

Borough of Brielle

JULY 11, 2017

November 02 2017

July 11th, 2017

BRIELLE PLANNING BOARD

TUESDAY, JULY 11, 2017

The Regular meeting of the Brielle Planning Board was held on Tuesday, July 11, 2017 at 7:30 pm in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a salute to the flag, roll call was taken:

Present –Joseph Bonacci, Thomas Condon, Eric Lapham, James Maclearie, Charles Sarnasi, Stacey Montalto

Absent – Mayor Thomas Nicol, Councilman Frank Garruzzo, James Langenberger, James Stenson

Also present was Karen S. Brisben, Recording Secretary, Joe Clark, Esq., Board Attorney and Alan Hilla, Jr. Board Engineer. There were approximately 60 people in the audience.

Mr. Condon called the meeting to order and declared a quorum. He announced that, in compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board fixing the time and place of all hearings.

The Minutes of the June 13, 2017 meeting were approved on a motion by Ms. Montalto, seconded by Mr. Maclearie and approved by voice vote, all aye.

OLD BUSINESS:

The Board considered a Resolution for approval of a one year extension for the Manasquan River Yacht to complete their site plan work and the following was presented:

WHEREAS, THE MANASQUAN RIVER YACHT CLUB ("Applicant") has applied to the Planning and Zoning Board ("Board") of the Borough of Brielle seeking a n extension of time relating to a previously granted Use Variance property for located at 405 Riverview Lane known as Block 73.01, Lot 5 (hereinafter "Property or Parcel"), on the tax map of the Borough of Brielle, in the Borough's Residential Zone 2 (R-2 zone); and WHEREAS, N.J.S.A. 40:55D-52. allows for three, one year extensions of original final site plan approval as a matter of right; and

WHEREAS, at the regularly scheduled meeting of the Board on June 13, 2017, the request was considered, and a motion was made by Councilman Garruzzo, seconded by Mr. Stenson, to grant a one year extension of time for perfecting the Use Variance application submitted by the Yacht Club; and

WHEREAS the roll call vote was as follows:

Ayes: Councilman Frank Garruzzo, Joe Bonacci, Tom Condon, Jim Langenberger, Jim Maclearie, Jim Stenson

Noes: None

Abstain: Stacey Montalto, Charles Sarnasi

NOW THEREFORE, BE IT RESOLVED by the Planning and Zoning Board of the Borough of Brielle, that Applicant's one year extension of time for perfecting the Use Variance application is granted.

The above Resolution was approved on a motion by Mr. Maclearie, seconded by Mr. Sarnasi and then by the following roll call vote:

Ayes: Joseph Bonacci, Thomas Condon, James Maclearie

Noes: None

Not Eligible to Vote: Eric Lapham, Stacey Montalto, Charles Sarnasi

The Board then considered a Resolution for variance relief for Block 110, Lot 2, 1023 Highway 70, owned by Alpha Property Management, LLC to allow expansion of the dance studio. As all members, as well as the client's attorney, had received a final draft copy and there were no changes offered, the following Resolution was presented for approval:

WHEREAS, Alpha Omega Technologies, Inc. ("Applicant," or "Alpha/Omega") has applied to the Planning and Zoning Board ("Board") of the Borough of Brielle for variances to permit additional use of space for a dance studio and for a variance form parking space requirements at Block 110, Lot 2, 1025 Highway 760 (hereinafter "Property or Parcel"), on the tax map of the Borough of Brielle; and

WHEREAS, this application requested a use variance to permit expansion of the dance studio located on site, and a variance as to the number of parking spaces required due to the enhanced use of the premises; and WHEREAS, it was determined during the course of the hearings in this matter that utilization of space at Applicant's property for a dance studio was a conforming use in the zone due to a prior Court ruling; and WHEREAS, it was determined during the course of hearings in this matter that a previous resolution passed in 1996, which granted Omnipoint Communications, Inc.'s application for a use variance, as well as bulk variances, design waivers and preliminary and final major site plan approval had a bearing on the issue of parking; and

WHEREAS The proper fees were paid, taxes were paid to date and the property owners within 200 feet as well as the newspaper were properly notified; and

WHEREAS the Board held hearings on December 13, 2016, January 10, 2017, February 21, 2017 and June 13, 2017 and considered the following documents presented at the hearing in connection with this application:

- a. Jurisdictional Packet;
- b. A-1 -aerial photo from 2015
- c. A-2 - series of 4 photographs showing front of the building, parking and area along the rear of the building on Old Bridge Road.
- d. A-3 through A-7 photos of storage area.
- e. A-4 - copies of parking plan and narrative
- f. A-8 – plan showing square footage of the building
- g. O-1 through O-3 - pictures of traffic presented by Objector Michael Ping,

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

DECEMBER 13, 2016

David Leone, Esq. came forward to present this hearing. Mr. Leone referenced a previous Resolution on this site, from 2007, that granted a Use Variance to permit a dance studio. He then commented on Mr. Hilla's review letter and wanted to correct the square footage issue; the application said there is 4,554 square feet used for the Dancing School but this is incorrect and the school is in compliance with the original Resolution and he had the owner of Alpha Property Management, Mr. Ed Zachowski, here to testify on this.

Mr. Zachowski came forward and was sworn in and told the Board Alpha/Omega Management has been there since 1979 and has 13 employees; customers do not come to the building, this business does analytical work. On his return from Florida he took over the business from his wife due to a divorce and he found a discrepancy on the square footage for the dance school. He discussed this with the school and the square footage was adjusted; he then took new measurements and found they had included 900 square feet of storage space. Mr. Hilla asked for better plans of the actual building so it is clear on the square footage matter and Mr. Zachowski said this will be done.

As no Board members had questions the meeting was opened to the public for questions to Mr. Zachowski; there were none so that portion was closed.

Mr. Hilla wanted to make sure the Board has this documented that the correct square footage is there, because it would exceed the prior approval of 3,640 square feet, and have an impact on parking calculations, which are based on gross floor area. Councilman Garruzzo asked Mr. Hilla how many more parking spaces are needed for the 900 square foot difference and Mr. Hilla said the Ordinance says one space for every 100 square feet, so there is a discrepancy of 7 to 9 parking spaces. The previous approval was based on reconfigured spaces and the property is already in variance condition due to that approval giving them parking relief, sixty spaces are needed and they had fifty-three.

Mayor Nicol asked if the businesses there and the dance school operate at different hours and Mr. Leone said Alpha Property Management overlaps with Dance for Joy for one hour, from 4:00 to 5:00.

Mr. Andrew Thomas, Professional Planner, came forward and was sworn in. The Board accepted him as an expert witness.

He said he reviewed the application, the Zoning Ordinance and Mr. Hilla's review letter, and then presented an aerial photo from 2015 which was marked as Exhibit A-1. Exhibit A-2 was also marked and consisted of a series of 4 photos on two sheets which shows the front of the building, parking and area along the rear of the building on Old Bridge Road.

Mr. Thomas testified that in Exhibit A-1 the building is highlighted in yellow; there is parking in the front with additional parking to the west side of the building, its rear. The business Dance for Joy occupies the eastern part of the building, there is a small office complex of 1,000+ square feet and the rest is occupied by Alpha/Omega Management. There also is a monopole on the site. The size of the building is 25,163 square feet and includes 19,573 square feet for Alpha/Omega, 4,554 square feet for Dance for Joy and 1,036 square feet for the office complex.

The bulk of the parking is to the west of the building, 11 spaces in the back – there are 261 students enrolled in Dance for Joy, 10 are 17-18 years old; most students are dropped off by their parents and the entrance is from Old Bridge Road. There are 3 parking spaces in the front for parents to drop off children. There are also very limited special events such as a Christmas show. The Christmas show is akin to a window display at a department store – parents do not take a seat in the studio, but rather look into the building from the outside.

Systems Connect has hours from 9:00 to 5:00 with only two employees; Applicant's employees work from 9:00 to 5:00 as well, but they do not have customers on-site – Applicant's employees travel to customer sites. Mr. Thomas testified that Applicant is proposing a change of use within the building with the dance school going from 4,550 square feet to 6,705 square feet; there will be no changes to the parking or lighting. The relief requested is for the expansion of an existing use and needs D variance relief.

He then referenced the parking requirements at 21:32.2 in the Ordinance. He said there is a need for 1 space per employee of Alpha/Omega; 13 spaces total. The office building requires 1 space for every 150 square feet for a total of 7 spaces. With regard to the dance studio, Mr. Thomas testified that the parking requirement is 1 space for every 200 square feet, which was contrary to Mr. Hilla's calculation of 1 space for every 100 square feet. Mr. Thomas calculated that the Dance studio creates a need for 33.5. Mr. Thomas testified that in sum, the total parking spaces required was 53 and there are 53 on the site now.

Mr. Thomas addressed the positive criteria, stating that the proposed enhanced use is not a major increase, it is not increasing the size of the building itself, and there is good street access. Mr. Thomas stated that this is conducive to the proposed additional use of dance space and that parking and circulation is adequate. The enhanced use promotes health, safety and welfare and is a benefit to the Borough. Moreover, because the dance school is in session during off-peak hours and has an established route to drop off students it is unlikely to conflict with current tenants.

As far as any negative criteria Mr. Thomas could find none to the Zoning Ordinance or Master Plan and this meets the purpose of the Municipal Land Use Law; he felt the burden of proof was satisfied. He finished by stating they will provide the plans requested by Mr. Hilla.

Mr. Condon asked if the proposed use is being classified as a "studio" (which has 1 parking space for every 200 square feet) and Mr. Thomas said yes. Mr. Maclearie asked if the spaces could be made smaller and Mr. Thomas again referred to the parking regulations in the Ordinance.

At this point, Mr. Hilla disagreed with Mr. Thomas on the need for a D variance. Mr. Hilla stated that the Ordinance applicable to the zone indicates that "physical culture" is a permitted use. Previously, a Borough Zoning Officer had indicated that the dance school was within the "physical culture" use, which was upheld by now-retired Judge Lehrer. Consequently, Mr. Hilla did not think a D Variance was required.

With regards to parking, Mr. Hilla stated that in 2007 Applicant was already 9 spaces less than the 64 needed; Mr. Hilla opined that the enhanced use creates a need for even more parking. He felt that the dance studio was more akin to "auditorium" for parking space purposes and therefore 1 space for 100 square feet of floor space was required. There are 53 spaces available but Dance for Joy has increased in size, thereby expanding the deficiency that already existed in 2007. Mr. Stenson asked about the difference in the definition used by Mr. Thomas and Mr. Hilla and Mr. Hilla did not feel "studio" use applied here, an "auditorium" is a public use.

Councilman Garruzzo asked how many spaces Applicant is short; Mr. Hilla replied that his calculations show a need for 92 spaces total. Mr. Hilla said that Applicant's building is one of the largest in Brielle and, while a variance as to parking may seem appropriate now, a change in use in the future could lead to problems.

Mr. Leone commented that, back in 2007, there is no reference to "auditorium" use and that Dance for Joy is more appropriately considered a "studio" use. Mr. Condon felt there was a lot of gray area here for both of the definitions. Mr. Thomas stated that Dance for Joy is primarily drop-off and pick-up; he was there prior to the hearing and saw no issues with parking. Mr. Leone agreed and stated that Dance for Joy is less intrusive than other uses allowed in the C-3 zone, such as diners and appliance stores.

Mr. Stenson asked about recitals and was told it does not appear there are onsite dance recitals. There was further indication that Dance for Joy has 8 teachers with 3 working at a time. The dance school wants more space so the students can practice 4-5 times a week instead of maybe 3. Mr. Lapham asked if an expansion from 3 days to 5 days will generate greater enrollment. The answer was no, that existing students will have more practice time. Mr. Lapham asked if there is an opportunity to create more parking spaces; Mr. Leone said they would have to do a traffic study and that has not happened, he did not know how many spaces they could get if they made the individual spaces smaller. Mr. Lapham suggested parallel parking in the back but Mayor Nicol said that was a problem and it was already addressed back in 2007. Ms. Montalto went back to Mr. Hilla's comments on the future and questioned if new tenants came in would there be a different formula for parking.

At this time Mr. Hilla came forward and Mr. Clark swore him in. Mr. Hilla testified that changes of use happen and there are many uses in this zone. The dance school could become a Tae Kwan Do studio and the protection would continue with this use. The Board does not want to create something that may dramatically change in 5-6 years, creating an enhanced parking need.

Mr. Langenberger asked how many students would be there at any given time. Mr. Leone commented that Dance for Joy does not plan on enrolling more students; he further indicated that the students are school age, with no adults enrolled. Mr. Langenberger asked if Mr. Leone was ever on the premises at 9:00 at night when cars are stacked back on Old Bridge Road? There can be 30 cars backed up, the parking now is away from the dance studio and more students will mean more load on the street; this may be a problem in the future. Mr. Leone said the applicant has no problem with conditions being imposed on a current tenant. Mr. Langenberger said the dance studio is limited with no space to grow and he wondered if there can be a limit as to the number of students.

At this time the hearing was opened to the public for questions to Mr. Thomas and there was no response so

that portion was closed and Mr. Condon asked for a motion to carry this hearing to the January 10th, 2017 meeting of the Planning Board with no further notice being given. This was done by Councilman Garruzzo, seconded by Mr. Sarnasi and unanimously approved, all aye.

JANUARY 10, 2017

Mr. David Leone, Esq. came forward and told the Board he had just received architect's drawings of the layout of the building. He stated that he had intended to request an adjournment to allow the Board Engineer to review the drawings, but thought that he could introduce testimony from Dance for Joy's owner, which did not require a review of the plans, and which would move the process along. The Board was agreeable and Kimberly Houli came forward and was sworn in.

Ms. Houli testified that she has owned Dance for Joy for 11 seasons and has 11 staff members which include 8 teachers total, with three working at any given time; she has 265 students and her hours are Tuesday, Thursday and Friday from 9-10 a.m., Tuesday through Friday from 4-9 p.m. and Saturday until 2:00 p.m. The morning classes are for preschool children; the largest class consists of 10 students. She further testified that the parents of the small children will typically stay during class, while the majority of parents, who have older children, drop them off and pick them up when their class is over. The evening and Saturday classes are held when the other businesses are not on the premises. She explained there is a drop-off in the front of the building. Mrs. Houli recognized that idling cars do line up behind the building but that there is no drop-off in the rear of the building.

Dance for Joy is a 100% dance studio; performances occur off-site at other places such as the Algonquin Theater, the Strand Theater in Lakewood, and Rutgers, among others. The only time dancers are presenting a show in the building is during the Christmas Season. The dancers are inside the studio and the audience views them from the outside; she added there has never been a problem with traffic.

Ms. Houli said she would like to have the additional space so children can be divided into smaller groups that do more intense and varied learning. Dance for Joy also wants to have a Special Needs program. Ms. Houli testified that past attempts to have such a class did not work because more space is needed. Some of the additional space would also be for music lessons. She said all her students are under 18. She further stated that out of the total number of students fewer than 10 drive themselves to class and require parking, as do dance instructors.

Ms. Houli indicated that Dance for Joy stagger the classes. Classes for the young ones are 45 minutes long; other classes are either an hour or one and a half hours. Mr. Leone asked if Ms. Houli would be willing to stagger class times even more so that cars don't line up as much, and Ms. Houli agreed.

Mr. Leone then asked if she was going to expand the number of students and Ms. Houli replied "not right now." They need more studio space for rehearsals, they do not have any music or voice classes and perhaps would like to have a small room for that.

Mr. Langenberger felt there will be 1/3 more space and there are 265 students now, if that goes to 300 students he asked how will that affect circulation of the cars outside? With 265 students there already is traffic congestion and he was concerned about adding more students. He also noted that the safety door in the rear gets propped open with a brick and anyone could walk in. Ms. Houli indicated that she will reiterate to her employees that the door must remain closed. Mr. Langenberger said he was given a photo of the door being opened but he didn't have a problem with this, he was just concerned about more students.

Ms. Montalto asked about the other classes that won't be dance, would the music and voice be for other students? Ms. Houli said she may have some new students but she could see her dance members doing this. She also said there is a lot of competition out there, a lot of dancing schools so she could not know about an increase in students.

Mr. Maclearie asked about what would happen if she did get 100 more kids and more kids with cars, there could be 200 people there. Mr. Leone said there are 54 parking spaces there now and they have 7 seniors this year who will not be attending next year, they can't predict the future; Mr. Maclearie felt the potential was there. Ms. Houli said this dance school is for those under 18, she did have a student come back that went to college and was told she couldn't join again.

Mr. Lapham asked her what she felt the maximum number of students could be and Ms. Houli guessed and said 315 at the maximum. Mr. Sarnasi asked if there is an occupancy limit and Ms. Houli said yes but she was not sure and felt that maybe one studio was 30 and the other two maybe 25. Mr. Sarnasi said if there are more students she will have to keep that in mind. Ms. Houli said they usually keep class sizes to 15 students, they don't want to have more than that. Mr. Sarnasi asked how many students are there when they are the busiest and the answer was 35-40 kids. Councilman Garruzzo asked for confirmation that the average class is 15 and Ms. Houli said yes and a lot of the classes are smaller with 6-8 kids. Councilman Garruzzo felt this school traffic was working and if the classes can be staggered it would work better. Ms. Houli said she has had 250-270 kids for the last 10 years every year. Councilman Garruzzo explained the Board was concerned about the future.

At this time the hearing was opened to the public for questions to Ms. Houli and, as there was no response, that portion was closed. Mr. Leone then asked to have this application carried to the February 21st meeting with no further notice and it was approved.

FEBRUARY 21, 2017

Mr. David Leone, Esq. came forward and asked that Andrew Thomas, Professional Planner, come forward to testify. Mr. Thomas came forward, was sworn in and was accepted as an expert witness.

Mr. Thomas said he had reviewed Mr. Hilla's latest report and did not find it necessary to change the application in any way. He said the square footage had been modified since 2007 and the expansion, which was for purposes of providing storage, was done without Board approval.

He then referenced the Omnipoint application and a 2007 Resolution where the term "studio" was stated 11 times. Mr. Thomas felt that Dance for Joy is a studio which leads to a parking space calculation of 57.5, leaving Applicant 4.5 spaces short.

Mr. Thomas disagreed with Mr. Hilla's report that 99 spaces are needed because Mr. Hilla believes the use should be defined as an "auditorium" under the parking requirement Ordinance, rather than a "studio." Mr. Thomas said the Dance for Joy is a drop-off and pick-up type of use and the lot is adequate for all businesses here; there is no additional parking needed.

Mr. Thomas then referenced the Municipal Land Use Law as far as positive and negative criteria and felt this use promotes health, safety & general welfare, a free flow of traffic and there is no detriment to the Zoning Ordinance. Mr. Leone said there is a concern from the Board over a possible change of use in the future and Mr. Thomas felt this can be in the enabling Resolution, if there is a change of use then the applicant would have to come back before the Board for approval. Mr. Condon asked if this can apply to all the business there and Mr. Thomas said yes this can apply to all.

Mr. Maclearie asked what would stop Dance for Joy from doing adult dance classes and enrolling more students? Mr. Leone said the Resolution can stipulate requirements for just this business and limit its use. Mr. Leone said the definition of a "studio" is not a true definition in the Ordinance but it was the one they felt fit Dance for Joy best; he said, as in the past, that there are no shows inside as there is no seating inside.

Mr. Hilla stated that an auditorium or recreational establishment is in the definition of an auditorium and he felt that fits here, a studio would be for broadcasting or art. He said if a gym wanted to go in here that would not be a change of use; he also commented that the testimony on the square footage does not match with the math from the Omnipoint application. Mr. Leone said the Omnipoint application was a separate application and not part of Alpha Management or Dance for Joy. Mr. Hilla said Alpha Management owns the building and the property owner knew of this. Mr. Leone said they leased the land and the Resolution from 1996 does not mention Alpha Management.

Mr. Leone told the Board that a Professional Planner testified this evening that this is a "studio" use and he addressed the concerns of the Board; he again said the Resolution can be tailored to fit the Board's concerns. Mr. Clark could see the position on both sides but he said he felt the Board should get a legal report on this from Mr. Leone, he did not know if there is enough here to act on and he agreed some of the terminology in the Ordinance is undefined. There was then another brief discussion on the parking. Mr. Clark felt the issue is the use definition that is before this Board. The dancing school is used primarily during off peak hours and the parking does not seem to be an issue. The Board can make it a condition of approval that no matter what comes in there in the future will have to come back before the Board and Mr. Leone agreed and said he will prepare a brief on the position of Alpha Management/Dance for Joy.

At this time the hearing was opened for questions to Mr. Thomas and, as there were none, that portion was closed. Mr. Leone asked the Board if Mr. Thomas not be required to come back as he is done with his testimony and the Board agreed.

Mr. Leone did have one more witness to come forward, Susan Allman, the Manager of Dance for Joy who came forward and was sworn in. She presented photos of the storage area that caused the expansion and these were marked as Exhibits A-3 through A-7. Also, the plant submitted by Mr. Leone of the square footage of the building was marked at this time, it was marked Exhibit A-8.

Ms. Allman said she has been the office manager here since 2007, they did take over more area but it is for storage as Exhibits A-3 through A-7 show, it is not used for studio space. They store equipment and supplies here and no students are allowed in this area. She also said she was familiar with the traffic pattern and would like to have an area, up front, for an admission area (no dancing) and this may help the parking, they now have only one door and would like another one so it would be easier for dropping off and picking up students. As far as the back-up on Old Bridge Road, they have sent out emails on this and they have employees come out and ask people to keep moving or park at the end of the building; she said this can be enforced more.

Councilman Garruzzo noted a space between the two studios and was told that is part of Alpha Management, they have an office there. Mr. Maclearie asked about the two doors and would that change the traffic lanes - Ms. Allman said no, she felt that two doors will help move traffic along. Mr. Langenberger felt the traffic would still stop even with two doors, there are 260 students at this time and he could see a problem if this goes to 300-350 students; he wanted to know if the student enrollment can be capped at 300 and he would not have a problem with this application if this were done. Right now there can be a back-up to Harpoon Willy's restaurant down the street and he was concerned about this. Ms. Allman said she could understand the concern but the Friday night classes are ending at 7:30 and the Saturday classes only go to 12:30, as far as capping the enrollment that would be up to the owner. She then told the Board they have 4 special needs students and really need more room for them and a solo space, the extra space is not for classes and the students in a class are about 15-17, there is no more room for more and they do cap the number of students in a class. She closed by stating that some students have gone on for scholarships due to the education they received here.

At this time the hearing was opened to the public for questions or comments and, as there were none, that

portion was closed. The Board decided to carry this hearing to the April meeting of the Board, this approved on a motion by Councilman Garruzzo, seconded by Mr. Lapham and then by voice vote, all aye, no nays. It was announced that there will be no further notice that will be given.

JUNE 13, 2017

Mr. David Leone, Esq. once again came forward and summarized the application. Based on the calculation by their Planner, there are 53 parking spaces at the property and this became an issue due to a discrepancy on this being a studio or auditorium. If this is considered a studio, then they need 57.5 spaces, Alpha Management has 13 spaces and the contractor that has his office in this building has 7 spaces (the monopole needs none). This makes a total of 57.5 spaces and there are 53 spaces for they need a variance for 4.5 spaces. This is a dance studio for children and is less intrusive than other uses.

There are concerns on the traffic backing up when picking up the children and, in order to address that they will be using a new policy; they will use the new entrance by Route 70, turn into the lot and park there, this will avoid traffic on Old Bridge Road as well as honking of horns & backing up. He asked for a vote tonight on this matter.

He then asked if Ms. Houli, the Dance Studio owner, to once again come forward and be sworn in; this was done. She said there are 8 teachers & 2 administrative staff and she said she has enough help to implement the new traffic plan. She is sending out an email and notice to all parents and they are not going to allow drop-off, parents can park and pick up their child; older children can walk to the car. There will be a staff member to help move the traffic along outside.

Mr. Clark then marked as Exhibit A-4 8 copies of the parking plan and narrative. Ms. Houli went on to say they don't start all classes at the same time so there is enough parking for all, even with the expanded space. As far as the new teaching area there will be one area for voice lessons & an area to teach acapella and maybe instrument lessons.

Mr. Maclearie questioned the new parking plan and Ms. Houli said the parents will be instructed to move to the parking lot, they can't stop and wait. Mr. Maclearie couldn't see the self-policing all the time.

The hearing was opened to the public for questions to Ms. Houli and, as there were none that portion was closed.

Mr. Leone felt that most of the issues have been addressed; he read from the 2008 Resolution which said if there is any change in the building parking requirements, they need to come back before the Planning Board. He said they can't increase the size of the building itself, it is right on the Highway and he felt the parking variance is warranted and the new parking management will help. He then referred to the 2007 Resolution that allowed the Dance Studio and he felt any changes would be applied to this dance studio only.

At this time the hearing was open to the public for general comments and Keith Wolfjohn came forward and was sworn in. He has two children that attend Dance for Joy and could understand the variance need for the parking. His children have benefited from this dance studio attendance, his daughter had bullying issues at school and in dancing school it is gone and the school has helped both of them. They do more charity work than competitions and it is a place for them to go. He said he has never seen a traffic issue here and hoped the Board can approve this, it is not a puppy mill dancing school, they learn here.

Next to come forward was Michael Ping who was sworn in. He lives across the street and the dance school has affected the homes in this area, the way it is laid out is not good; the neighbors have all heard, in the past, that the parking problems will be taken care of but nothing has ever been done. He showed pictures of the traffic problem, which Mr. Clark marked as Exhibit O-1, O-2 and O-3. Mr. Ping sees cars in the Fire Lane with parents waiting for the kids, they do not want to park in the lot and they circle around all the time. He said the neighbors were assured, after the monopole was put in, that this would stop and nothing was done, why can't there be some sort of enforcement, he is a concerned neighbor here.

Next to speak was Susan Olman who was sworn in. She works in the office at Dance for Joy and said the Fire Lane was changed when the bridge construction was done, it is not really a Fire Lane any more. She then went on to say that one day she saw a truck and trailer taking up space in the employee parking lot and then saw Mr. Ping come out of his house and go in the truck. She has seen pictures being taken of cars and they are not cars for the dancing school; she was not going to deny a problem with parents and kids but not all the cars there are for the school.

As there were no further comments, that portion of the hearing was closed. Mr. Leone said the Board has heard a lot here a number of times, he felt the dance studio here was unique in this space and they are asking for 2 more rooms with a total of maybe 10-12 more students in each studio with 1 or 2 more teachers being hired. He said a reference was made to the monopole application but that had nothing to do with Dance for Joy. He again requested the Board approve this application.

Mr. Langenberger asked Mr. Hilla and Mr. Clark if the Resolution can be tailored to protect the town from future businesses that may be here. Mr. Clark said all the conditions will be in the Resolution and if there is a new use they will have to come before the Board; the Board has the old Resolutions as backup as well. Mr. Stenson felt there should be restrictions in the Resolution and there should be self-policing every time. Mr. Sarnasi agreed with the restrictions and he liked the new parking plan. Mr. Maclearie still had a parking plan issue and was concerned the Board will be back here in 5-7 years. He was glad she is doing well and maybe she will grow out of this space. Mr. Clark said the current owner is the applicant and Dance for Joy is the tenant, if a new business comes in they may have different parking requirements and they will have to come before the Board.

Ms. Montalto agreed with all that was said, Councilman Garruzzo felt they had a great program but Council hears this all over town as all the businesses in Brielle about Residential areas and there are noise and parking issues all around with commercial/residential areas. He felt this new plan will help and he felt Dance for Joy is a great business that is run here, he hoped the restrictions can be put in the Resolution. Mr. Condon agreed also with all that has been said and felt this was a pro-active step to a new parking plan but felt there needs to be some kind of enforcement in the Resolution. Mr. Clark said enforcement can be done through the Code Enforcement Officer or they can come back before the Board.

At this it was asked for a motion to approve this application with all the stipulations that were discussed, parking will be policed and handled by the dance studio, expansion limited to what was proposed, and any others that are reflected in the record. This motion was made by Councilman Garruzzo, seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Councilman Frank Garruzzo, Tom Condon, Jim Langenberger, Stacey

Montalto, Charles Sarnasi, Jim Stenson

Noes: Jim Maclearie

Not Eligible to Vote: Joe Bonacci

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 testimony of Mr. Hilla relating to a prior Court finding that a dance studio was a permitted use as "physical culture," was credible and obviates the need for a use variance;

b. The 1996 Resolution approving the application of Omnipoint Communications, Inc. contained 2 conditions that directly addressed responsibilities of Applicant Alpha Omega Technologies, Inc., and which have a bearing on this Application. Those conditions, which are located on page 29 of the Omnipoint resolution as conditions 4 and 6 respectively state as follows:

4. The parking spaces located to the rear (north) of the building shall be restricted as "employees only" parking. The property owner shall require employees of businesses operating in the building to use these spaces for parking needs in order to preclude the use of these spaces by business patrons. The property owner shall be responsible to enforce this condition.

6. In the event that a change in the nature of tenants in the building requires more than 64 parking spaces, the property owner is required to obtain a variance for any such additional parking space deficiency, and shall submit a variance application and an amended site plan to the Board. No change in business occupants/tenants requiring more than 64 parking spaces shall be commenced unless a variance is approved by the Board.

c. The expansion of the dance studio is a sufficient change in the nature of a tenant such that additional parking spaces would be required, thereby prompting a need for a variance;

d. The testimony presented to the Board by Dance for Joy's owner indicates that Dance for Joy's use of space in Applicant's building is unique in that the vast majority of students are dropped off and picked up at certain times. This use creates a situation where the availability of parking spaces is not as necessary as it might be for a different business. The specific and pointed references to the nature of this tenant's use, with the accompanying diminished need for dedicated parking spaces, is accepted by the Board, and is an important part of the foundation of the Board's approval.

e. The variance relates to a specific piece of property;

f. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the variance encourages municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement;

g. The benefits of the deviation substantially outweigh any detriment;

h. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance;

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

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

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

C. To the extent not expressly contravened by the terms of this resolution, requirements and/or conditions set forth in any prior resolution shall remain applicable;

D. The parking spaces located to the rear (north) of the building shall be restricted as "employees only" parking. Applicant shall require employees of businesses operating in the building to use these spaces for parking needs in order to preclude the use of these spaces by business patrons. Applicant shall be responsible to enforce this condition;

E. In the event that a change in tenants in the building alters or otherwise effects parking space requirements past the 64 spaces set forth in the 1996 Omnipoint Communications, Inc. Resolution, Applicant is required to obtain a variance for any additional parking space deficiency, and shall submit a variance application and any other necessary papers to the Board. No change in business occupants/tenants requiring more than 64 parking spaces shall be commenced unless a variance is approved by the Board;

F. The proposed parking plan introduced on June 13, 2017 as Exhibit A-4 is the responsibility of Applicant and Tenant Dance for Joy to enforce;

G. Dance class starting and ending times shall be staggered so that the use of the parking area for drop-off and pick-up will be minimized, and the availability of parking spaces for the few students who do drive to class will be enhanced; and

H. Tenant Dance for Joy has represented to the Board, and Applicant has agreed as a condition of approval, that in order to further address potential parking issues, enrollment at Dance for Joy shall be limited to students of secondary school age or younger; Dance for Joy shall not enroll students over the age of 18, which would necessarily increase parking demand.

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

Ayes: Thomas Condon, James Maclearie, Stacey Montalto, Charles Sarnasi

Noes: None

Not Eligible to Vote: Joseph Bonacci, James Maclearie

The next Resolution to be considered was for variance relief for Block 70.01, Lot 5, 610 Locust Road, owned by Kenneth & Karen O'Donnell, to allow construction of a front porch.

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

WHEREAS, KENNETH AND KAREN O'DONNELL ("Applicants") have applied to the Planning and Zoning Board ("Board") of the Borough of Brielle seeking a variance for the property located at 610 Locust Road known as Block 70.01, Lot 5 (hereinafter "Property or Parcel"), on the tax map of the Borough of Brielle, in the Borough's Residential Zone 2 (R-2 zone) to allow construction of a covered front patio addition to an existing 2 story dwelling; and

WHEREAS, This application specifically requires the following variances:

- a. Front Yard Setback – 40 feet required, 31.5 feet existing, 23.5 feet proposed;
- b. Side Yard Setback – 5 feet for existing shed, 1.5 feet existing & proposed;
- c. Rear Yard Setback – 5 feet for existing shed, 2 feet existing & proposed.

WHEREAS, The proper fees were paid, taxes were paid to date and the property owners within 200 feet as well as the newspaper were properly notified

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

- a. Jurisdictional Packet;
- b. Exhibit A-1; pictures of the property; and
- c. Exhibit A-2; pictures of the property;

WHEREAS, Councilman Garruzzo left the dais as he lives within 200 feet of this property; Mr. Hilla did the same as his parents live within 200 feet of this property as well, and Zoning Officer Elissa Commins took over his position;

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

Mr. Kenneth O'Donnell ("Mr. O'Donnell"), who owns the property along with his wife Karen, came forward to present this application and was sworn in. Mr. O'Donnell testified he was before the Board in 2000, and submitted photos of the changes that have occurred to his property; the photos were submitted and marked as Exhibit A-1 and A-2. Mr. O'Donnell further testified the purpose of the porch was to shade the front door as he had experienced significant sun glare and erosion. He stated that the patio would add to the property because it would blend the house aesthetically.

At this time Mr. Mark Chadwick, a home improvement contractor, came forward and was sworn in. He told the Board he is building a covering over the front porch to shade it from the sun. He will continue the dental molding with 10 inch columns, and the masonry will be the same as is there now.

Mr. Condon asked about the height and was told the porch will come out 44 inches with a height of 72 inches with one additional step. The width of the porch will be 10.8 feet, increasing the existing size by 4 feet on each side. Mr. Langenberger asked how many risers there will be and was informed there would be one. Ms. Commins commented that they are staying within the lot coverage. Mr. Bonacci wanted confirmation that the front yard setback will be 8 feet less and Mr. Chadwick said it will be approximately 6 feet.

At this time the hearing was opened to the public for questions or comments and, hearing none that portion was closed. As all Board members were in favor of approving this application, Mr. Stenson made a motion for approval, this seconded by Ms. Montalto and then by the following roll call vote:

Ayes: Joe Bonacci, Tom Condon, Jim Langenberger, Jim Maclearie, Stacey Montalto, Charles Sarnasi, Jim Stenson

Noes: None

WHEREAS, the Board after carefully considering the evidence presented by the applicant at the hearings and of the adjoining property owners and general public, if any, makes the following factual findings and

conclusions of law:

- i. The variance relates to a specific piece of property;
 - j. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the variance encourages municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement, which benefit the entire neighborhood by creating an enhanced aesthetic and concomitant sense of community;
 - k. The variances can be granted without substantial detriment to the public good inasmuch as the proposed lot line change runs between two parcels owned by the same family;
 - l. The benefits of the deviation substantially outweigh any detriment; and
 - m. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
- NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that Applicant's variance application is hereby approved and granted subject to the following conditions:
- A. Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
 - B. Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application.

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

Ayes: Joseph Bonacci, Thomas Condon, James Maclearie, Stacey Montalto, Charles Sarnasi
Noes: None
Not Eligible to Vote: Eric Lapham

The last Resolution to be considered was for a Use Variance for Block 78.02, Lot 8, 413 Euclid Avenue (Applicant – Rocon Construction Group, Inc.) to allow construction of a mixed use building.

As all Board members, as well as the client's attorney, had received a draft Resolution and there were no changes or recommendations, the following was presented for approval:

WHEREAS, ROCON CONSTRUCTION GROUP, INC. ("Applicant") has applied to the Planning and Zoning Board ("Board") of the Borough of Brielle seeking variances for the property located at 413 Euclid Avenue, and known as Block 78.02, Lot 8 (hereinafter "Property or Parcel"), on the tax map of the Borough of Brielle, to allow the construction of a mixed-use building with a 3-car garage & 517 square foot office on the first floor & two 2-bedroom apartments on the second floor in the C-1 Commercial Zone; and

WHEREAS, This application specifically requires the following variances:

- d. Use variance to permit the mixed use residential construction in the C-1 zone; residential uses are not permitted under Borough Ordinance 21-18.1;
- e. Minimum Lot Depth – 150 feet required, 110 feet existing and proposed;
- f. Rear Yard Setback – 30 feet required, 20 feet proposed;
- g. Parking Aisle Width – 24 feet minimum required, 18 feet proposed;
- h. Driveways – 15 feet width required, driveway dimension not provided;
- i. Parking in Front Yard – 5 foot landscaped buffer required, none proposed;
- j. Loading Zone – 14'x55' required, none proposed.

WHEREAS, Councilman Garruzzo recused himself from the hearing because the application sought a use variance in addition to bulk variances; and

WHEREAS Board Engineer Alan Hilla had a conflict due to his brother living within 200 feet of the property, left the dais and was replaced by Zoning Officer Elissa Commings; and

WHEREAS, The proper fees were paid, taxes were paid to date and the property owners within 200 feet as well as the newspaper were properly notified;

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

- a. Jurisdictional Packet;
- b. Exhibit A-1, aerial view of the property;
- c. Exhibit A-2, street view of the property;
- d. Exhibit A-3; street view of the property;
- e. Exhibit A-4, rendering of the proposed addition to the property;
- f. Exhibit A-5, blueprints of the property; and
- g. Exhibit A-6, set of plans for street by Ray Carpenter;

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

Dennis Roberts ("Mr. Roberts"), owner of Rocon Construction Group, Inc., came forward and was sworn in. He testified he is under contract to purchase 413 Euclid Avenue, and he presented Exhibits A1 through A5 at this time.

Mr. Roberts testified the garage will be used to park vehicles, as well as be used for storage. Mr. Roberts further testified there would be a maximum of three (3) employees on the site at one time. Mr. Maclearie asked if the State should be included in this discussion as this is on the corner of Euclid Avenue and the off-ramp from the State Highway. Mr. Roberts answered in the affirmative and this would be addressed later. The hearing was opened for questions to Mr. Roberts, and Susan Montgomery came forward and was sworn in. She asked whether construction vehicles such as dump trucks would be stored on site, which Mr. Roberts answered those vehicles would remain in Farmingdale. John Hilla was next to be sworn in and wanted to know where the tenants of the apartments will park. Mr. Roberts said this, too, will be addressed within the next 15 minutes. As there were no other questions, this portion of the hearing was closed.

Ray Carpenter ("Mr. Carpenter"), a Certified Planner in the State of NJ, came forward and was sworn in; he was accepted as an expert witness. Mr. Carpenter presented a set of the plans, which were marked as Exhibit A-6. The first sheet shows the location of the property, sheet two shows the conditions on the vacant lot and the curbing. An application has been forwarded to the State for an access permit, and a cutout does exist on the ramp. The State has requested that the "Yield" sign that is there now at the end of Euclid be changed to a "Stop" sign. A total of nine (9) parking spots would be included.

Mr. Carpenter continued his testimony that this whole design is to come in off of Euclid Avenue and then exit to a one way ramp. There is currently a 17 foot curb to the roadway, and RSIS requires 16 feet. The impervious surface coverage is approximately 8,000 square feet or a little over 72.7%. Ms. Commins indicated the Master Plan requires the impervious surface coverage to less than 50%. Mr. Carpenter said the property will have a slot trench drain, which will flow to the Route 35 catch basins. Mr. Carpenter further testified the lighting will be back shielded, and the landscape plan will include cypress and deciduous trees to soften the parking lot. Mr. Carpenter testified that this was an odd property well suited for mixed-use, and there will be separate stairs and storage for each apartment. At this point, the Board had the following questions:

Mr. Wenzel asked about the Loading Zone and Mr. Carpenter said this office does not need a Loading Zone.

Mr. Carpenter indicated there is no negative criteria here, and this will not be a detriment to the public good or zone plan. Mr. Stenson asked about the lot size. Mr. Kauffman told the Board the plans submitted show the existing and an overlay of the new home.

Mr. Langenberger asked about tying into the sewer system, and Mr. Carpenter indicated there is both sewer & water on Euclid Avenue. Ms. Commins asked if the tanks fill up due to heavy rainfall, the tanks won't be able to handle it. Mr. Carpenter testified this was considered and felt the system could handle it.

Ms. Commins told Mr. Roberts he will have to pay for the State's required Stop sign, and Mr. Roberts agreed to the condition.

At this time the hearing was opened to the public for questions to Mr. Carpenter and, as there was no response, that portion was closed.

Mr. Scott Kennell ("Mr. Kennell"), a Senior Associate with Traffic Planning Experts came forward and was sworn in. The Board accepted him as an expert witness with regards to traffic. Mr. Kennell was requested to coordinate with the New Jersey Department of Transportation ("NJDOT") for the property. Mr. Kennell submitted the application to NJDOT, and testified that NJDOT will require the Stop sign. NJDOT also requested a traffic count, which Mr. Kennell would forward a traffic report as well as a police report on accidents here. Mr. Sarnasi asked about the final location of the stop sign. Mr. Kennell testified the final location will be from the NJDOT; Mr. Sarnasi then asked about the ramp speed, and Mr. Kennell said it is not posted. Mr. Condon asked about cars stopping at the Stop sign and whether this would inhibit traffic coming off the highway onto the ramp. Mr. Kennell said yes, it could be a problem, but would be a rare occurrence due to the low level of traffic. Mr. Condon noted they have to do what the State says, and Mr. Kennell said the State will have the better plan.

The hearing was then opened for questions to Mr. Kennell and, as there none, that portion was closed. The hearing was then opened for public comments on the application and, again, there was no comment so that portion was also closed and the Board went into discussion.

Mr. Langenberger and Mr. Stenson believed the application would be an improvement. Mr. Sarnasi was concerned with the impervious coverage being high, but it would be a nice building. Mr. Maclearie echoed Mr. Sarnasi's concerns, but commented this has been vacant for a long time. Ms. Montalto felt it was a great application and all the Zoning Officer's concerns had been addressed. Mr. Bonacci was also concerned about the impervious surface of almost 75% where less than 50% is required, but was not concerned about the traffic here. Mr. Condon understood all that has been said but he did not think there is much else that could be done on the property.

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

n. The variance relates to a specific piece of property;

o. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the variance encourages municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; promotes the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the

environment; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement;

p. In this case, compliance with NJDOT regulations has mandated at least some of the requested variances;

q. The variances can be granted without substantial detriment to the public good;

r. The benefits of the deviation substantially outweigh any detriment;

s. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance;

t. Mixed uses exist in the surrounding area already, and this parcel may not otherwise be subject to good planning and development without the approval of variances;

u. The proposed mixed use adds to the inventory of apartments in the Borough; and

v. The commercial portion of the mixed use is likely to result in less traffic to the site than other potential retail uses, which is beneficial due to the unique roadway configuration nearby

The Board then voted on the application on a roll call on a motion by Mr. Stenson, seconded by Mr. Bonacci and it was approved by the following roll call vote:

Ayes: Joe Bonacci, Tom Condon, Jim Langenberger, Jim Maclearie, Stacey

Montalto, Charles Sarnasi, Jim Stenson

Noes: None

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

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

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

c. Applicant shall pay for the installation of a Stop sign to be located at the discretion of NJDOT;

d. Landscaping must include deciduous trees to soften the aesthetic of the parking lot;

e. The proposed drainage tanks for collecting runoff should be interconnected to help prevent overflow situations.

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

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

Noes: None

Not Eligible to Vote: Eric Lapham

The Board then turned to the continuation of a hearing for Waypoint 622, Use Variance and Minor Site Plan for Block 52, Lots 1 through 8.01. Mr. John Jackson, Esq. came forward to represent the applicant and said he wanted to go over a few things regarding Mr. Hilla's latest report. Before this was to start, Mr. Condon asked him to go over the latest changes made in the application and Mr. Jackson said the site plan was revised to reflect the center line of Union Lane as a boundary line of the property. He realized this could have some effect on the application so they revised the application to get it right. This is still a right-of-way and Brielle Borough still manages it but it is the property of Waypoint, this decided after a Title Search was done.

Mr. Jackson then went back to Mr. Hilla's report and wanted to show the Board they have tried to comply, then there was a 1978 Resolution that defined the hours of operation as 4 pm to 10 pm and Mr. Hilla said this should be addressed; they have permits and applications to show the Board. Mr. Hilla said, in his report, that the conditions of the time should still be in force and Mr. Jackson then referenced a report from Tim Middleton, attorney for an objector, that was sent to Council and not the Planning Board; it appears Mr. Hilla embraced Mr. Middleton's report.

At this time Exhibit A-13 was marked, documents from Minutes of 1979 where the dock and parking configurations were asked to be changed. Attorney Klein, at that time, asked for an amended site plan and on 6/12/1979 Union Landing came in and made changes to the docks and parking and the Resolution that was granted was in July of 1979. This Resolution had no conditions on hours of operation and Mr. Jackson wanted this point to be brought out that there were no zoning requirements in 1979 in regards to closing at 10:00 p.m. However, Mr. Condon felt this Resolution was referencing the boat dock and has nothing to do with the restaurant. Mr. Jackson answered with the fact that the 4-10 pm hours of operation has been disregarded for the last 30 years. Mr. Maclearie agreed that this Resolution was not mentioning any conditions of the hours of operation but asked if that would be a deed restriction and Mr. Condon asked if that would normally be something in the Resolution and Mr. Jackson said it would be and there have been no Planning Board actions on this.

Mr. Jackson went on to say in December of 1979 they did a small addition to the kitchen and the building was made bigger. He then went to a 1986 liquor license and said the ABC hours of operation are regulated by them, the State does say that the towns have to have uniform hours through that town, there is no violation by Council here. In 1986 and since then the liquor license has been before Council and it was never stated

they have to close at 10:00 p.m. and Mr. Jackson felt those conditions no longer apply.

He then went on to a 25x22 patio approved by Council for a deck that was built in 1993, a deck and planters over blacktop. Mr. Jackson showed the Board the permits, all the exhibits were shown on a television screen that they had set up before the meeting; he then showed the schematics of the deck and the Zoning Officer has stated they have expanded the deck but he felt the same configurations are in place now. Mr. Condon asked about the fire zones and Mr. Jackson said they all have been approved on the plan they have. They had to rebuild the steps due to Hurricane Sandy and had approval for this, as per the State. Mr. Jackson then showed an application before the Planning Board for Greywolf Antiques to change one building on the property to sell antiques, a Site Plan exemption was given as per letters from 1995 and the hours of operation overlap Union Landing Restaurant for 3 hours. There was an "Attachment B" mentioned in this application but Mr. Jackson did not have it, but Union Landing was open for lunch on Friday, Saturday and Sunday so here is testimony they were opened for lunch, before 4 p.m. Mr. Jackson then asked why were the 1978 hours disregarded at this time? This application also stated that Union Landing had different hours during the summertime.

Mr. Jackson then referenced an application for 1996 for the liquor license renewal and said that as recently as 2011, heaters were allowed to be put on the deck. Now all of a sudden we have to enforce plans from 1978 and asked to look at the whole record fairly. One of the accusations he is hearing is that Mr. Grafas, the owner, just did what he wanted to do but in 2014, before he closed on this property, he put in an application to replace the deck and this was done on 11/17/14 before the final purchase. On 12/14/14 he received a CAFRA permit that said he did not need to have CAFRA approval as this is a seasonal area and the deck is temporary. Mr. Condon could not believe that a steel & cement deck can be considered "temporary". Mr. Jackson said this is because it is a seasonal use only, there is a lot of nuance here; the deck now projects out but is narrower and longer than the original deck. It was later revised so it does not come out as far. He went back to Mr. Middleton's report where he accused them of not doing due diligence and they should have done more research. Mr. Jackson said his client had to do the work and it was done and conforms, Mr. Langenberger, Code Enforcement Officer, wrote in 2014 there were no zoning violations on this property.

On 1/12/15 the Zoning Officer did a review for replacing the deck and said it can be replaced within the same footprint, the only different would be the stairs. On January 30, 2015, a corrective letter was written saying site plan approval is needed by the Planning Board; on 4/14/15, the construction Department wrote to Mr. Grafas asking for detail on the steps, plumbing approval was given on 4/21/15 for the outside bar area. In August of 2015 there were complaints about noise and they took sound readings which all were within the limits and no violations summons were given. Then, on 7/24/15, there was an email from Alan Hilla to Tom Nolan, Administrator regarding "problems". On 7/27/15 there was a memo to Mr. Nolan from Council regarding the development at the Union Landing site and Council asked for an investigation. They then received a letter from the Zoning Officer, Elissa Commons, stating the permits they were issued were not what was built and listed deficiencies on the site improvements. There is a 1,500 square foot side area (which they acknowledge and plan to remove) that is not to be used for restaurant use and the rear stairs extend out past the allowed footprint (Mr. Jackson said the steps are safer and have been approved by the Fire Dept. & Police). She also said the deck was constructed beyond what was permitted, Mr. Jackson said it is "nominally" different but it really doesn't have an effect here. Again, there was nothing about a 10:00 p.m. closing or outside bands or limit of tables.

They then filed an appeal and are now here as a result of that appeal. Mr. Clark said he was marking all the additional facts as shown as Exhibit A-14 (Mr. Jackson did have a written report on this which was marked as Exhibit A-14). Mr. Jackson said he is having a serious concern that the Board Engineer is also the Borough Engineer and he felt there have been adversarial issued due to this; he again referenced Mr. Middleton's letter and felt that is prejudicing his client.

Mr. Condon felt his testimony was unfair and he is painting the Board as not listening to their arguments and that is not true. Mr. Hilla defended his latest report by saying he did not have a lot of time to do a review, the plans were not brought in until the end of June and he did not do a Title Search on Union Lane, he needed to see that Search; it was a jurisdictional issue. Mr. Jackson wanted to know how Mr. Hilla got Mr. Middleton's letter and he did not, now he has to spend an hour defending it. Mr. Clark felt it was helpful it was out and Mr. Condon agreed that Mr. Hilla had very little time in getting his report out; Mr. Clark felt that the Planning Board is capable of addressing this issue with or without Mr. Hilla. Mr. Jackson said, by Statute, the Board of Adjustment Engineer cannot be the Borough Engineer but Mr. Clark did not see any conflict here; Mr. Jackson said he did and wanted to cross examine Mr. Hilla.

At this time Mr. Tim Middleton, Esq., said he would like to respond – he said that, under the Municipal Land Use Law, conditions can be lifted by the Planning Board through process and this was not done in this application. In 1978 there was a concern about traffic and hours of operation and it was settled by hours from 4 p.m. to 10 p.m. and Waypoint can submit an application to ask for relief from this. Mr. Keith Henderson was

the attorney back in 1978 and the liquor license said if the hours change they need approval. Any approval comes from the Planning Board and not Council and Mr. Middleton cited case 365, NJ 264. He said if there is a conflict for Mr. Hilla then this whole procedure is a complete waste of time and he felt that something needs to be put on record that there is not a conflict that will be raised at a later date but he agreed with Mr. Clark that he could not see a conflict. He then went on to say they should have filed an application for a Use Certificate which would give them knowledge on the history of Union Landing, this is done all the time. There are issues here, 5 issues from the Zoning Officer and this is the law of the case; the Zoning Officer gave approval of changing the deck from timber to asphalt, not a change of the deck area.

Mr. Jackson once again said he had an issue with Mr. Hilla and saw a conflict. His client has made changes and done it all in the right way and is being accused of doing this without approvals. Mr. Middleton said, in his report, that Mr. Grafas is making a mockery of the neighborhood, his list goes on and on. He then asked the Board if the hours of operation are before this Board and Mr. Condon said that is not on the application. Mr. Jackson then asked if this means their hours are limited and Mr. Condon said no, that is not part of this application. Mr. Jackson stated the Zoning Officer never said they were to close at 10 p.m. but they are going to amend their application to be open from 11:00 a.m. to 2:00 a.m. If the Board approves this application that is to be included. He was astonished over this as this place has been open for 30 years until 2:00 a.m. and they are getting beat over it.

At this time Mr. Jackson wanted to call Mr. Tim Lurie of DW Smith Associates to come forward, however, Mr. Condon thought his testimony was all done last month. Mr. Jackson explained that he wanted Mr. Lurie to address the changes made to the plans. At this time Mr. Middleton felt that they would have to renote regarding the hours of operation and Mr. Clark agreed as they may run the risk of an appeal, but it was up to Mr. Jackson; he did not think it was necessary as their variance notice did state "any and all variances" but he will do it if the Boards wants it and the Board was agreeable to this action.

Mr. Lurie then came forward and submitted Exhibit A-15, a color rendering of sheet 4 of 6 from 6/26/17 which shows the relocated property line on Union Lane; this eliminated one variance for setback for the building, there still is a variance need to the columns on the covered patio, the lot coverage is 13.7 % and the lot coverage for impervious surface comes up to 43.2% when the lots are combined and the open space is 56.8%. Mr. Condon asked about parking spaces and Mr. Lurie said there are 5 along Union Lane. Mr. Jackson mentioned that Mr. Clark had suggested making an easement to allow parking on Hoffman's lot.

Exhibit A-16 was an aerial photo from the Manasquan River to the shoreline of Brielle showing the Waypoint 622 area and it shows cars parked in the area around Waypoint on the Hoffman's site. Mr. Lurie then presented Exhibit A-17, the Minor Site Plan for Block 52, Lots 2, 2.01-8.01 which shows the parking analysis here; this comes out to a total of 86 spaces required and there are 137 spaces available. Mr. Jackson said that valet parking is possible and they are agreeable to having this, they have golf carts to take people to their cars. Mr. Jackson asked Mr. Lurie about access to the docks and Mr. Lurie said it is easy access from Hoffman's gate and boardwalk by the water. Mr. Jackson asked how many boat slips there are here and the answer was 56 and Waypoint has 23, a total of 79 slips. Exhibit A-16 shows that at the end of the dock there are an additional 5-8 slips for transient boats coming to the restaurant, there is no restaurant at Hoffman's but the same client owns both properties. Mr. Lurie said the properties share similar amenities, there is a surplus of parking on Hoffman's lot; also, the Ordinance is silent on riparian lands being used for coverage. They meet the spirit of the Conditional Use because this is an existing lot that has always been under sized and the use of Hoffman's helps to meet the parking variance for two acres and they have 1.72 acres. Hoffman's has always been used for parking, boats are stored there in the winter and the lot is used by cars in the summer, there is sufficient parking as per section 21:53-15 2b of the Ordinance. Also, people use taxis and Uber to get there safely and an Easement will be provided, Mr. Jackson said this will continue if the restaurant is sold in the future.

At this time Mr. Jackson said he had one more expert, Mr. Richard Kendarian, but Mr. Middleton wanted a chance to cross-examine Mr. Lurie and he came forward. Mr. Middleton asked about the retail area that is north of the office, as well as the location of apartments and boat slips; Mr. Lurie showed him all of these. Mr. Middleton asked how many square feet does the boat works building take up and Mr. Lurie said about 5,000 square feet, it is a place to work on boats and storage area. Next to that is a mechanic's workspace but Mr. Middleton thought it had fishing equipment. Mr. Middleton then asked if the warehouse was considered part of the gross floor area of the property and the answer was no, it is used for boat storage; Mr. Middleton said the Ordinance said gross floor area which would mean everything. He also said the Ordinance says one parking space per boat and there also is a dry storage area here; he wanted to know how many boats are in the dry dock area and Mr. Lurie did not know. Mr. Middleton then asked about the 5 spaces that are in the area where the boats are dry docked and he and Mr. Lurie had a brief discussion on safety of parking here, Mr. Lurie felt it was a safe place to park, no problems.

Mr. Middleton then asked if is common for a restaurant to share a parking area with a boatyard and Mr. Lurie

said yes it was and cited the area across the river, in Point Pleasant Beach, where Chef's International shares parking with the fishing boats for the Patio Bar, there is a lot of activity there. Mr. Middleton asked if all parking will be valet and Mr. Jackson answered and said no, it is not necessary if you don't want to. Mr. Middleton then said he did not think this was a safe area to park but was told this is an approved parking lot and is safe.

Mr. Middleton asked if a traffic Engineer was consulted and the answer was no. He then inquired about an outbound survey done in 2011, this is Exhibit A-8, and Mr. Lurie said that was done on 12/8/11 for a dredging permit for the docks.

At this time Mr. Clark marked Exhibit A-18, sheet 2 of 6 dated 6/26/17 which is the latest survey, based off the 12/8/11 survey. Mr. Middleton asked to have the boundary survey of 4/29/14 marked and this was marked as Exhibit O-1. There was a difference of dates and Mr. Lurie said there could be more than one survey, he did not interact with Mr. Schmidt (previous owner) but perhaps his partner did, they have worked with Mr. Schmidt on this before. Mr. Middleton asked why the survey was done and Mr. Lurie said it is a requirement for dredging. Mr. Lurie was not sure of the timeline when they started working for Mr. Grafas and the changes to the deck area were planned; he sketched out this and then went to see the Zoning Officer, DEP and Borough. They got notice from the DEP that all was okay.

Mr. Middleton then presented Exhibit O-2 which was a letter of 10/2/14 from DW Smith to an Senior employee and this referred to appearing before the Planning Board; Mr. Lurie felt all this says is they have to do this if they need outside approval. Mr. Middleton then had the deck plan marked as Exhibit O-3, this is the same as Exhibit A-14. Mr. Lurie said this is the proposed deck/canopy plan and is stamped by the Zoning Officer on 1/16/15. Mr. Middleton then wanted to know where Mr. Lurie got the dimensions for the canopy area and Mr. Lurie said he would have to look at his notes which are in his office, done from aerial photos. Mr. Middleton asked about the bar in by the middle canopy and how many feet does it extend; the answer was from the rear of the building about 30 feet. Mr. Middleton then showed Exhibit O-4 which was a photo of the canopy area and said he felt Mr. Lurie plan is overstated. At this point Mr. Jackson questioned the authenticity of the photo, it has to be explained; Mr. Clark agreed if there is no one to authenticate this photo it can't be submitted. Mr. Middleton said that his client, Mr. Thomas Stuhmann, took the two photos and Mr. Clark wanted to know the purpose of this. Mr. Middleton explained that the Zoning Officer said they can build canopies but they can't be any larger than the ones that were there; he felt the new canopies built were larger, as shown by the photos. Mr. Condon noted that Mr. Lurie took the calculations from aerial photos and Mr. Lurie said he can authenticate this but he doesn't have his notes with him.

At this time Mr. Middleton wanted to have Thomas Stuhmann sworn in, he came forward and this was done, he resides at 106 Ocean Avenue in Brielle and has been there for 17 years and has gone to Union Landing Restaurant several times. Mr. Jackson came forward and had a problem with this, he is not an expert witness. He and Mr. Condon then went back and forth over the deck & patio issue and the Zoning Officer's letter and Mr. Clark noted the letter does not authorize construction of a steel canopy but Mr. Jackson said they are mixing up the deck & canopy and he again objected to the questioning of Mr. Sturhmann. Mr. Middleton again said he thought the canopy was overstated on Mr. Lurie's plans.

At this time Mr. Condon noted it was 10:30 and the hearing was going to be ended for this evening, it was late. He said the Board was prepared to have 3 additional meetings this month to finish up this application as they want to get this done; Mr. Jackson said he can't do the dates that were suggested, he can appear on the 27th of July, however, Mr. Hilla said he can't. Mr. Condon wanted all to know it is not the Board that is dragging this along as inferred in a letter from Mr. Jackson and Mr. Jackson said that is not what he meant. It was decided to continue this hearing on the next regular meeting date of Tuesday, August 8th and then possibly meet on the 9th and 10th. Mr. Condon said the homeowners in this area deserve an answer to this application, as well as Mr. Grafas and this Board is doing everything in its power to get this done. He then announced that this hearing is being carried to the Tuesday, August 8th meeting of the Planning Board and asked if there was any public comment on this, there was none.

As there was no other business to come before the Board this evening a motion to adjourn as made by Ms. Montalto, seconded by Mr. Maclearie and approved unanimously by voice vote, all aye. The meeting was adjourned at 10:40 p.m.

Karen S. Brisben, Recording Secretary