issues with CAFRA due to flood hazard area issue. Ms. Trainor asked if there would be some type of barrier protecting the patrons on the walkway. Mr. Fichter responded there are bumpers to protect the patrons.

Mr. Clark asked Mr. Henderson if he wanted to add the exhibit to the record. Mr. Henderson responded it was up to the Board. Ms. Trainor asked for the exhibit to be shared. Mr. Clark marked the exhibit A-5. Mr. Fichter gave a summary of the exhibit; it is a rendering of the proposed site by the Architect.

Ms. Trainor asked the public if they had any comments and there was no response. Ms. Trainor asked the Board for comments. Mr. Stenson commented on the parking. Mr. Fichter explained there are more than enough spaces for Shipwreck, the Marina and Anchor Bar, it is when you add the Bogan operation to the equation, it is insufficient. Mr. Miller had no comments. Mr. Maclearie questioned whether the applicant has discussed the liquor license with the ABC. Mr. Henderson responded they do not intend to discuss it with them until after they are approved. Ms. Ferraro asked about the tight parking. Mr. Fichter responded the patrons of Bogan's can park in lot one and under and west of the bridge. Mr. Siano commented the project looked good. Ms. Brisben commented she had no problems with the application. Ms. Trainor commented it is a better use to the waterfront, but she remains concerned about the bathroom safety.

Mr. Clark clarified that a motion to approve the application would include the conditions the Board had stated which were no live amplified music, the owners and operators of the lots would have to have and continue to have a leasehold relationship, CAFRA approval obtained and submitted to the Planning Board, the bathroom will only be used for patrons of the Anchor Bar, that there will

be appropriate signage on the bathrooms saying it's for patrons only, the bathrooms will be removed when Anchor Bar is not in operation and the ticket building will be removed.

Mr. Siano made a motion to approve the application with the stated conditions, Mr. Miller seconded.

Ayes: Ms. Corinne Trainor, Mr. James Maclearie, Mr. James Stenson, Mr. Christian Siano, Ms. Karen Brisben, Mr. Glenn Miller and Ms. Madeline Ferraro. Noes: None

Mr. Henderson thanked the Board for their time and consideration of the application.

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

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Ms. Carol Baran, Recording Secretary  
Approved: