

Tuesday, September 13<sup>th</sup>, 2022

BRIELLE PLANNING BOARD  
TUESDAY, SEPTEMBER 13<sup>th</sup>, 2022

The Regular Meeting of the Brielle Planning Board was held on Tuesday, September 13<sup>th</sup>, 2022, at 7:00 p.m., in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a Salute to the Flag roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Absent – None

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 9 people in the audience.

ANNOUNCEMENT: The Major Subdivision for the Rathjen property on North Tamarack Drive is being postponed, by the applicant, until the Tuesday, October 11<sup>th</sup> meeting of the Board. No further notice will be given.

A motion was made to approve the Minutes of July 14<sup>th</sup>, 2022 and August 9<sup>th</sup>, 2022 this done by Councilman Garruzzo, seconded by Stephanie Frith, all ayes, no nays.

CORRESPONDENCE: DEP application for Bridge Fender Maintenance from NJ Dept. Transportation for Route 35 Bridge over Manasquan River.

OLD BUSINESS: Consideration of Resolution of approval for Block 66.03, Lot 16, 625 Union Lane, owned by Norman Noe, to allow construction of a second story addition & front porch.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF NORMAN AND CAROL NOE SEEKING VARIANCE RELIEF FOR CONSTRUCTION OF A SECOND FLOOR ADDITION AND FRONT PORCH ON THE PROPERTY LOCATED AT 625 UNION LANE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 66.03, LOT 16**

**WHEREAS**, Norman and Carol Noe (collectively, the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to construct a second floor addition and a front porch on the property owned by the Applicants located at 625 Union Lane identified on the tax map of the Borough of Brielle as Block 66.03, Lot 16 (the “Property”); and

**WHEREAS**, the Property is located within the Borough's R-3 Residential Zone (the "R-3 Zone"); and

**WHEREAS**, the Property is currently developed with a single story dwelling, a frame shed, and various accessories; and

**WHEREAS**, the Applicants are proposing to construct a full second story addition and a front porch to the dwelling on the Property as described more fully within the plans submitted with this application; and

**WHEREAS**, the existing and proposed uses and the frame shed are conforming to the zone, but the existing lot, the existing and proposed principal structure, and the existing/proposed driveway do not conform to the zone; and

**WHEREAS**, the Property has the following non-conformities which are not being impacted or changed by this application:

- (a) Lot Area—11,250 square feet minimum required; 8,434 square feet existing;
- (b) Lot Width—75 feet minimum required; 60 feet existing; and

**WHEREAS**, the Property is therefore located on an undersized and irregularly-shaped lot; and

**WHEREAS**, the Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below):

- (a) Front Yard Setback—30 feet required; 27.7 feet existing (to house); **27.7 feet proposed (to second story addition to house); 20.5 feet proposed (to porch steps);**
- (b) Side Yard Setback (east side)—10 feet required; 10.5 feet existing; **7.5 feet proposed (to side entrance);**

(c) Side Yard Setback (west side)—10 feet required; 8.7 feet existing; **8.7 feet proposed (to second story addition to house);**

(d) Driveway Setback—5 feet required; 0 feet existing; **0 feet proposed;** and

**WHEREAS,** the Applicants submitted the following documents in support of this application:

(a) variance plan prepared by John E. Freeman, P.E. dated February 2, 2022;

(b) architectural plans (2 sheets) prepared by Paul J. Rodek, R.A.;

(d) an application package signed by the Applicants; and

(e) a Zoning Permit denial letter from the Zoning Officer dated November 16, 2021;

and

**WHEREAS,** the Board was also provided with a letter dated June 20, 2022 prepared by the Board's Engineer and Planner Alan Hilla, P.E., P.P., C.M.E., of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS,** the Planning Board held a hearing on this application on July 12, 2022; and

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

Norman and Carol Noe stated they were the applicants and stated that engineer, John Freeman, would be appearing as well. Mr. and Mrs. Noe, and Mr. Freeman were all sworn in by Mr. Clark. Mr. Freeman stated he was a Professional Engineer employed by Najarian Associates in New Jersey. Mr. Freeman stated he was a licensed engineer and had appeared before Boards in Point Pleasant Beach, Little Silver, Surf City, Manahawkin, and many others. The Board accepted Mr. Freeman's qualifications to present evidence as a professional engineer.

Mr. Noe began by saying this was his primary residence and said they wanted to build a second story on the existing structure, a small addition in the rear and a porch in the front. Ms. Trainor explained to Mr. Noe that there was a criteria they would have to be met in order to obtain variance relief. Ms. Trainor then asked Mr. Noe if he had received a copy of Mr. Hilla's letter dated, June 22<sup>nd</sup>, 2022. Mr. Noe replied that he had received Mr. Hilla's letter and then began to address the issues raised and changes that had been made to the plans. Mr. Clark asked Mr. Noe if the revised plans showing the changes had been submitted to Ms. Brisben, Board Secretary. Mr.

Noe answered he thought so but was not completely sure. Ms. Brisben stated she would double check to see if she had received them.

Mr. Freeman displayed Exhibit A-1 described as a one page Revised Variance Plan. Mr. Freeman stated he believed the Board had received the Exhibit and if not he would supply a copy to the Board. Mr. Clark asked Mr. Freeman to describe the changes made so the Board members could understand the difference between the original plan and the revised one being shown. Mr. Freeman described and pointed to the changes made that were shown on Exhibit A-1.

Ms. Trainor asked Mr. Hilla if he would like to address the issues raised in his report. Mr. Hilla stated that on the architectural plans, the second floor was vertically higher than either of the two floors below it. Mr. Hilla asked if the roof pitch necessarily needs to be that steep and for what the area would be used. Mr. Noe answered that the space would be used for attic space and would not be occupied. Mr. Noe stated he did speak to his architect who said if the pitch were too steep or created a bulk concern, it could be adjusted. Mr. Noe asked Mr. Hilla how they could adjust that to fit the criteria. Mr. Hilla answered that by lowering the roof pitch but said he did not want to just jump to that because he would be curious what the internal math in the space would be and if it were ever converted to a half story that it would achieve a half-story requirement. Mrs. Noe stated they had no plans for the space other than storage and said that they were only planning to have pull down stairs to the area. Mrs. Noe stated that if the recommendation were to make it smaller, they would make it smaller. Mr. Hilla answered he did not know how much smaller it should be, it was not something he could suggest.

Mr. Hilla referenced the placement of the mechanicals at the side of the house and stated that the setback requirement was 5 feet back from the adjacent property line and stated there was no dimension where the air conditioning condensers would be. Mr. Freeman stated there would be no issue of placing the mechanicals within 5 feet of the property line and that they would show them on the plan and that they will comply with all requirements.

Mr. Hilla stated he had not heard a lot about the livability and necessity of the porch that was being proposed because that is really the main appendage that comes into the streetscape. Mr. Noe replied that like anyone else would, they would sit out on the porch and enjoy the nice weather. Mrs. Noe added that they would be able to see their kids at the park from the porch and said that the house next door to them has a porch.

Ms. Trainor announced it was now time to hear questions for Mr. Freeman and Mr. and Mrs. Noe from the Board.

Mayor Nicol stated the only question he had was about the mechanicals but his question was addressed when the applicant stated they would comply.

Councilman Garruzzo asked Mr. Hilla if the issue Mr. Hilla discussed regarding the attic was the square footage or the height. Mr. Hilla replied that it was a combination of both and then explained the issue.

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Mr. Jones asked if there were any plans to change the existing material on the driveway. Mr. Noe answered that they would prefer to keep the gravel driveway as is.

Mr. Siano asked if the depth of the house was approximately 30 feet. Mr. Freeman replied that it was 30.1 feet on the east side and 30.8 feet on the west side. Mr. Siano stated that when he looked at the elevations he did not feel that there would be very much attic space and explained how he came to his conclusion. Mr. Siano said he could see where Mr. Hilla was coming from but did not think that there was as much space in the attic as it appeared and thought the steeper pitch would make the house aesthetically look better. Mr. Siano stated he did think that they needed to add some windows on the side elevations.

Ms. Brisben asked if the east side neighbor's driveway was next to Mr. and Mrs. Noe's driveway. Mr. Noe replied that the neighbor's driveway was on the other side of their property. Ms. Brisben asked if the mechanicals could be placed in the rear yard. Mr. Freeman answered that it was possible. Mr. Noe stated they would prefer to keep them on the side if it met the setback requirement. Ms. Brisben asked if they were planning on keeping the porch open or closed. Mr. Noe answered that the porch would be kept open.

Mr. Tice asked what the bump out on the west side was a fireplace. Mr. Noe answered that he believed it was a fireplace. Mr. Tice asked if they were going to tie the fence to the front of the house instead of the middle of the house in order to fit the new stairway. The vinyl fence will remain "as is" with a gate at the middle of the east side of the house.

Ms. Trainor asked if the side door that the applicant was proposing would be for entry to a mud room with access to a bathroom. Mr. Noe replied yes to that question.

Ms. Frith and Ms. Fernicola did not have any questions.

Ms. Trainor announced it was time to hear questions for Mr. Freeman and Mr. and Mrs. Noe from the public. Hearing none, Ms. Trainor announced it was time to hear comments from the public. Hearing none, Ms. Trainor announced it was time to hear comments from the Board.

Mayor Nicol stated he had no issues and felt the house would be an improvement to the neighborhood.

Councilman Garruzzo stated he agreed with Mayor Nicol, had no issues with the application and noted there had been no neighbors that had come forward with questions or issues.

Mr. Jones stated he agreed with Mayor Nicol and Councilman Garruzzo and thought it would definitely be an improvement.

Ms. Frith stated she had agreed with all the comments so far and said how nice it would be to see the kids in the park.

Mr. Siano stated he agreed with the previous comments and said it would be a nice addition to the neighborhood. Mr. Siano stated he liked the architecture and would like to see some windows put on the sides of the elevations. Mr. Siano stated he was definitely in favor of the application.

Ms. Brisben stated she was in favor of the application but because the porch would go into the front yard setback, she would like to see in the Resolution that the porch be maintained as an open porch and never enclosed.

Ms. Fernicola stated she agreed that the porch should remain open and not ever be enclosed and agreed that there should be windows added as Mr. Siano suggested.

Ms. Trainor stated that the lot was non-conforming and believed that as a result felt that the applicant had met their burden of showing that they qualify for the Variance relief they were seeking. Ms. Trainor stated she was also convinced that the home would be an asset to the neighborhood and noted that no one from the public had come forward with any concerns where the mechanicals or driveway would be placed. Ms. Trainor stated she was in favor of the application.

Ms. Trainor asked Mr. Clark if he could review the conditions or recommendations made with respect to the application. Mr. Clark stated that to the extent that it has not already been provided, the Board needs 4 sets of Revised Variance Plans and a copy of the survey submitted to Ms. Brisben, the front porch would not be enclosed but would remain open and that the driveway would remain as a gravel driveway.

Ms. Trainor asked Mr. and Mrs. Noe if they had any objections to the conditions Mr. Clark had listed. Mr. Noe replied that he did not and felt the conditions were fair and thanked Mr. Siano for the window recommendation.

Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had listed. Chris Siano made a motion, seconded by Councilman Frank Garruzzo, and followed by the roll call vote.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicants are the record owners of the Property
- c. The Property is located within the Borough's R-3 residential zone.

- d. the Property is currently developed with a single story dwelling, a frame shed, and various accessories.
- e. The Applicants are proposing to construct a full second story addition and a front porch to the dwelling on the Property as described more fully within the plans submitted with this application.
- f. The existing and proposed uses and the frame shed are conforming to the zone, but the existing lot, the existing and proposed principal structure, and the existing/proposed driveway do not conform to the zone
- g. The Property has the following non-conformities which are not being impacted or changed by this application: (i) Lot Area—11,250 square feet minimum required; 8,434 square feet existing; and (ii) Lot Width—75 feet minimum required; 60 feet existing.
- h. The Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below: (i) Front Yard Setback—30 feet required; 27.7 feet existing (to house); **27.7 feet proposed (to second story addition to house); 20.5 feet proposed (to porch steps)**; (ii) Side Yard Setback (east side)—10 feet required; 10.5 feet existing; **7.5 feet proposed (to side entrance)**; (iii) Side Yard Setback (west side)—10 feet required; 8.7 feet existing; **8.7 feet proposed (to second story addition to house)**; and Driveway Setback—5 feet required; 0 feet existing; **0 feet proposed**.
- i. The Property is an undersized and irregularly-shaped lot which has insufficient lot area (8,434 square feet existing where an 11,250 square feet minimum required) and insufficient lot width (60 feet existing where a 75 feet minimum is required).
- j. With the exceptions of the front porch and the side entrance, the other improvements proposed by the Applicants are being made within the footprint of the existing structure and are not impacting the lot coverage of the improvements on the Property.
- k. With regard to the front porch and the side entrance, it would be a hardship for the Applicants to comply with the requirements of the zoning code and these deviations the deviations are consistent with the development in the neighborhood and do not cause any substantial detriment to the public good.
- l. With regard to the variance for the driveway setback, the Board recognizes that the driveway is already located within that setback directly adjacent to the boundary with the adjoining property and that the Applicants are not seeking to make any improvements or changes to the driveway, and instead have agreed that it shall remain as a gravel/shell driveway and shall not be paved. The Board

further notes that the Applicants' property has an insufficient lot width so that it is a hardship to require the Applicants to meet this driveway setback requirement and that no members of the public objected to the Applicants' proposed improvements to the Property.

- m. The Applicants testified that their attic space will only be used for storage and will only be accessible through a pull-down attic ladder. Since the attic will not be used as livable space, the Board did not require any further testimony about whether this attic space meets the Borough's half-story requirements.
- n. The Applicants also testified that the mechanicals will be located on the side of the house as indicated within their revised plans. The Applicants represented to the Board that the mechanicals will comply with all mandatory setback requirements for the side yard and also with any manufacturer's requirements regarding the placement of mechanicals in relationship to a dwelling and further represented that if they cannot install the mechanicals in a manner which complies with these requirements, they will re-locate the mechanicals to another location so that they do comply with these requirements.
- o. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicants to comply with the requirements of the Borough Code, and the development being proposed by the Applicants is consistent with other development in the neighborhood.
- p. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.
- q. 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**, Chris Siano moved to approve the application; this motion was seconded by Councilman Frank Garruzzo. At that time the application was approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corrine Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Absent: James Stenson



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

- a. Within forty-five (45) days of the date of the adoption of this resolution, the Applicants shall submit the following documents to the Board Secretary: (i) four sets of revised variance plans making the changes delineated within the June 20, 2022 technical review letter on this application and as described during testimony at the hearing; and (ii) a copy of the survey prepared by a licensed surveyor that was used in the preparation of the variance plans.
- b. The Applicants agree that they shall not enclose the front porch and that the front porch shall remain open.
- c. The Applicants further agree that they shall retain the existing driveway as a gravel/shell driveway and will not pave the driveway.
- d. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- e. The Applicants shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- f. All representations made under oath by the Applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above Resolution was made by Chris Siano, seconded by Mayor Thomas Nicol and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Not Eligible to Vote: James Stenson

NEW BUSINESS: Application for variance relief for Block 38.01, Lot 1, 404 Bennett Place, owned by Fred & Marylynn Ferraro, to allow the construction of an in-ground pool and pump house/ cabana/pergola structure. Front Yard Setback — 25 feet required, 20.2 feet existing & proposed (to house), 8 feet proposed (to pump house/cabana/pergola). Grading Changes — change in elevation not to exceed 2 feet, 2.5 feet proposed and more than half proposed in a Flood Zone, DEP approval required.

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Attorney Michael Henderson, Law Firm of Henderson & Henderson, Manasquan, New Jersey, announced he was here to represent the applicant. Mr. Henderson stated he would be presenting two witnesses, Mr. Fred Ferraro, and Mr. James Thaon and asked that they be sworn in by the Board. Mr. Ferraro, co-applicant, and Mr. Thaon, Bohler Engineering, Manasquan, New Jersey, were sworn in by Mr. Clark.

Mr. Ferraro began by stating that the property had been in the family for 35 years and that he had purchased it in 2014. Mr. Ferraro stated he wanted to build a pool and a pool house. Mr. Henderson stated he had no further questions for Mr. Ferraro. Ms. Trainor announced it was time to hear questions from the Board for Mr. Ferraro. Mr. Jones asked about the wetlands on the property. Mr. Henderson stated he felt that would be a question for the engineer. Ms. Brisben stated the dock looked like it was brand new and asked when it had been built and if it was approved by the NJ DEP. Mr. Ferraro stated he did not recall and said it was put in by a previous owner. Mr. Ferraro stated that he did not know and would have to check on that. Ms. Brisben asked if the trees on Brielle Avenue would remain. Mr. Ferraro stated that those trees were on Borough property but he would be removing 4 small cedar trees for construction. Mayor Nicol, Councilman Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Stephanie Frith, Jay Jones, Charlie Tice, and Amber Fernicola stated they did not have any questions for Mr. Ferraro.

Ms. Trainor asked if there were any questions from the public for Mr. Ferraro. Hearing none, Ms. Trainor asked Mr. Henderson to present his next witness. Mr. Henderson called Mr. Thaon to testify. Mr. Thaon stated he was a Licensed Professional Engineer at Bohler Engineering and has testified before numerous Board's in the New Jersey. Ms. Trainor announced that Mr. Thaon was accepted as an expert witness by the Board.

Mr. Thaon began by presenting and describing Exhibit A-1, an aerial exhibit prepared by Bohler Engineering, dated August 9<sup>th</sup>, 2022. Mr. Thaon also displayed Exhibit A-2, a previously submitted site lay-out grading and utilities plan, as prepared by Bohler Engineering, last revised on July 28<sup>th</sup>, 2022. Mr. Thaon stated there would be no changes to the home or driveway, the focal point was the back yard area. Mr. Thaon stated the applicant is proposing an accessory structure and swimming pool. Mr. Thaon stated that the accessory structure would not be a habitable structure and would not include heating or kitchen equipment. Mr. Thaon explained to the Board the reasoning why the application did not require NJ DEP approval. Mr. Thaon that the fence proposed would have openings to allow for the passing of flood waters. Mr. Thaon discussed the change in grade and stated they figured they would have to bring in any fill from off-site but would use clean fill if any additional fill was needed. Mr. Thaon presented and described Exhibit A-3, a previously submitted floor plan and elevations of the cabana, prepared by RWR Architecture, dated June 20<sup>th</sup>, 2022.

Ms. Trainor asked Mr. Hilla if he had questions for Mr. Thaon. Mr. Hilla stated that it appeared that the building on the plan on the architectural plan was transposed. Mr. Thaon stated that the site plan would control the orientation there. Mr. Hilla then asked where the mechanical equipment would be. Mr. Thaon answered that the equipment associated with the swimming pool would be on the northwestern area of the property, strategically placed to be far away from the neighbor as possible.

Ms. Trainor announced it was now time to hear questions for Mr. Thaon from the Board. Councilman Garruzzo asked Mr. Thaon if it were true that the cabana would provide no living space with only a ½ bath with no shower facilities. Mr. Thaon replied that was a correct statement. Mr. Stenson asked Mr. Thaon to confirm that they do not need NJ DEP approval. Mr. Thaon answered that you need a permit by rule for the NJ DEP flood hazard area as it relates to filling in a tidal flood area. Mr. Jones asked Mr. Thaon to describe the proposed fence. Mr. Thaon stated the fence would be vinyl with openings to allow water to pass through. Ms. Brisben asked if fill has already been put on the property. Mr. Ferraro answered that the fill that is there was from test pits that were required for the foundation and the pool to confirm the soil condition. Ms. Brisben asked if they would be going into the wetlands and stated that it looked like some of the wetlands reeds had already been cleared out. Mr. Ferraro answered none had been cleared. Mr. Hilla asked Mr. Thaon to explain to the Board the wetland situation. Mr. Thaon replied that they had reviewed State GIS Mapping for this location and no wetlands were shown on the map. Ms. Brisben stated that it looked like the cabana would have a peaked roof and asked if there would be storage in that area. Mr. Ferraro answered that the peak was for a cathedral ceiling on each side. Ms. Brisben asked how large the cabana would be. Mr. Thaon responded that the cabana was 33 feet long with a pergola that extends beyond that and the height was 13 foot, 11 inches.

Ms. Trainor asked if the mechanical equipment would be at grade or elevated. Mr. Thaon replied that the equipment would be at grade, not elevated. Ms. Trainor asked if they were concerned about the possibility of flooding. Mr. Thaon stated that the equipment would be above the flood plain elevation. Ms. Trainor asked if the fence would go all the way to the water to keep any pedestrians away from the pool. Mr. Thaon answered that the fence would completely enclose the property. Mayor Nicol, Mr. Siano, Ms. Frith, Mr. Tice, and Ms. Fernicola did not have questions for Mr. Thaon.

Ms. Trainor announced it was time for questions for Mr. Thaon from the public. Hearing none, Ms. Trainor asked Mr. Henderson if he had anything else to add. Mr. Henderson stated that this property was a corner lot and said how Brielle defines the frontage of these lots creates a hardship which would satisfy the C-1 criteria. Mr. Henderson referenced Mr. Thaon's testimony that stated it this were an interior lot there would not be any variances required. Mr. Henderson stated that the property across the street is undevelopable land owned by the Borough of Brielle so it would not create any detriment to the public and have no impact to the Zoning plan.

Ms. Trainor announced it was time for comments from the Board. Mayor Nicol stated he felt this was a reasonable application and had no problems with the application. Councilman Garruzzo stated he had no concerns with the application. Mr. Stenson stated he had some questions regarding the NJ DEP but those questions had been answered so had no issues with the application. Mr. Jones stated he had some concerns about the size of the structure and the wetlands but his questions had been answered so he had no additional comments. Mr. Siano stated he felt it would be a nice addition to the home. Ms. Brisben asked what the cement wall in the back was for. Mr. Ferraro responded that it was an existing retaining wall which was cleaned up and put pavers on top. Ms. Brisben stated she did have a problem with the application, she felt they would have an issue with flooding, that the cabana was too large and too close to the flood zone. Ms. Brisben stated she was not in favor of the application. Ms. Fernicola stated she felt it was a lovely application. Ms. Trainor stated she is concerned by the size of the cabana, allowing plumbing to run to an accessory

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structure and concerns about the drainage but stated that there was no public opposing the application and it is a corner lot and the Planning Board had approved similar kinds of structures on corner lots.

Ms. Trainor asked if there were any public comments in regard to the application. Hearing none, Ms. Trainor asked Mr. Clark to list the conditions the Board should consider for a motion. Mr. Clark stated that one condition, which is mentioned in number 3 of Mr. Hilla's letter, is a prohibition on the use of the space in the cabana structure as living space including installation of kitchen or heating in the area. Another condition Mr. Clark listed was it was testified that there would not be a need for off-site fill but if there was such a need, it would be clean fill. Mr. Clark referenced the error that Mr. Hilla had pointed out in the plan and stated that the Board would need 4 sets of the corrected plan. Mr. Clark stated that there would be a condition that the fence installed would be an open styled fence to allow water to pass through.

Ms. Trainor asked for a motion to approve the application with the conditions that Mr. Clark had listed. Councilman Frank Garruzzo made a motion, seconded by James Stenson, and followed by the roll call vote.

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Stephanie Frith, Jay Jones, Charlie Tice

Noes: Karen Brisben

Not eligible to vote: Amber Fernicola

NEW BUSINESS: Application for variance relief for Block 1.01, Lot 2, 503 Lenape Trail, owned by Tereza Mirkovic, to allow the construction of a new home. Minimum Lot Size — 75x125 feet, 75x82 feet existing. Minimum Lot Area — 11,250 square feet required, 6,154.50 square feet existing. Minimum Lot Depth — 125 feet required, 91.95 feet existing. Minimum Front Yard Setback — 30 feet required, 19.9 feet existing, 17 feet proposed (to front steps), 19.9 feet to the structure/porch). Note: this property is mostly located in Wall Township and the applicant has to go before the Wall Township Zoning Board also for, at least, Front Yard Setback, Building Coverage (29.73%, vs. Wall's 25% maximum), and Impervious Coverage (48.63% vs. Wall's 40% maximum).

Attorney Michael Henderson, Henderson & Henderson, Manasquan, NJ, announced he was here to represent the applicant. Mr. Henderson began by saying that the application is sort of unique because the property itself is located within two municipalities, Brielle, and Wall Township. Mr. Henderson stated the property is split front to back by the municipal boundary. Mr. Henderson stated that the front of the property is on a Brielle street, taxes are paid to Brielle but only about 10% of the property is located in Brielle, about 90% located in Wall Township. Mr. Henderson stated the entire proposed dwelling is in Wall Township. Mr. Henderson stated that there was case law that instructs Boards how to handle this situation. Mr. Henderson explained to the Board his interpretation of case law and writings in the Cox Manual on how this application should be handled. Ms. Trainor asked Mr. Clark if he agreed with Mr. Henderson's position. Mr. Clark said

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he had looked at the relevant section of the Cox Manual and agreed and said that it does say what Mr. Henderson had said.

Mr. Henderson stated he was going to present four witnesses and asked the Board if they could be sworn in together. Mr. Clark swore in the following witnesses: Mr. James Priolo, co-applicant, Mr. Ryan Myers, Atlantic Modular Builders, Joseph Kociuba, KBA Engineering Services, and Debbie Lawler, Planner.

Mr. Henderson called Mr. James Priolo to testify. Mr. Priolo stated that he was the co-applicant of this application and said that the existing home was a small ranch with 2 bedrooms and 1 bathroom and added that if approved he would like to build a 2 ½ story dwelling. Mr. Priolo stated that his family needed more space, wanted to stay in the same area and that to his knowledge, there were not any other properties for sale in the same area. Mr. Henderson stated he had no further questions for Mr. Priolo.

Ms. Trainor announced it was time for questions from the Board for Mr. Priolo. Councilman Garruzzo asked to confirm that the Board was only looking at the front yard setback for this piece of property as it pertains to Brielle and that the balance of the application is going to Wall Township. Mr. Henderson replied that this was their interpretation. Mr. Stenson asked if the applicant had gone to Wall Township yet. Mr. Henderson responded that if the Board approved the application, their next step would be Wall Township. Mayor Nicol, Ms. Trainor, Chris Siano, Karen Brisben, Ms. Frith, Mr. Jones, Mr. Tice, and Ms. Fernicola did not have questions for Mr. Thاون.

Ms. Trainor announced it was time for questions from the public for Mr. Priolo. Hearing none, Mr. Henderson called Mr. Ryan Myers to testify. Mr. Myers stated he was employed at Atlantic Modular Builders and has previously testified before several Boards including this Planning Board and typically testifies as an expert in the modular home industry. Ms. Trainor announced that Mr. Myers was accepted as an expert witness by the Board.

Mr. Myers presented Exhibit A-1, described as pictures and surroundings of the existing home. Mr. Myers presented Exhibit A-2, described as pictures of the proposed home and its surroundings. Mr. Meyers stated that this Exhibit, dated August 8<sup>th</sup>, 2022, was prepared by him, he then described the details of the Exhibit to the Board.

Ms. Trainor announced it was time for questions from the Board for Mr. Myers. Ms. Brisben asked if the driveway and walkway would remain in the same location. Mr. Meyers replied that they would be close to the same location. Mayor Nicol, Councilman Garruzzo, Ms. Trainor, Chris Siano, Ms. Frith, Mr. Jones, Mr. Tice, and Ms. Fernicola did not have questions for Mr. Myers. Ms. Trainor asked if there were any questions from the public for Mr. Myers. Hearing none, Ms. Trainor asked Mr. Hilla if he had any questions to which he replied he did not.

Mr. Henderson called Mr. Joseph Kociuba to testify. Mr. Kociuba stated he was a Licensed Planner, Licensed Engineer in New Jersey and would be testifying before the Board as a Professional Licensed Engineer only. Mr. Kociuba stated he had testified before numerous Boards in Monmouth and Ocean County. Ms. Trainor announced that Mr. Kociuba was accepted as an expert witness by the Board.

Mr. Kociuba stated that the interior Lot is a smaller Lot measuring 6,154 square feet in the R-3 zone, bisected by two municipalities, a portion of the front yard located in Brielle and the majority of the property including the entirety of the structure located in Wall Township. Kociuba presented and explained to the Board Exhibit A-3, prepared by his office, dated August 17<sup>th</sup>, 2022, described as the Plot Plan. Mr. Kociuba described to the board the length, width, depth, setbacks, and grading of the Lot and stated that the applicant is requesting to raise the height a little bit, proposing 36.82 feet measured under Brielle standards. Ms. Trainor asked Mr. Hilla if he had any questions for Mr. Hilla. Mr. Hilla replied he did not have any questions.

Ms. Trainor announced it was time for questions from the Board for Mr. Kociuba. Hearing none, Ms. Trainor asked if there were any questions from the public for Mr. Kociuba. There were no public questions asked.

Mr. Henderson called Ms. Debra Lawler to testify. Ms. Lawler stated she was the Planning Discipline Leader for the company, Colliers Engineering & Design, was a Professional Planner in New Jersey and had previously testified before dozens of Boards throughout New Jersey. Ms. Trainor announced that Ms. Lawler was accepted as an expert witness by the Board.

Ms. Lawler began by saying this application was an extremely unique situation and that very rarely would you see a split in municipal boundaries on such a small Lot. Ms. Lawler spoke about Lot size and setbacks. Ms. Lawler said that this Lot is the shallowest Lot on the street and that the variances that were being requested were basically pre-existing non-conformities. Ms. Lawler then proceeded to explain those variances to the Board. Ms. Lawler said that in terms of the variances they are seeking, they are seeking them under a C-1 and C-2 and believed they had met this criteria and variance relief was justified. Ms. Lawler stated there would be a fence that went around the whole property because there would be a small plunge pool in the backyard. Ms. Lawler said the applicant has planned to re-landscape the site upon completion and it would look a lot more enhanced than it currently does, adding more vegetation and color. Ms. Lawler said they planned to keep in line with seashore type character and character of the neighborhood. Ms. Lawler concluded that what was being requested maintains the current front yard, the new structure would not exacerbate any encroachments in the front yard, the visual image would be very nice from the roadway and the property line and the proposed home would consist of a scale and character with the neighboring properties which would be a positive enhancement to the neighborhood.

Ms. Trainor asked Mr. Hilla if he had any questions for Ms. Lawler. Mr. Hilla answered he did not have any questions. Ms. Trainor then asked the Board if they had questions for Ms. Lawler. There were no questions from the Board members. Ms. Trainor asked the public if there were any questions for Ms. Lawler. There were no public questions for Ms. Lawler. Mr. Henderson stated he did not have anything else to add.

Ms. Trainor asked the public if they had any comments in regard to the application. Hearing none, Ms. Trainor announced it was time to hear comments from the Board. Mayor Nicol stated he did not have any issues and wished the applicant luck. Councilman Garruzzo stated that because the Board's determination was very limited on the Brielle portion they were viewing, he did not see any issues with the application. Mr. Stenson stated he had no problems with the application and

wished the applicant luck. Mr. Siano said it was a challenging lot and thought they did a great job with the application. Ms. Brisben stated she felt the whole design was very nice and wished the applicant luck in Wall Township. Ms. Frith stated she had no issues with the application. Mr. Tice wished the applicant the best of luck in the next steps and said the house looks fantastic. Ms. Fernicola stated she had no comment. Mr. Jones had no comment. Ms. Trainor stated she accepted Ms. Lawler's testimony in support of the C Variances that the applicant is seeking and also accepts Mr. Kociuba's testimony to the irregularity and shallowness of the Lot also in support of the variances being sought and said she did not have any issues with the application.

Ms. Trainor asked Mr. Clark to list the conditions the Board should consider for a motion. Mr. Clark asked Mr. Henderson to confirm that the only variance that was being sought was a front yard setback variance because all other variances would be required from the Wall Township Planning Board. Mr. Henderson confirmed that was accurate. Mr. Clark stated that in addition to the normal outside agency approvals, the Brielle Planning Board's approval of this application would be conditioned upon the future approval of this application by the Wall Township Planning Board.

Ms. Trainor asked for a motion to approve the application with the condition Mr. Clark had listed. Chris Siano made a motion, seconded by Councilman Frank Garruzzo, and followed by the roll call vote.

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Noes: None

Not eligible to vote: Amber Fernicola

NEW BUSINESS: Application for Use Variance/Site Plan for Block 33.01, Lot 1, 110 Union Avenue (site of La Mondina), to allow a roof over the existing outdoor dining patio that was approved by the Board in 2016. Minimum Front Yard Setback (Fisk Avenue) — 30 feet required, 4.8 feet existing/proposed to building, 4.8 feet existing/proposed to storage container, 6.5 feet existing/proposed to three sheds. Minimum Front Yard Setback (Highway 71) — 30 feet required, 17.9 feet existing/proposed to building, 17.9 feet existing/proposed to patio roof. Expansion of patio seating — Nonconforming use. Variances required for accessory structures to remain. Variances for parking area and buffer changed from previous approvals.

Mayor Thomas Nicol and Councilman Frank Garruzzo announced that they would be recusing themselves from this application.

Attorney Matthew Posada, Sills, Cummis, & Gross Law firm, announced he was here to represent the applicant and stated they were before the Board for Minor Site Plan Approval with the expansion of the D-2 non-conformity. Mr. Posada began by saying that in 2015, the previous owner received site plan approval for the patio and that the prior owner built more than what was approved. Mr. Posada stated that the applicant was here to clean that up by seeking the necessary approvals and to put on the Record exactly what they were requesting. Mr. Posada stated that with

the patio expansion, they were requesting a cover for protection of the patrons, installation of 11 parking places, and a fence with a no entry sign fence and relocation of the dumpster. Mr. Posada stated that they were requesting to increase their storage sheds from 2 to 3 which would be used to store paper, glass, and maintenance products.

Mr. Posada called Architect, Mr. Jason Hanrahan, MODE-Architects, Asbury Park, New Jersey to testify. Mr. Hanrahan was sworn in by Mr. Clark. Mr. Hanrahan stated he graduated with an Architecture degree in 2002 and has been the owner of MODE-Architects for the past seven years and that he has testified before several Boards before in Monmouth and Ocean Counties. Mr. Hanrahan was accepted as an expert by the Board.

Mr. Hanrahan began by stating that when reviewing the previous approval of the patio and the patio that is currently there, they realized there was a roughly 50 square foot discrepancy of old versus new. Mr. Hanrahan presented and described to the Board Exhibit A-1, Architectural Site Plan. Mr. Hanrahan referred to Mr. Hilla's letter and said that the trailer would be removed. Mr. Hanrahan discussed the additional parking spaces being requested and said there was not any new landscaping or buffering being proposed. Mr. Hanrahan presented and described to the Board Exhibit A-2, Architectural Elevations, and spoke about the lighting that was being proposed. Mr. Hanrahan referred to comment number 7 in Mr. Hilla's letter and said that they were proosing 44 outdoor patio seats, which is currently the amount that is there now.

Mr. Hilla asked Mr. Hanrahan if the parking that is in the rear was added by the previous owner. Mr. Hanrahan answered that it was added by the current owner. Mr. Hilla stated that there was a fire zone in the rear that was now obscured by the parking so at the minimum it should be reviewed by the Fire Marshall. Mr. Harahan replied that the applicant agrees that the Fire Marshall should review that and confirm that it is up to code.

Ms. Trainor announced that it was now time to hear questions from the Board for Mr. Hanrahan. Mr. Stenson stated that the prior approval was for 800 square feet for the patio and now the space is 1396 square feet and asked how that happened. Mr. Hanrahan answered that the prior approval was for 811 square feet of outdoor dining space on the patio but within that was a very large walkway and bench seating which was eliminated. Mr. Hanrahan then presented Exhibit A- 3, which depicted a drawing showing what was previously approved, and explained the difference of square footage to the Board. Mr. Stenson asked about the parking spaces that were being requested. Mr. Hanrahan showed on the Exhibit where the parking was being proposed and Mr. Hilla added that pavement had been added where there had been grass before.

Mr. Jones asked where the prior approved pad site would be in the Exhibit. Mr. Hanrahan pointed that out to Mr. Jones. Mr. Jones asked if the pad site was ever developed, would the patio have to be removed. Mr. Clark answered yes because the patio is conditioned on the use of the area of the pad site.

Mr. Siano asked how many seats currently exist in the restaurant. Mr. Posada answered that there were approximately 260-265 seats, indoors and outdoors. Mr. Siano asked if there was a parking deficiency with the 260-265 seats. Mr. Hilla answered that parking does not go by number of seats but by square footage, so the Board treated the square footage of the patio the same as the interior



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of the restaurant. Mr. Hilla stated the criteria by Ordinance is based on square footage not by number of seats. Mr. Clark stated that the applicant is deficient in spaces but by only what they stated.

Ms. Brisben stated that they had mentioned 3 sheds but that on the map it shows 5 and asked if that could be explained. Mr. Hanrahan answered that the sheds Ms. Brisben was referring to belonged to the neighbors.

Mr. Tice stated that the original approval allowed 38 seats outdoors, based on the applicants redesign there could be up to 60 seats but they are requesting approval for 44 and asked if that could be explained. Mr. Hanrahan answered that originally there were 38 seats approved, currently there are 44 seats of outdoor dining seats and that is what they are requesting now. Mr. Posada stated they are requesting an additional 6 seats with a cap of 44 seats.

Mr. Hilla stated that in the prior approval there were approvals for operational items like outdoors televisions, and asked if there was any equipment like this out there now. Mr. Posada replied that there were not and said they were not proposing anything like that.

Mr. Siano asked Mr. Hanrahan if there was any intention to use winter panels or heaters. Mr. Posada answered that they did intend to put heaters outside but would not be using the space 365 days a year.

Ms. Trainor asked Mr. Hanrahan where the no entry fence would be. Mr. Posada answered that it would be a chain with a no entry sign at the curb cut on Union Avenue. Mr. Hanrahan showed the Board where the chain would be placed on Exhibit A-1. Ms. Trainor stated there appeared to be a fire lane that needed to be addressed. Mr. Hanrahan answered that the applicant had no objection to getting the approval from the Fire Marshall. Ms. Brisben stated she would write to the Fire Marshall and ask for a report.

Mr. Stenson stated he thought that the parking lot was not level, that there was a portion of the parking lot that was not even and asked if that was being addressed. Mr. Hanrahan answered that there was a depression in a particular spot of the parking lot, that it was not unsafe and that they had not planned to address it.

Ms. Trainor announced it was time to hear questions for Mr. Hanrahan. Hearing none, Mr. Posada called Mr. John Leoncavallo as the next witness. Mr. Leoncavallo was sworn in by Mr. Clark. Mr. Leoncavallo stated he was employed at his own firm in Sayreville, NJ, and also worked with John McDonough Associates in Morris Plains, NJ. Mr. Leoncavallo stated has been a Licensed Professional Planner in New Jersey for over 38 years and is also a Licensed Architect and has testified before at least 280 Planning and Zoning Boards in New Jersey. Mr. Leoncavallo was accepted by the Board as an expert in Professional Planning.

Mr. Leoncavallo presented and described to the Board each page of Exhibit A-4, which he characterized as Aerial and Drone Views of the Subject Site. Mr. Leoncavallo described the property as odd shaped and pointed out the structures in the back behind the restaurant, some of the neighboring houses, the restaurant structure, covered portion and the parking in the rear. Mr.

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Leoncavallo stated he felt that the applicant had done a lot of improvements to the restaurant site. Mr. Leoncavallo stated that the project was an enhancement to the community of Brielle and that the statutory criteria for variance relief have been satisfied. Mr. Posada announced he did not have any other witnesses to present.

Ms. Trainor asked Mr. Hilla if he had any questions for Mr. Leoncavallo. Mr. Hilla answered he did not have any questions. Ms. Trainor announced it was time to hear questions from the Board for Mr. Leoncavallo. Hearing none, Ms. Trainor announced that it was time to hear questions from the public with respect to the application. Hearing none, Ms. Trainor announced it was time to hear comments from the Board with respect to the application.

Mr. Siano stated he was in favor of the application and because no one from the public was present at the meeting showed the validity of the request. Ms. Brisben stated she felt it would be an improvement and would be very nice. Mr. Tice stated he was in favor of the application and thought it would be an improvement. Ms. Trainor stated her only concern was with the fire lane and how that affects the parking places that are available because the Board needs to know what kind of Variance the applicant is requesting and the number of parking places they are submitting. Mr. Posada suggested that as a condition of approval, the applicant would have to obtain a confirmation from the Fire Marshall that it is adequate and if not they would have to seek variance relief if required. Ms. Trainor stated she accepted Mr. Leoncavallo's testimony in respect to the planning and variance criteria and found that they had met their burden. Mr. Stenson, Mr. Jones, Ms. Frith and Ms. Fernicola stated that had no comment.

Ms. Trainor asked Mr. Clark to list the conditions the Board should consider for a motion. Mr. Clark stated that the plans would be submitted to the Fire Marshall for approval and if the Fire Marshall requires changes in the parking, then the applicant would have to come back before the Board. Mr. Clark stated the applicant had agreed to put a chain with a no entry sign at the curb cut on Union Avenue and would add additional shrubbery near the fence by December 31<sup>st</sup>, 2022 subject to Mr. Hilla's approval. Mr. Clark stated the applicant has agreed to remove the trailer within 60 days from the adoption and memorializing of the Resolution. Mr. Clark stated that the prior patio approval stated that if the pad site is developed then the patio approvals would be abandoned and it was suggested that this same condition be listed and that the applicant had agreed. Mr. Clark stated that the applicant had agreed to a limit of 44 seats for outdoor seating.

Ms. Trainor asked for a motion to approve the application with the condition Mr. Clark had listed. James Stenson made a motion, seconded by Corinne Trainor, and followed by the roll call vote.

Ayes: James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

#### OTHER BUSINESS:

A motion to enter into Executive Session was made by James Stenson, seconded by Chris Siano at 9:08pm., and followed by the roll call vote.

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Ayes: James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Absent: Mayor Thomas Nicol , Councilman Frank Garruzzo

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

The topic discussed was ongoing litigation. The Planning Board Attorney briefed the Board on the status of the ongoing lawsuits. The details of this matter will be made public at the conclusion of the litigation.

Ms. Trainor asked for a motion to close the executive session. Mr. Stenson made the motion, seconded by Mr. Siano, all aye. The executive session was closed at 9:33pm.

Ms. Trainor asked if there was any other business to bring before the Board. Hearing none, Ms. Trainor asked for a motion to adjourn., Mr. Jones made the motion, it was seconded, and then unanimously approved by the Board, all ayes. The meeting was adjourned at 9:43p.m.

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Denise Murphy, Recording Secretary

Approved: October 11<sup>th</sup>, 2022