

BRIELLE PLANNING BOARD
TUESDAY, OCTOBER 13, 2020

The Regular Meeting of the Brielle Planning Board was held on Tuesday, October 13th, 2020 at 6:00 p.m. virtually. Ms. Trainor read the OPMA compliance statement, after which was a moment of silent prayer and a Salute to the Flag.

Mr. Andrew Chermark was sworn as a new member.

Roll call was taken:

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

Absent – Mr. James Maclearie and Ms. Madeline Ferraro

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 September 8th, 2020, this done by Mr. Stenson seconded by Ms. Brisben and approved by unanimous vote, all aye. (Mayor Nicol and Councilman Garruzzo abstained and Mr. Chermark was not eligible to vote)

CORRESPONDENCE: July/August 2020 issue of the NJ Planner.

OLD BUSINESS:

Resolution for approval for Site Plan approval for Block 85, Lot 1, 722 Ashley Avenue, Bogan's Basin & 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 to the Shipwreck Grill.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF PAYTON ENTERPRISES, LLC SEEKING SITE PLAN APPROVAL AND VARIANCE RELIEF FOR CONSTRUCTION OF A SATELLITE RESTAURANT/BAR AND OTHER IMPROVEMENTS ON THE PROPERTIES LOCATED AT 720 AND 722 ASHLEY AVENUE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 85, LOTS 1 AND 2

WHEREAS, Payton Enterprises, Inc. (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking site plan approval and variance

relief to construct a satellite restaurant/bar and other site improvements on the properties located at 720 and 722 Ashley Avenue in Brielle which are identified on the Borough tax map as Block 85, Lots 1 and 2 (collectively, the “Properties”); and

WHEREAS, the Properties are located within the Borough’s Marine Commercial (C-2) zone; and

WHEREAS, restaurants are permitted as conditional uses within the Borough’s C-2 zone; and

WHEREAS, the Applicant is the owner of the property located at 720 Ashley Avenue in Brielle and identified on the Borough tax map as Block 85, Lot 2 (hereinafter, “Lot 2”); and

WHEREAS, the Applicant currently leases Lot 2 to a tenant with common ownership to the Applicant who operates a restaurant and bar on Lot 2 known as the Shipwreck Grill; and

WHEREAS, Lot 2 is a 50,775 square foot lot that currently hosts a 1 story restaurant (the Shipwreck Grill), walk in refrigerators, sheds and parking that is operated in conjunction with a small marina with 17 boat slips; and

WHEREAS, the property located next door to Lot 2 is 722 Ashley Avenue, Block 85, Lot 1 (hereinafter, “Lot 1”), which is owned by Brielle Basin, Inc. and is currently used for commercial marine purposes; and

WHEREAS, Lot 1 is a 24,075 square foot lot that currently hosts a 2 ½ story building, refrigerators, sheds and parking that support party boat operations which occur on Lot 1; and

WHEREAS, the Applicant has represented to the Board that it has entered into a lease agreement with Brielle Basin, Inc. allowing the Applicant to construct and operate a bar and restaurant on Lot 1 that will be used as a satellite to the Shipwreck Grill; and

WHEREAS, specifically the Applicant is proposing to renovate the existing main building on Lot 1 to add a kitchen and covered bar area, including a 133 square foot addition which will be part of the covered bar area, and to develop an 895 square foot open deck dining area, which will thereafter be operated as a restaurant/bar called the Anchor Bar; and

WHEREAS, the Applicant is also proposing to make certain site improvements to Lot 2, including but not limited to the installation of portable restrooms, the paving and striping of an additional 12,700 square feet of existing gravel surface for parking, and certain lighting improvements, to support the development and operation of the Anchor Bar on Lot 1; and

WHEREAS, access to the Anchor Bar will be provided through Lot 2 and parking for the Anchor Bar will be provided on both Lots 1 and 2; and

WHEREAS, although restaurants are conditional uses within the C-2 zone, the Applicant does not satisfy all of the conditions for such conditional use and it therefore requires a D(3) variance; and

WHEREAS, the Applicant also requires other variance relief for these proposed improvements on the Properties; and

WHEREAS, specifically, the Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type):

Variances Specific to Lot 1

- 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 (2 sheds)—10 feet required; 0.9 feet existing
- Side yard setback (fridge)—10 feet required; 8 feet existing

- Unoccupied open space—25% required; 5.4% existing
- Water's edge setback—25 feet required; 0.1 feet existing; **9 feet and 20 feet are proposed**
- Boat dockage—1 slip per 4 seats required---**15 slips required for the proposed 60 seats, 4 slips existing**

Variances Specific to Lot 2

- Front yard setback—30 feet required; 29.8 feet proposed
- 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**
- Minimum unoccupied open space—25% required; 6.8% existing
- Water's edge setback—25 feet required; 8.9 feet existing;
- Boat dockage—1 slip per 4 seats required; estimated 30 slips required for estimated 120 seats; 17 slips existing

Variances Applicable to Both Lots

- Parking spaces—the proposed conditions on Lot 1 required 130 off-street parking spaces (where 33 spaces are proposed) and the proposed conditions on Lot 2 would require 52 off-street spaces (where 86 spaces are proposed). **Variance relief is required for the proposed parking deficit of 97 off-street spaces on Lot 1 and, when both lots are considered together in a joint parking arrangement, variance relief is required for the proposed parking deficit of 63 off-street spaces on the two lots together.**
- Travel aisle width—the site plans show a few areas where the required 24 foot travel aisle width is not achieved and where variance relief is required.

- Paving of parking areas—the Applicant is proposing to pave the gravel portions of Lot 2 in conformance with the requirements of the Borough Code; **the Applicant is not proposing to pave the gravel portions of the parking on Lot 1 so variance relief is required for this deviation from the requirements of the Borough Code.**
- Lighting—the Applicant is proposing to make lighting improvements to Lot 2 as shown on the site plan in order to comply with the requirements of the Borough Code; **the Applicant is not proposing to make lighting improvements to Lot 1 so variance relief is required for this deviation from the requirements of the Borough Code.**
- Loading spaces—Code Section 21-33 sets forth the regulations for loading and unloading of commercial properties and requires that every building occupied for commercial use shall provide and maintain a space for off loading and unloading services. **Lot 1 does not provide a loading space and instead relies upon the proposed loading zone on Lot 2. Additionally, the plans for the loading zone on Lot 2 do not include any screening around the loading area even though Code Section 21-33.5 requires that loading facilities be screened from public view by a solid fence or evergreen shrubs.**
- Landscaping—Code Section 21-36 requires a minimum landscaped area of 5 feet wide to be provided at the perimeter of all commercial sites and Code Section 21-37 requires 20% of the site to be devoted to landscaping; **the two lots which are the subject of this application do not meet these landscaping requirements.**

WHEREAS, the Applicant submitted the following documents in support of its application:

- (a) Boundary and Topographic Survey prepared by Justin J. Hedges, PLS, dated August 7, 2019, last revised December 11, 2019;

(b) Preliminary and Major Site Plan prepared by Jason L. Fichter, P.E., P.P., CFM, CME, dated December 6, 2019, last revised July 30, 2020;

(c) Architectural Plans (2 sheets) prepared by Robert H. Weinstein, R.A., dated December 7, 2019;

(d) Stormwater Management Report prepared by Jason L. Fichter, P.E., P.P., CFM, CME, dated December 6, 2019;

(e) Environmental Impact and Compliance Statement prepared by Maeve Desmond dated December 20, 2019; and an

(f) Application package which includes a Zoning Permit denial letter from the Zoning Officer; and

WHEREAS, the Board was also provided with two letters dated April 15, 2020 and August 10, 2020 prepared by the Board's Engineer and Planner Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Planning Board held hearings on this application on August 11, 2020 and September 8, 2020 and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1 exhibit showing rendering of back side of the proposed bar area;
- b. Exhibit A-2 proposed floor plan;
- c. Exhibit A-3 site layout plan;
- d. Exhibit A-4 site layout plan overlaid onto aerial;
- e. Exhibit A-5 architect's rendering of site; and

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

August 11, 2020 hearing

Mr. Keith Henderson stated for the record his name and that he is from the law firm of C. Keith Henderson and Associates in Manasquan, NJ. He is representing the Applicant Payton Enterprises in this application.

Mr. Henderson stated that the Applicant previously submitted a letter of denial from Elissa Commins dated January 6th, 2020, an affidavit of proof of service, certified list of the property owners, a copy of the notice of the property owners and the public utilities, a copy of the certified mail receipts, and an affidavit of publication of copies of public notice including the virtual meeting provisions and that he would respectfully request that the Board move to accept jurisdiction. Mr. Clark asked Ms. Brisben if the Board has all those documents. Mr. Brisben responded that the Board did. Mr. Clark accepted jurisdiction.

Mr. William Cleary was sworn in by Mr. Clark. Mr. Henderson stated that Mr. Cleary is a lay witness. Mr. Cleary testified that he resides at 49 Inlet Drive, Point Pleasant Beach, NJ. Mr. Henderson asked Mr. Cleary if he is the sole member of Payton Enterprises. Mr. Cleary responded yes, and that Payton Enterprises is a real estate holding company that he has owned since 1999. Mr. Henderson asked Mr. Cleary if Payton Enterprises leases to the Shipwreck Bar & Grill. Mr. Cleary replied that Payton owns 720 Ashley Avenue and that it leases that property to Shipwreck Inn trading as Shipwreck Grill. Mr. Henderson asked Mr. Cleary if in the past 20 years, has he experienced any problems with your neighbors or the operation of the facility. Mr. Cleary answered that he had not. Mr. Henderson asked Mr. Cleary if they play live music inside the facility. Mr. Cleary answered that on Thursday nights, they have jazz indoors. Mr. Cleary stated that the windows are closed, and the volume is controlled.

Mr. Henderson asked Mr. Cleary if in the new proposed facility, will there be live music. Mr. Cleary responded that there will be no live music because he does not want to disturb anyone. Mr. Henderson asked Mr. Cleary if he would accept that as a stipulation in connection in a condition with this application. Mr. Cleary answered that he would gladly accept that stipulation as a condition of any approval for this application.

Mr. Henderson asked Mr. Cleary if during his period of ownership of the Shipwreck, has he ever had any interaction with NJDOT regarding access to the property. Mr. Cleary testified that recently, when the NJDOT began work on the bridge, it notified Shipwreck that Shipwreck's ingress and egress would be impacted, and that the NJDOT worked with Shipwreck to make sure that the construction did not impede the restaurant by changing hours of construction and the location of its staging area. Mr. Henderson asked Mr. Cleary if Shipwreck had very good relations with the NJDOT on that issue. Mr. Cleary testified that it has extremely good relations and in fact despite completion of the work, Shipwreck still allows NJDOT vehicles to park in the its parking lot and that it also allows the bridge operators to use the Shipwreck parking lot.

Mr. Henderson asked Mr. Cleary if during his ownership of the Shipwreck if he had experienced any parking difficulties. Mr. Cleary answered none, except on an occasional day when there is an event on the water, or an event in the afternoon, coupled with a dinner crowd, and in that case, it has had to put maybe 10 or 15 cars next door at the Bogan's property. Mr. Cleary stated that at times Bogan's has also needed to use Shipwreck's lot and that parking difficulties has happened over the past twenty years, approximately twelve or fewer times.

Mr. Henderson asked Mr. Cleary if he had a lease with Bogan's for the area where he is proposing this facility. Mr. Cleary responded that he did. Mr. Henderson asked what is in the building you are proposing to utilize for this facility. Mr. Cleary stated there is a very large catering kitchen. Mr. Henderson asked Mr. Cleary if in response to a question of lack of a loading area on lot 2 in the engineer review letter, did your engineer add that to the plan and would that be a shared facility. Mr. Cleary responded yes, to the extent that his facility needs a loading dock. Mr. Cleary stated that they use small, local vendors with smaller trucks, that may not need a loading dock, but that they are adding a loading dock to comply with Borough requirements and that the loading dock will be available for use by everyone to the extent that it is needed. Mr. Henderson asked Mr. Cleary if the new facility is going to be operated as an adjunct to the existing Shipwreck Inn. Mr. Cleary replied yes and stated that it is part and parcel of the Shipwreck Inn trading as Shipwreck Grill.

Mr. Henderson stated that he had no further questions of Mr. Cleary, but that he may need to be recalled after testimony from the engineer and the architect.

Ms. Trainor asked if there were any questions from the public for Mr. Cleary. None being heard, Ms. Trainor then asked the Board if they had any questions for Mr. Cleary. The Board did not have any questions of this witness.

Mr. Henderson called his next witness, Mr. Robert Weinstein. Mr. Weinstein was sworn in by Mr. Clark. Mr. Weinstein stated that he is with the firm RW Architecture located in Spring Lake.

Mr. Henderson asked Mr. Weinstein if he holds an architecture license in the State of New Jersey and if he had previously testified before boards of adjustment and planning boards in the state. Mr. Weinstein responded that he received his architecture license 22 years ago in 1998 and that he had testified before other boards on several occasions. Mr. Henderson asked Mr. Weinstein if he has been accepted as an expert before these boards. Mr. Weinstein answered that he had. Mr. Clark stated that Mr. Weinstein was admitted as an expert in architecture.

Mr. Henderson asked Mr. Weinstein if he would give the Board an overall description of the proposed property. Mr. Weinstein responded that what they are proposing is to renovate the existing main building and add a kitchen in a covered bar area, including an addition that will be part of the covered bar area, and develop 895 square feet of open deck dining area. The new facility would be a free-standing bar restaurant and is proposed to be called the Anchor Bar. There is an existing ticket booth on site now and there's a structure that's sustained some damage from Hurricane Sandy, which will be replaced with the Anchor Bar which would create a beautiful place for people to gather which is a small extension of the Shipwreck Grill.

Mr. Henderson asked Mr. Weinstein if he is only talking about an 895 foot area. Mr. Weinstein replied, that is correct. Mr. Henderson asked Mr. Weinstein if he had an exhibit that he would like to show the Board. Mr. Weinstein said that he did, and Mr. Clark stated that this document would be marked as Exhibit A-1 and asked Mr. Weinstein to describe what this document is showing. Mr. Weinstein responded that Exhibit A-1 is showing a post and beam

structure made of timbers to create the covered area with screening on the back side of the bar area from the parking lot and there is a kitchen that is accessed from the corner of the bar, and there is also an exit onto the parking lot at the rear. Mr. Weinstein added that there are ten seats proposed at the bar and a series of tables, two of the tables have eight seats that are under the covered portion of the bar and the remaining tables are outside. Mr. Weinstein stated that they also are proposing a railing system around the perimeter of the bar. Mr. Weinstein testified that there is a walkway that leads to the parking lot of the Shipwreck Grill and to a bathroom facility.

Mr. Clark stated that a copy of the Exhibit A-1 that was being shown on the screen would need to be sent to Ms. Brisben, the secretary of the Planning Board so the Board would have a hard copy for the file. Mr. Henderson agreed that he would do that.

Mr. Henderson stated that he had no further questions of Mr. Weinstein.

Ms. Trainor asked if there were any questions from the public for Mr. Weinstein. With none being heard, Ms. Trainor asked if any of the Board members had questions for Mr. Weinstein.

Mr. Stenson asked Mr. Weinstein if the building portion is part of the 2 ½ story building that is there now or if this is a new structure. Mr. Weinstein responded that they want to replace a section of one story and build a small corner to square off the structure to create a uniform look. Mr. Stenson asked Mr. Weinstein if the rest of the building will remain. Mr. Weinstein replied that the rest of the building will remain, untouched. Mr. Stenson asked Mr. Weinstein if the deck will be new. Mr. Weinstein replied that the decking is new and will be at the same elevation as the kitchen and the existing structures.

Mr. Miller asked Mr. Weinstein if there are restrooms in the existing building. Mr. Weinstein responded that the existing portion of the building that we would like to convert does not have bathrooms as part of it.

Mr. Maclearie asked Mr. Weinstein if they would be building a new bath house. Mr. Weinstein stated yes, they are proposing to have a remotely located luxury trailer that will be placed on site during the time of the season when the Anchor Bar will be opened. Mr. Maclearie asked Mr. Weinstein if the kitchen is shared with the River Queen or if it is an independent kitchen. Mr. Weinstein replied that it is its own independent kitchen, a separate entity, that is adjacent to the other side of the wall of the River Queen kitchen. Mr. Maclearie asked Mr. Weinstein if this would act as a satellite to the existing Shipwreck which Mr. Weinstein replied, yes. Mr. Weinstein testified that it is on the site on the right, on the neighboring property adjacent to the parking lot currently utilized and owned by the Shipwreck Grill, and it has complete access to that parking lot.

Ms. Brisben asked Mr. Weinstein if they are planning to put some protection on the side where the poles are to prevent someone from falling into the water. Mr. Weinstein responded that they would be incorporating a railing on top of those pilings and filling them in and stated that they purposely left that detail off the rendering at this time to get a better representation of the facility. Ms. Brisben stated to Mr. Weinstein that she had visited the site and there is a large diesel

tank that she assumes is fuel for the boats. Ms. Brisben asked Mr. Weinstein if the tank is going to stay. Mr. Weinstein stated that he had no comment and that they can defer to the engineer.

Mr. Hilla asked Mr. Weinstein if there is any other way to get to the Anchor Bar other than from the right side or if that is the single point of access to the facility. Mr. Weinstein stated that that is the single point of access. Mr. Hilla asked Mr. Weinstein if the handicap spaces on the far side of the building are not intended for the Anchor Bar which Mr. Weinstein responded that they are not. Mr. Hilla asked Mr. Weinstein if there is a set plan for the tables. Mr. Weinstein asked if they could look at floor plan exhibit. Mr. Clark marked this as Exhibit A-2 and asked Mr. Weinstein to explain what this exhibit is. Mr. Weinstein replied that A-2 is the floor plan which shows the kitchen facility, the bar area, covered and uncovered seating areas and specifically, shown is 40 seats accommodated on the open deck area tables and 8 seats under the covered deck dining area and the 10 stools proposed at the bar. Mr. Clark asked Mr. Weinstein if the seats are movable or fixed. Mr. Weinstein testified that the chairs could pull out. Mr. Hilla asked Mr. Weinstein if there is no need for a second egress from this space, from a code perspective. Mr. Weinstein replied he is assuming because this is an outdoor facility, and there's a wide enough point of egress, that exiting this facility from this location would not be an issue, but that in the event that the code requires a second means of egress, it could be possible, that a gate could be put on the opposite side of where the tables are on the Bogan property to provide a second access point to exit the deck. Mr. Hilla asked Mr. Weinstein if there are plans to enclose any of the space, that this would be like a three-season arrangement. Mr. Weinstein responded that this is proposed as a seasonal facility, which would be open to the outdoors and that the only portion of the building that is completely enclosed is the kitchen area. Mr. Weinstein stated that there may be a possibility of some weather screens to pull down in the event of rain but nothing permanent. Mr. Hilla stated that he had no further questions for Mr. Weinstein.

Ms. Trainor stated that there were no other questions from the Board.

Mr. Henderson called Mr. Jason Fichter to testify. Mr. Fichter was sworn in by Mr. Clark. Mr. Fichter stated that he is with Insight Engineering in Wall, NJ. Mr. Henderson asked Mr. Fichter what professional licenses he held. Mr. Fichter replied that he is a professional engineer, professional planner, certified floodplain manager and certified municipal engineer. Mr. Henderson asked Mr. Fichter if he had testified before Boards of Adjustment and Planning Boards in those capacities. Mr. Fichter responded that he had. The Board accepted Mr. Fichter as an expert witness in engineering, planning and floodplain management.

Mr. Henderson asked Mr. Fichter if he was familiar with the site and with the review letters, the denial letter from the zoning officer, and what the application requires in terms of relief. Mr. Fichter stated that he was familiar with all these things. Mr. Henderson asked Mr. Fichter to take the Board through the various requirements. Mr. Henderson stated to Mr. Fichter that the Board knows this as a D variance but that this a D-3 variance. Mr. Fichter stated that is the type of variance needed for not meeting all the conditions of a conditional use. Mr. Henderson asked Mr. Fichter if the standards are different from those applicable to a D-1 variance. Mr. Fichter stated that they are different as a D-3 variance has more relaxed standards than a D-1 or D-2 variance. Mr. Henderson asked Mr. Fichter to take the Board through the other issues that Ms. Trainor had recited at the very beginning of the hearing on this application. Mr. Fichter asked if the site layout

exhibit could be put on the screen. Mr. Clark marked this site layout document as Exhibit A-3 and asked that a hard copy be supplied to Ms. Brisben, Board secretary. Mr. Fichter testified that this project consists of two lots that are in the C-2 marine commercial zone, Lot 1 which could also be called the Bogan lot, is 24,075 square feet and Lot 2, which is called the Shipwreck lot is 50,774 square feet. Mr. Fichter stated that all together the two lots are 74,849 square feet or 1.72 acres.

Mr. Fichter asked that the aerial exhibit be put up on the screen. Mr. Clark marked this exhibit as Exhibit A-4. Mr. Fichter stated that this is an aerial exhibit that is the previous exhibit, A-3, overlaid onto an aerial. Mr. Fichter stated that they took property lines from Monmouth County GIS, tax map lines, that is intended to show the site in the context of the neighborhoods.

Mr. Fichter asked if he could go back to Exhibit A-3. Mr. Fichter stated that the crux of the application is the existing building along the waterfront. Mr. Fichter stated that the application is a very simple basic project but when zoning is analyzed the simplicity of the project may get lost. Mr. Fichter testified that the applicant is proposing to convert a portion of the existing building to create a patio bar with an open patio area covered patio area which includes squaring off the existing roof.

Mr. Fichter stated that while going through the approval process with the Board and the NJDEP, they wanted the opportunity to better organize the parking lot for the Shipwreck and the Anchor Bar to provide more parking and better circulation.

Mr. Fichter testified that the existing building is in a flood hazard area and they have received CAFRA approval from the NJDEP for the proposed improvements to the Anchor Bar and parking lot.

Mr. Fichter stated that all existing utilities will remain in place and are available for the Anchor Bar.

Mr. Fichter testified that they are proposing a portable restroom that would be placed above the base flood elevation as required and it would be connected to public water and would be pumped out regularly.

Mr. Fichter stated that they would not be changing run off patterns and existing traffic patterns would remain.

Mr. Fichter stated that the plans reflect, and they are happy to accommodate the request by the Borough fire official.

Mr. Fichter testified that they are proposing a loading zone on Lot 2 in order to satisfy the borough's ordinance. Mr. Fichter stated that they located it on Lot 2 to avoid interruption to internal traffic circulation, they are buffered by a steep slope up to Route 35 and have an existing vegetation line along the east side of the property. Mr. Fichter stated that the common practice with loading activities is to take deliveries early in the day when the Shipwreck is closed. Mr. Fichter testified that if this application is approved that they will add the designated loading space.

Mr. Fichter stated that in terms of parking, they evaluated the parking requirements for the Shipwreck Grill, the proposed bar, the balance of the building with the Anchor Bar and Bogan's party boat operations and altogether require 182 parking spaces. Mr. Fichter stated that they are proposing 119 parking spaces. Mr. Fichter stated that if the parking requirements are analyzed by lot, then Lot 2, the Shipwreck lot, requires 52 parking spaces and today there is 81 and with reorganizing they got the count to 86. Mr. Fichter stated that on Lot 1, the requirement is 130 parking spaces and there are 27 parking spaces exist on Lot 1 and 33 are proposed. Mr. Fichter testified that historically, Lot 1 accommodates a lot more than 33 cars because this is the head boat operation and people show up and leave at the same time so what they commonly do is to stack their cars when they park. Mr. Fichter stated that he looked at some aerials through the years and he saw as many as 70 cars parked there and all along the drive aisle.

Mr. Fichter testified that they are proposing to relocate the refuse area, on Lot 2, which is on the east side of the property by about 20 feet as part of the parking lot reorganization and are proposing to enclose it as ordinance requires. Mr. Fichter stated that the refuse area will handle refuse for the Shipwreck and the Anchor Bar. Mr. Fichter testified that refuse from Lot 1 will be handled by the Bogan operation, as it is today. Mr. Fichter stated that with regard to the arrangement that the applicant has with the Bogan's, it is a lease to operate the bar, it is not taking over the whole property.

Mr. Fichter testified that they are proposing lighting in Lot 2 in order to ensure safety in the parking lot and stated that the lights are pole mounted at 14 feet high they are decorative lights and decorative poles. Mr. Fichter stated that they would have house side shields on the lights that are along the common property line with Brielle Landing, and that will avoid any adverse impacts to the residential neighbors and made sure to provide light along the walking path from Lot 2 to the Anchor Bar. Mr. Fichter testified that lighting in Lot 1 would be left in its current condition.

In terms of landscaping, Mr. Fichter testified that they are proposing an evergreen hedge row between Lots 1 and 2 that would follow the walking path that goes from the Anchor Bar to the restroom.

Mr. Fichter testified that the biggest variance that they are asking for is the D-3. Mr. Fichter stated that the C-2 zone provides for five conditional uses, one is restaurants and the other is multi-use marina.

Mr. Fichter testified that what is being proposed for this project for both Lot 1 and 2 qualifies under either one of these conditional uses, which are essentially the same, but that the application does not comply with all of the conditions, which is why they require the D-3 conditional use variance. Mr. Fichter testified that one of the conditions they do not comply with is parking. Mr. Fichter stated 182 parking spaces are required and they are proposing 119 parking spaces. Mr. Fichter testified that the applicant is confident that parking will be met on the site, coming from his 20 years of operating at the site.

Mr. Fichter testified that another condition for a multi-use marine facility is that the property be two acres. Mr. Fichter stated that the combined site is 1.72 acres, that this cannot be reasonably cured, and this condition does not actually exist for the restaurant conditional use.

Mr. Fichter stated that there was a comment in the review letter about a loading zone not being provided on Lot 1 and that they would provide a loading zone on Lot 2. Mr. Fichter stated that the intent of this requirement is met, because the loading zone can serve the combined site.

Mr. Fichter testified that he evaluated as a C-2 variance, which he stated is the flexible C but could also be a C-1, landscape areas must provide five feet wide at the perimeter of commercial sites. Mr. Fichter stated that they have Route 35 as their buffer to the west, the Manasquan River to the their south, an existing buffer to their east along Brielle Landing and their driveway, the Shipwreck building to their north, and they are proposing an evergreen hedge row between Lots 1 and 2. Mr. Fichter stated that he believed that the intent of this requirement has been met.

Mr. Fichter stated that another condition is pavement within 5 feet of a property line is prohibited. Mr. Fichter stated that each property showed zero feet and that was how it was stated in the review letter. Mr. Fichter testified that they are proposing to move the pavement further away from Brielle Landing and will exceed the 5-foot requirement, everywhere else remains in its existing condition and does not impact any neighbors.

Mr. Fichter testified that some variances that he believes are more of a hardship C-1 could also be considered under the C-2 criteria, for example the requirement that parking must be on the same lot. Mr. Fichter testified that they are relying on parking across two lots. Mr. Fichter stated that there is a formal agreement between the two properties to share parking and that the Borough Code allows joint parking facilities, provided that they achieve the requisite number of parking spaces. Mr. Fichter stated that the parking demand is met on the combined sites. Mr. Fichter testified that parking aisles are required to be 24 feet wide. Mr. Fichter testified that the 24 feet is met but the reality of parking on Lot 1 is even tighter than that but Bogan's and their customers have been managing just fine for many years operating this way and it isn't the applicant's intention to interrupt Brogan's operation.

Mr. Fichter stated that going through the purposes of planning in terms of the required proofs for these variances, he does believe that this is an appropriate use and development, which promotes general welfare. Mr. Fichter testified that the borough's ordinance encourages and promotes physical and visual access to the water's edge and to preserve continuous, physical, and visual access to the water's edge and he believes that this was achieved by this application. Mr. Fichter stated that the whole idea of the Anchor Bar is to provide a place to relax and enjoy the waterfront, and for this reason they are providing general welfare and they are securing safety, fire, flood, panic, and natural and man-made disasters. Mr. Fichter stated that they secured a CAFRA permit for the project, which includes a flood hazard review by the DEP. Mr. Fichter testified that there is nothing proposed by this application that would impede upon light air and open space for the neighbors or the public and that the Anchor Bar uses existing building area. Mr. Fichter stated they are providing sufficient space and appropriate location for a commercial use in order to meet the needs of citizens. Mr. Fichter stated that there is an existing building along the waterfront that the applicant is able to make use of to provide a small bar restaurant in a spectacular location and the location is also already improved with a marina restaurant, charter boats parking, making it an ideal fit to provide a terrific destination for New Jersey's citizens. Mr. Fichter testified that they are providing a desirable visual environment and lastly, he believes they are conserving property

values in the neighborhood. Mr. Fichter stated that in terms of negative criteria, the purpose of the C-2 zone is to promote expanded and upgraded recreational boating and sport fishing facilities and to provide an area for a variety of uses that capitalize upon and enhance the unique community wide resources, the waterfront. Mr. Fichter testified that the appeal of the Anchor Bar is its setting along the waterfront, and the applicants anticipate boaters, and Bogan customers will make great use of the Anchor Bar, and also residents that simply want to enjoy the beauty of the waterfront. Mr. Fichter stated that, for those reasons, they think they have achieved the purpose of the C-2 zone. Mr. Fichter testified that one of the conditions of the conditional use that we're proposing is that the board must make a finding that this application promotes the use of the waterfront or compliments or serves other existing or planned uses in the C-2 zone. Mr. Fichter stated the Anchor Bar is along the waterfront, it is next to the Route 35 bridge, it complements the Bogan's operation, and it is 240 feet from the nearest residents at Brielle Landing and for all those reasons he doesn't feel this development would cause a substantial detriment to the public good, nor does he believe it would substantially impair the intent and purpose of the zone plan.

Ms. Trainor asked Mr. Henderson if he had any other questions for Mr. Fichter. Mr. Henderson replied that he did not and that concluded the applicant's testimony.

Ms. Trainor asked if there were any questions from the public for Mr. Fichter. With none being heard, Ms. Trainor asked Mr. Hilla if he had any questions.

Mr. Hilla asked what would happen to the Anchor Bar if the lease agreement was voided by one or both of the parties. Mr. Henderson answered that it is the same as any other facility where you have a landowner and a separate person who is leasing it to run a restaurant bar, when it ends, it ends. Mr. Hilla stated that the properties rely upon one another, it is not like other entities can come into this and operate the one without the other. Mr. Henderson stated that the liquor license belongs to the Shipwreck and that Bogan's could not operate a bar without a liquor license. Mr. Hilla stated that he is just trying to determine what becomes of the Anchor Bar development if the lease allowing the joint use of the properties is terminated, because he does not think Lot 1 on its own supports that use, even without the ability to serve liquor. Mr. Henderson responded that Bogan's would get a free building because the Applicant is doing all the work and it is are paying the money to have the facility built. Mr. Clark asked Mr. Hilla if what he was saying is that if Bogan's got a free building and then started operating a restaurant/bar in it, that use is reliant on the ability to use the Shipwreck lot for parking, restrooms and other things, and without the use of the Shipwreck lot, that use should not be allowed to continue. Mr. Hilla replied, correct. Mr. Henderson stated that the use would have to terminate with the lease because the uses are dependent upon use of both lots and on the liquor license. Mr. Hilla stated that he is trying to anticipate something down the line here because this is kind of an odd application because it involves two properties and he thinks that the Board needs to consider what would happen if the existing right to use both properties is ever an enforcement disaster? Mr. Henderson responded that the Bogans got out of the restaurant business, that this was originally a diner and it did not work and has been sitting idle for years. Mr. Cleary asked why the use cannot die with the lease. Mr. Clark stated that the Board could condition its approval for these various improvements and this use and these variances, upon the continuation of a lease, whether it's between Bogans and Shipwreck or whether it is somebody who buys Bogans property or whatever it is, if the lease ever disappears, and there's no longer any rights to use both properties, then the approval goes away.

Mr. Henderson stated that he believes that his client has a right of first refusal to purchase the Bogans property. Mr. Clark responded that it may not ever become an issue, but, but certainly in any event, he would think the Board would want to put that as a condition because clearly the approval is reliant upon the ability to use two lots with two different owners. Mr. Clark stated that there needs to be an agreement in place between those owners in order for this approval to really go forward, and that he thinks everybody can see that. Mr. Clark stated he would think that the way to do it would just be to condition the approval and all the variances and the rest upon the fact that there is an existing and continuing lease, and if the lease ever disappears, and there's no longer any right unless they buy it, then the approval goes away. Mr. Henderson responded that he doesn't think they would have any objection at all if the lease terminated, to having that as a condition, that the approvals would end unless they made a new application, and the Board granted that new application. Mr. Cleary stated that he would be willing to do that and that the lease could be amended to include that as well. Mr. Hilla stated that this sounded reasonable to him, but it is up to the Board to decide if it is reasonable.

Mr. Hilla asked about signage stating that he knows that Shipwreck has a sign out front but how is signage going to work for both passersby on Ashley Avenue and interior to the site and how people will get to the new facility, the Anchor Bar. Mr. Fichter responded that his understanding in this application was that the signs would be more of an afterthought, but would be completely conforming and would be subtle, there would be no variances related to signage. Mr. Hilla asked about lighting in Lot 1. Mr. Fichter responded that what they did was, they re-organized the parking lot on Lot 2 and lit it, and then they made sure that the walking path from Lot 2 to the Anchor Bar was lit. Mr. Fichter stated that the use of Lot 1 is governed by an agreement between Shipwreck and Bogans. Mr. Fichter stated that Shipwreck is being allowed to construct and operate the Anchor Bar but is not permitted to interrupt the operations of Bogans on Lot 1 and it is their intention to leave it that way. Mr. Fichter stated that the Anchor Bar itself has plenty of light and the path to and from the Anchor Bar in the parking lot has plenty of light, and Lot 1 which is really for Bogan's operations will just stay that way it currently is. Mr. Hilla asked Mr. Fichter if they are seeking variance relief for Lot 1 to the extent that it does not conform with the lighting requirements of the ordinance. Mr. Fichter responded, correct. Mr. Hilla asked Mr. Fichter about the lighting, indicating that it is shown as controlled between dusk to dawn, is there a specific reason for that and is it necessary for that to happen. Mr. Fichter responded that what he anticipates is going to happen is, as the details of this project are fine-tuned, select lights will remain on dusk to dawn for security, which is common to commercial facilities. Mr. Hilla stated that his point is that being close to the residential properties, right now, they don't endure hardly any lighting compared to what is being proposed. Mr. Fichter responded that the lights that are proposed along that eastern property line of Brielle Landing, they're going to have house side shields, they're going to cut it off, we'll update the plan to reflect that, but if we're going to have select lights dusk to dawn for security, those would not be the lights that would be on. Mr. Cleary stated that there are big and bright existing lights in the parking lot now and they are going to try to do a nice set of uniform lighting and that he is confident that the impact on our neighbors would be less than what is there now.

Mr. Hilla asked Mr. Fichter to explain what the remote bathroom arrangement is and how it is going to be served. Mr. Fichter replied that it is a portable restroom that is essentially a very attractive trailer and will be located between the Shipwreck and the Anchor Bar. Mr. Fichter stated

that it will arrive at the beginning of the season for the Anchor Bar, which he believes is May, and leaves at the end of the season, which he understands is October. Mr. Fichter stated that if there are any major events like a Sandy event or something like that, there has been discussions and there is a plan in place for the owners to cart it out of there. Mr. Fichter stated that the NJDEP asked them a lot of questions and the bathroom itself is elevated above the flood hazard elevation, so it fully complies with all NJDEP requirements and NJDEP is satisfied with it. Mr. Fichter stated that the restroom is attractive and when it is there it will not look temporary, but it is portable. Mr. Hilla asked if the restrooms is going to use town water and have holding tanks. Mr. Fichter replied yes, and that there would be a contract with a company that would come, pump it out, and clean it very often to keep it neat and clean with little to no odor. Mr. Henderson asked Mr. Fichter to explain the reason why they are not putting in permanent bathrooms at this time. Mr. Fichter replied that it was largely driven by the NJDEP Regulations, being in a flood hazard area, we're able to renovate the building to do what is being proposed here, but they have rules in place where they didn't want restrooms there so we had to come up with a solution to keep it as close to the Anchor bar as we could. Mr. Fichter stated that it has three rooms in it with the intention of a his, hers and an ADA. Mr. Hilla stated in the new lay out the trailer unit kind of crowds the parking spaces that it sits in front of and asked Mr. Fichter if it could be moved back a little bit. Mr. Fichter stated that there is no reason that it could not be moved back from the parking spaces. Mr. Hilla stated that the walkway from the entrance from the entrance to the restaurant toward the bathroom is only like a four foot wide sidewalk butting up against the front ends of those cars, normally you try for a 5 or 6 foot walkway when you have that sort of arrangement because otherwise any car that fully pulls up to the parking stop then occupies a fair portion of the walkaway as well. Mr. Fichter responded that when they move the portable restroom, they can move it a bit away from the parking spaces, pull the sidewalk with it and create a little additional space there.

Ms. Trainor announced that she thought this application was reaching the end of the Board's time threshold and stated, that if the Board agreed, this application would need to be carried to the September 8th meeting. All members of the Board agreed.

September 8, 2020 hearing

Mr. Keith Henderson started by indicating Mr. Clark had sent a copy of the proposed stipulation regarding the existence of the lease for the 2 Lots and that the Applicant has agreed to the wording of this proposed stipulation. Mr. Henderson stated that the stipulation provided for 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 that they had spoken to the Fire Official while putting plan 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 2, the Shipwreck property and nothing was asked of for Lot 1, the Bogan property. Mr. Fichter indicated that 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 that under 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 testimony about hours of operation, live or amplified music and enforcement. Mr. Fichter responded Mr. Cleary testified to the operations. Mr. Henderson stated that 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 questions to the public. Hearing none, Ms. Trainor turned to the Board. Mr. Stenson asked if the parking lot on Lot 2 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 explained 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 1. Mr. Fichter stated their changes are to Lot 2, not Lot 1, and however they currently 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 no plans to remove. 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. Ms. Trainor asked the Board for comments. Mr. Stenson commented on the parking. Mr. Fichter explained without the Bogan property there are more than enough spaces, it is when you add the Bogan lot 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 and the bathrooms will be removed when Anchor Bar is not in operation and the ticket building will be removed.

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 is the owner of Lot 2, which is a 50,775 square foot lot that currently hosts a 1 story restaurant known as the Shipwreck Grill, walk in refrigerators, sheds and parking that is operated in conjunction with a small marina with 17 boat slips;
- c. Brielle Basin, LLC is the owner of Lot 1, which is a 24,075 square foot lot that currently hosts a 2 ½ story building, refrigerators, sheds and parking that support party boat operations;
- d. The Applicant has represented to the Board that it has entered into a lease agreement with Brielle Basin, Inc. allowing the Applicant to construct and

operate a bar and restaurant on Lot 1 that will be used as a satellite to the Shipwreck Grill;

- e. The Applicant is proposing to renovate the existing main building on Lot 1 to add a kitchen and covered bar area, including a 133 square foot addition which will be part of the covered bar area, and to develop an 895 square foot open deck dining area, which will thereafter be operated as a restaurant/bar called the Anchor Bar;
- f. The Applicant is proposing to make certain site improvements as part of the improvements for this Application, including, among other things, the installation of a bathroom trailer on Lot 2 for use of Anchor Bar patrons, the paving of the parking lot on Lot 2, and lighting and signage improvements to Lot 2;
- g. The Applicant presented testimony from its principal William Cleary, from a licensed architect Robert Weinstein, and from a licensed professional engineer, professional planner, and certified floodplain manager Jason Fichter, in support of its Application;
- h. The Applicant is seeking variance relief under N.J.S.A. 40:55D-70d(3) and 40:55D-70c;
- i. The Borough has already determined that a restaurant is an appropriate use within the C-2 Zone as restaurants are conditional uses within this zone;
- j. The Applicant has shown that Lots 1 and 2, when used together, can accommodate the problems associated with a restaurant use even though the Application does not meet every condition for a restaurant use as the Applicant has shown that the Property (i) has not had any recurring parking problems associated with the current restaurant use on Lot 2 and has adequate parking to accommodate the proposed capacity of the Anchor Bar to be constructed on Lot 1, (ii) can meet the loading zone requirements through the installation of one loading area for use by both Lots, (iii) can provide a bathroom for the Anchor Bar through a bathroom trailer to be located on Lot 2, and that (iv) the paving and lighting improvements proposed to Lot 2 will be sufficient to support the proposed Anchor Bar as patrons of that bar will be accessing it through Lot 2;
- k. Some of the deviations from the Borough Code are pre-existing deviations which are not being exacerbated or changed by this Application;
- l. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicant to comply with other requirements of the Borough Code, and the development being proposed by the Applicant is consistent with other development in the neighborhood and promotes the purposes of the Borough Code;

- m. Additionally, the purposes of the Municipal Land Use Law would be advanced by deviation from the requirements of the Borough Code;
- n. The Borough's ordinance encourages and promotes physical and visual access to the water's edge and to preserve continuous, physical, and visual access to the water's edge and this Application promotes these purposes as it will result in the development of a waterfront bar/restaurant which will promote the public use of this waterfront location;
- o. There is nothing proposed by this Application that would impede upon light air and open space for the neighbors or the public as the Anchor Bar is promoting the re-use and renovation of existing building area.
- p. The Applicant is providing sufficient space and an appropriate location for a commercial use in order to meet the needs of citizens;
- q. The development of this project will promote a desirable visual environment and will conserve property values in the neighborhood;
- r. The purpose of the C-2 Zone is to promote expanded and upgraded recreational boating and sport fishing facilities and to provide an area for a variety of uses that capitalize upon and enhance the unique community wide resource of the waterfront;
- s. The development of this project will promote the use of the waterfront in this area and complements and serves other existing or planned uses in the C-2 Zone, including the existing party boat operation of Lot 1;
- t. The project is at least 240 feet away from the nearest residents at Brielle Landing and therefore should not adversely impact those residents;
- u. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.
- v. 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, Mr. Siano moved to approve the application with the conditions as described herein; this motion was seconded by Mr. Miller. At that time the application was approved by the following roll call vote:

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

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

- a. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- b. The Applicant stipulates and agrees that there will be no live amplified music in any of the outdoor areas of the Properties;
- c. Since the Applicant, the owner of Lot 2, is seeking a site plan approval and variance relief to construct improvements on Lot 1, an adjacent lot owned by another entity where the Applicant and/or the tenant of Lot 2 has existing leasehold rights, and since the development of Lot 1 in the manner proposed by the Applicant is dependent upon the combined use of Lot 1 and Lot 2 to satisfy certain Borough Code requirements, this approval is expressly conditioned upon (i) the continued leasehold rights of the Applicant and/or its tenant in Lot 1, and (ii) the continued combined use of Lot 1 and Lot 2 to support the improvements on Lot 1 sought through this application. Thus, if the Applicant and/or its tenant ceases to have any leasehold rights in Lot 1, or if the owner of Lot 1 is no longer able to use Lot 2 to support the improvements on Lot 1 sought through this application, then this approval shall automatically expire without the necessity of any further action.
- d. Within 30 days of the date of the adoption of this resolution, the Applicant shall provide the Board Secretary with a copy of the Applicant's lease authorizing its use of Lot 1. The Applicant shall have a continuing obligation to provide written notification to the Board Secretary immediately if the Applicant's lease for the use of Lot 1 terminates or expires.
- e. This approval is conditioned upon the Applicant's receipt of CAFRA approval for this proposed development. The Applicant has represented to the Board that it has already obtained CAFRA approval for the development of the Properties in the manner described within the application. Within 30 days of the date of the adoption of this resolution, the Applicant shall provide the Board Secretary with a copy of its CAFRA application for this development along with the permits/approvals issued by CAFRA for this development.

- f. The bathroom trailer being installed on Lot 2 as part of this application shall only be used by patrons of the Anchor Bar and will not be open for use by the general public. The Applicant shall post appropriate signage on the bathroom trailer indicating that is for use of patrons of the Anchor Bar only. Additionally, the bathroom trailer will be removed from the Property during the seasons when the Anchor Bar is not in use.
- g. Within 90 days of the date of the adoption of this resolution, the Applicant shall remove the ticket building from the Property.
- h. Prior to the date that the Anchor Bar opens to the public, the Applicant shall make one of the following improvements to the gravel parking area on Lot 1 (i) it shall either install bumper stops to delineate the parking spaces on this lot, or (ii) it shall paint the gravel parking area in order to delineate parking spaces on this lot. These improvements shall be reviewed and approved by the Board Engineer.
- i. The Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- j. All representations made under oath by the Applicant or its agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the resolution was made by Jim Stenson seconded Karen Brisben and then by the following roll call vote:

Ayes: James Stenson, Glenn Miller, Corinne Trainor, Karen Brisben and Christian Siano.

Noes: None

Absent: James Maclearie and Madeline Ferraro.

Not eligible to vote: Mayor Thomas Nicol and Councilman Frank Garruzzo

OTHER OLD BUSINESS:

Continuation of hearing for a Major Subdivision for Block 64.06, Lot 18, 619 Rankin Road, owned by 619 Rankin Rd., LLC (applicant - Bojac Realty), to create five buildable Lots. Minimum Lot Depth for proposed Lot 18.05 – 125 feet Required; 61.32 feet proposed. Other items as per Engineer's review letter.

Ms. Trainor announced around 3:30, the Planning Board received correspondence from the Law Office of Kenneth Lackey, LLC. Ms. Trainor asked Ms. Brisben if this had been made available

to the Board members. Ms. Brisben responded yes it had gone out to the Board members. Ms. Trainor asked Mr. Henderson if this was his application. Mr. Henderson responded yes it was.

Ms. Trainor reminded everyone from the public if they wish to speak during public questions or comments to enter their name in the chat and they will be addressed in the order which they are received. She reminded the public that called in: that they would be heard after the folks who entered their name in the chat.

Ms. Trainor asked Mr. Henderson to remind everyone where they were with the application. Mr. Clark asked to interrupt, he addressed Mr. Chermack. Mr. Clark told Mr. Chermack if he listened to the other recorded meetings that have occurred already for this application, then he would be able to participate with this application. Mr. Clark suggested the Board address some of the issues in Mr. Lackey's letter including the jurisdictional issue before going forward on the merits of the application. Ms. Trainor agreed with Mr. Clark and wanted to get a sense of what had already occurred with the application. Ms. Trainor stated Mr. Lackey had the opportunity to ask questions of prior witnesses and the recent letter is supplemental, though she wanted Mr. Henderson to address this.

Mr. Henderson responded he could address the question in two different ways. Mr. Henderson continued there has been a prolonged period because there were objectors. Mr. Henderson explained one of the principals in the organization is planning to build a home in the development. Mr. Henderson continued they want to address the property owners concerns and complaints. Mr. Henderson stated he feels they have addressed and resolved all the issues. Mr. Henderson stated the plans are significantly different and they will explain the differences and respond to Mr. Hilla's review letter. Mr. Henderson stated according to Mr. Hilla's letter, the applicant is down to one variance.

Mr. Henderson responded to the letter from Mr. Lackey. Mr. Henderson testified they have several copies of the application on file and they are signed, and he continued he felt the Board would not have allowed the application to proceed if they had not been signed. Mr. Henderson continued the second issue raised was the notice. Mr. Henderson said in land use law, you do not want to omit possible variances when making the notice. Mr. Henderson testified they noticed with several possible variances. He continued there is a lot of case law on what constitutes a proper notice, and the statute is vague, stating the notice must name the nature of the matters to be considered. Mr. Henderson cited Case 420 New Jersey Super 193, an active case from 2011 and several others. Mr. Henderson stated under case law you do not have to address the individual variances. Mr. Henderson felt they have met all the jurisdictional requirements and should proceed.

Ms. Trainor stated the Board would hear from Mr. Lackey and then Mr. Clark. Before proceeding, Ms. Trainor asked Mr. Henderson who is Mr. Steven Goldthwaite, referenced in Mr. Lackey's letter. Mr. Henderson replied Steven was the owner at the time of the application.

Mr. Lackey was asked by Ms. Trainor to share with the Board his jurisdictional concerns. Mr. Lackey started with the signed application, stating the copy the public had access to was not signed by any member of Bojac. Next, Mr. Lackey spoke of the notice issue. He continued the public is required to be clearly noticed on what is in the application and he felt the notice was vague,

ambiguous, and subject to interpretation. Ms. Trainor gave Mr. Henderson a chance to respond to Mr. Lackey's comments. Mr. Henderson reiterated he did not have to give every variance according to case law. Mr. Henderson thought the important issues had been noticed properly.

Ms. Trainor asked Mr. Clark to advise the Board. Mr. Clark started with the signature issue; he stated the Board would not process an application unless it was signed by the applicant. Mr. Clark stated he had a signed copy, and the law states the owner at the time must sign off on the application. Mr. Clark added the application states Mr. Goldthwaite was the consenting owner and not the applicant which is required. Mr. Clark said that in terms of the notice, the application had been heard several times, Mr. Lackey had appeared at the previous meetings and questioned witnesses and Mr. Lackey discussed there may be a discrepancy in the variances noticed, which those variances may not even be needed anymore. Mr. Clark stated his view was the notice was done properly and there is no jurisdictional issue. Ms. Trainor asked Mr. Clark if the jurisdictional issues raised by Mr. Lackey could be considered waivable. Ms. Trainor asked Mr. Hilla if he had any information to believe the application was not signed. Mr. Hilla responded no he believed they were signed. Ms. Trainor asked Mr. Clark how the Board should proceed with the jurisdictional issue decision, as Chairperson of the Board would Ms. Trainor make the decision or by vote from the Board. Mr. Clark advised as Chair, Ms. Trainor would be the one that would make decisions about evidence and about proceeding, or not proceeding with the application. Ms. Trainor testified she accepted Mr. Hilla's statement that the application he has on file is signed and Mr. Clark's interpretation that the jurisdictional issue is curable, and his legal analysis of the notice issue is sufficient. Ms. Trainor thanked Mr. Lackey for his letter and decided the Board would proceed.

Mr. Henderson introduced Mr. Jeff Carr as his first witness. Mr. Carr was sworn in by Mr. Clark. Mr. Carr stated he was a principal with the firm Lindstrom, Diessner, and Carr, P.C and a Licensed Professional Engineer and Licensed Professional Planner in the State of New Jersey. Ms. Trainor stated that the Board accepts Mr. Carr's credentials and that they qualify him as an expert in those areas. Mr. Henderson asked Mr. Carr if he was in receipt of Mr. Hilla's most recent review letter. Mr. Carr stated that he was. Mr. Henderson asked Mr. Carr if Mr. Hilla's letter with description of the property accurate. Mr. Carr stated the Mr. Hilla's letter stated that there were five oversized lots, much larger than the minimum required and that the proposed new street is a typical roadway with typical facilities and utilities, so there was nothing out of the ordinary except that these are oversized lots. Mr. Henderson asked Mr. Carr if he agreed that a variance is required for lot 18.05 where 125 feet is required and approximately 61.32 feet is proposed. Mr. Carr responded that he would describe this as a technical variance. Mr. Carr continued by saying that in a sense when you look at definitions, it may appear to be a variance situation but when you look at the shape and size of lot 18.05 it is somewhat of an odd shaped lot because of the configuration of the existing property that narrows down at Rankin Road which he would kind of call a tail on one portion of the lot that borders Squan Brook Way and touches Rankin Road. Mr. Carr stated that on a practical sense in his estimation the lot is extremely deep and more than 125 feet when measured off Squan Brook Way, it is roughly 160 feet deep so it's far in excess of 125 feet, by definition. Mr. Carr stated that in a practical sense, the buildable area and where the house will be put hasn't changed. Mr. Henderson asked Mr. Carr to address Mr. Hilla's comment about street lighting. Mr. Carr responded that there are three lights proposed shown on Plan Sheet, Number 5 of 10, one at the end of the cul-de-sac, one at the middle of the road and one at the entrance of the road. Mr. Carr stated the lights are lighting up the areas that are most critical on a residential street. Mr. Carr

testified that the lighting is adequate for this development. Mr. Henderson then asked Mr. Carr to comment on shade trees. Mr. Carr stated that they would be providing street trees along the road, a very simplistic plan as landscape plans go and in accordance with the law, professional landscape engineers could provide that on their plans.

Mr. Henderson asked Mr. Carr to explain what would happen with the utilities. Mr. Carr responded there is an existing pole in the back which is not required for the proposed plans. Mr. Carr continued the utilities would be underground, they would work with the utility companies and the existing pole would be removed unless it is serving Lot 16.

Mr. Henderson asked Mr. Carr if the site distances conform with AASHTO. Mr. Carr responded yes, they do conform with the American Association of State and Highway Traffic Officials, whose standards are to ensure safe distances when turning in and out of the development.

Mr. Henderson testified in all his years, he had never been requested to supply a report from a traffic expert for new houses in a suburban area, but if the Board requests it, he will bring an expert to the next hearing. Mr. Trainor stated the Board would take it under advisement.

Mr. Henderson asked Mr. Carr to respond to item "G" in Mr. Hilla's letter. Mr. Carr stated there were two items, one the curb detail which the information is located on sheet nine of ten in the upper left-hand corner, standard detail for Belgium block curb. Mr. Carr continued the other item was additional information on the various swale components which have been removed since the original plans.

Mr. Henderson stated Mr. Hilla wanted a response to I, 4 and 6 of the Stormwater Management report and Mr. Henderson felt the most important item was who would be responsible for managing and maintaining the stormwater management system. Mr. Henderson said he would prepare and submit to the Board attorney and engineer for approval, a Home Owner's association which would be responsible to manage and maintain the system so the Borough would not be responsible. Mr. Henderson requested they receive submission waivers for the couple of items left as a condition of post approval. Ms. Trainor asked Mr. Henderson which paragraph items he was referring to and Mr. Carr clarified H1, H4 and H6 on page 5. Mr. Henderson asked Mr. Carr to address item "I". Mr. Carr responded the storm drainage system will be a part of the Homeowner's Association. Mr. Carr explained they were using storm tech system, which was high density polyethylene pipe, pipes that have been used in shopping centers and under pavement.

Mr. Henderson addressed Ms. Trainor pointing out the remaining items up to page 8 of 9 have been revised to comply with Mr. Hilla's comments. Mr. Carr was asked to discuss the comment on the bottom of page 4. He stated this was five single family homes, a small cul-de-sac on large lots, grading and earth work would need to be done to ensure proper drainage. Mr. Henderson asked Mr. Carr if he engaged a CAFRA expert and Mr. Carr responded yes, there are wetlands and buffers, so an environmental consultant was retained. Mr. Carr testified the consultant determined no other permits were required based on the plan.

Ms. Trainor explained the Board has a forty-five-minute limit per application, the Board allows the testimony from the applicants, followed by questions from the Board and public, the Bojac applicant has run out of time and will be heard again next month.

OTHER 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.

Ms. Trainor stated to the public she assumed that they had entered their name to speak with respect to the prior application not for the continuation of the River House application.

Ms. Trainor asked who was representing the applicant. Mr. Sarto stated he was representing the applicant. Mr. Clark asked Ms. Trainor if there were enough members to hear the application. Ms. Brisben responded there were enough members to hear the application.

Mr. Clark told Mr. Sarto there were five Planning Board members tonight and the two missing members would be able listen to the recording of tonight and vote at a future meeting.

Mr. Sarto stated he believed at the last meeting we left off with the Board members turn to ask questions of Barbara Ehlen. Ms. Trainor agreed it was time for the Board members to ask questions.

Ms. Trainor proceeded to call on the Board members for questions. Ms. Trainor started with Mr. Stenson who had no questions at this time. Mr. Miller and Mr. Siano also had no questions at this time.

Ms. Trainor called on Ms. Brisben who had several questions. Ms. Brisben asked Ms. Ehlen if she testified that the parking lot across the street held 83 or 85 spots, with valet parking it could hold up to 127 cars and could she explain. Ms. Ehlen responded yes, she did, when using valet parking they can stack the cars and shift them around when needed. Ms. Brisben asked where the public, using the restaurant would park when valet parking is used for a wedding. Ms. Ehlen responded she has discussed with the applicant to encourage wedding clients to use busing to take guests to the venue. Ms. Ehlen reminded the Board “the site has currently accommodated the use as it is, as it is presented today. There is no intensification wherein more parking is going to be demanded because of the proposed revisions.” Ms. Brisben asked how bright and intrusive the lights would be for the parking lot. Ms. Ehlen said she could not answer that question. Mr. Sarto responded Dan Condatore, project architect, testified LED lights directed to point down. Ms. Brisben asked Mr. Hilla if he any comment on the lighting. Mr. Hilla responded he believed the lighting recently was operational. Mr. Sarto explained Mr. Condatore had another meeting which he needed to attend so he was unavailable to confirm. Mr. Sarto offered to confirm with Mr. Condatore and give an update.

Ms. Trainor asked Mr. Chermark if he had any questions and he responded not at this time.

Ms. Trainor had several questions of Ms. Ehlen about the intensification of the use of the outside ceremony deck. Ms. Trainor asked what the use of the deck was previously. Ms. Ehlen responded a ceremony space. Ms. Trainor asked if Ms. Ehlen has investigated the intensification of the use of the space. Ms. Ehlen stated the space was wider but the number of people the facility accommodates did not increase. Ms. Trainor asked, in reference to the variances, is the Board supposed to consider the intensification of the use of the property as a whole. Ms. Ehlen responded there is a thought that additional footage would intensify the use but, in this case, they are rearranging the space for better usage. Ms. Trainor asked who could answer the question of what the use of the deck was previously. Mr. Sarto responded he could answer. Mr. Sarto continued by saying the footprint was the same and the use was the same. Ms. Trainor asked if there was a different deck space for the guest to revel after the ceremony. Ms. Ehlen responded correct.

Ms. Trainor asked Mr. Sarto if he had any further witnesses. Mr. Sarto responded the two witnesses were the conclusion of their testimony.

Ms. Trainor asked the public for comments of the application. According to the log in list of names, Mr. Callahan, 205 River Mist Way, was the first to comment. Mr. Callahan stated his name and address for the record. Mr. Callahan had been previously sworn in. Mr. Callahan testified he was a resident of the condos next door to the restaurant. Mr. Callahan continued by saying their concern was the effect this application will have on their lives and they were thankful the applicant has agreed to some of the stipulations. Mr. Callahan stated they were pleased with the offer to screen the units and fans. Mr. Callahan stated his surprise to the stipulation to no outside music or food or beverages served on the outside deck. Mr. Callahan testified he would like the applicant to put

back the wall and the shingled roof they had ripped down on the outside deck. Mr. Callahan stated he did not want the new wall.

Ms. Trainor asked Mr. Howard Dubinett, 100 Ocean Avenue, if he would like to comment. Ms. Trainor stated Mr. Dubinett had been sworn in previously. Mr. Dubinett stated the applicant is trying to create a Riverwalk which is not what was intended, and it was always considered part of the marina. Mr. Dubinett stated he felt it was a life safety issue to install a railing, should someone fall into the water they would not be able to get out.

Ms. Trainor asked Mr. Tom Stuhmann, 106 Ocean Avenue, for his comments. Ms. Trainor stated he had been sworn in previously. Mr. Stuhmann requested the applicant use the warmest lights and not extremely bright white and the plan reviewed, and installation inspected. Mr. Stuhmann testified he felt the new restaurant was an improvement to the area and re-opening would enhance the waterfront. Mr. Stuhmann stated he felt the new patio was a positive and the stipulation of no outside music would make it consistent with the other restaurants in the Borough.

Ms. Trainor asked Mr. Don Gordon, 206 River Mist Way, for his comment. Mr. Gordon stated he had been sworn in previously. Mr. Gordon stated he lives next the restaurant and had a boat in the marina. Mr. Gordon stated he did not know where the patrons who wanted to dock and dine would be able to dock their boats. Mr. Gordon stated his concern with the lighting on the proposed deck. Mr. Gordon stated he agreed with his neighbor Mr. Callahan and would like them to go back to the old roofline.

Ms. Trainor asked if any other public member would like to comment. Mr. Anthony Knapp, 16 Crescent Drive, was sworn in by Mr. Clark. Mr. Knapp stated he was a resident of Brielle for 26 years. Mr. Knapp wished to compliment the applicant on this application, and he felt year-round waterfront dining would be a good thing for the public. Mr. Knapp testified he hoped the Board would approve the application.

Ms. Trainor asked for any other public comment. Hearing none, she closed the comment portion. Ms. Trainor adjourned the application to next month's meeting and stated she would allow Mr. Sarto to give closing statements and hear comments from the Board.

Ms. Trainor asked Mr. Clark if in advance of next month's meeting, it would make sense for Mr. Clark and Mr. Sarto to put together a list of stipulations which have been agreed upon over the months. Mr. Callahan asked to be copied on the list so he may circulate it among his neighbors. Mr. Sarto responded "I'm agreeable to work with the Board Attorney to come up with the stipulations. I don't really think it's appropriate to open that up to neighbors, to add additional comments and stipulations, because it's our application."

Ms. Brisben added the next meeting is Tuesday, November 10th.

Ms. Trainor asked for any other comments from the public. Mr. Dubinett commented he felt the Borough should have the documents submitted electronically. Ms. Brisben asked to respond. Ms. Brisben stated she agreed the documents should be put on the website.

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.

Ms. Carol Baran, Recording Secretary
Approved: