

Tuesday, October 11th, 2022

**BRIELLE PLANNING BOARD
TUESDAY, OCTOBER 11th, 2022**

The Regular Meeting of the Brielle Planning Board was held on Tuesday, October 11th, 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 – Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Amber Fernicola

Absent – Mayor Thomas Nicol, Charlie Tice

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 22 people in the audience.

A motion was made to approve the Minutes of September 13th, 2022 this done by Councilman Frank Garruzzo, seconded by Stephanie Frith, all ayes, no nays.

CORRESPONDENCE: July/August issue of the NJ Planner.

OLD BUSINESS: Consideration of Resolution of approval for Block 38.01, Lot 11, 404 Bennett Place, owned by Fred & Marylynn Ferraro, to allow construction of an in-ground pool and a pumphouse/cabana/pergola structure.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF FRED AND MARYLYNN FERRARO SEEKING MINOR SITE PLAN APPROVAL AND VARIANCE RELIEF FOR CONSTRUCTION OF AN IN-GROUND POOL AND A PUMP HOUSE/CABANA/PERGOLA STRUCTURE ON THE PROPERTY LOCATED AT 404 BENNETT PLACE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 38.01, LOT 1

WHEREAS, Fred and Marylynn Ferraro (collectively, the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to construct an in-ground pool and a pump house/cabana/pergola structure on the property owned by the Applicants located at 404 Bennett Place and identified on the tax map of the Borough of Brielle as Block 38.01, Lot 1 (the “Property”); and

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WHEREAS, the Property is located within the Borough’s R-4 Residential Zone (the “R-4 Zone”); and

WHEREAS, the Property is currently developed with a split-level frame dwelling and minor accessories; and

WHEREAS, the Applicants are proposing to construct an in-ground pool and a pump house/cabana/ pergola structure (as described more fully within the application, the “Project”) in the rear portion of the Property; and

WHEREAS, the existing lot and the existing and proposed use are conforming to the zone, but the existing principal structure and the proposed accessory structures are not conforming to the zone; and

WHEREAS, the Property is on an oversized corner lot with frontage on Brielle Avenue and Bennett Place; and

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

(a) Front Yard setback (Brielle Avenue)—25 feet required; 20.2 feet existing (to house); 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 (Brielle Avenue)—25 feet required; **8 feet proposed (to pump house/cabana/ pergola)**; and

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

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(a) site layout, grading, and utility plan prepared by James Thaon, P.E. dated March 15, 2022, last revised July 28, 2022;

(b) letter dated July 28, 2022 from James Thaon of Bohler Engineering NJ, LLC providing responses to July 12, 2022 technical review letter issued by the Board Engineer/Planner;

(c) boundary and topographic survey prepared by James D. Sens, P.L.S. dated November 11, 2021;

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

(e) a Zoning Permit denial letter from the Zoning Officer dated February 24, 2022; and

WHEREAS, the Board was also provided with a letter dated July 12, 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 September 13, 2022, and considered the following exhibits presented at the hearings in connection with this application:

- a. Exhibit A-1 aerial exhibit prepared by Bohler Engineering, dated August 9th, 2022;
- b. Exhibit A-2 site lay-out grading and utilities plan, as prepared by Bohler Engineering, last revised on July 28th, 2022;
- c. Exhibit A-3 floor plan and elevations of the cabana, prepared by RWR Architecture, dated June 20th, 2022; and

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

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

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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 9th, 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 28th, 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 20th, 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 of salt water. 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 if 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 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 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

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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.

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-4 residential zone.
- d. The Property is currently developed with a split-level frame dwelling and minor accessories.
- e. The Applicants are proposing to construct an in-ground pool and a pump house/cabana/ pergola structure (as described more fully within the application, the "Project") in the rear portion of the Property.
- f. The existing lot and the existing and proposed use are conforming to the zone, but the existing principal structure and the proposed accessory structures are not conforming to the zone.
- g. The Property is on an oversized corner lot with frontage on Brielle Avenue and Bennett Place.
- h. The Property has the following non-conformities which are not being impacted or changed by this application: (i) Front Yard setback (Brielle Avenue)—25 feet required; 20.2 feet existing (to house).
- i. The Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Front Yard Setback (Brielle Avenue)—25 feet required; **8 feet proposed (to pump house/cabana/pergola)**.

- j. The Applicants provided testimony agreeing to a condition on any approval that the pump house/cabana/ pergola will not be used for living space and will not have a kitchen or heating (but will have a ½ bathroom with no shower).
- k. The Applicants provided testimony representing that the Property will be enclosed with a fence to prevent public access to the in-ground pool and the improvements proposed through this Project and that this fence will have openings to allow water to pass through the fence.
- l. The Applicants further testified that they do not anticipate that they will require any off-site fill to construct this Project. They went on to represent that, in the unlikely event that off-site fill is needed, the Applicants will only use clean fill.
- m. The house on the Property faces Bennett Place and the driveway enters the Property from Bennett Place.
- n. Thus, the portion of the Property fronting on Brielle Avenue would normally be considered to be a side yard but for the fact that the Property is on a corner lot and is therefore considered to have two front yards for purposes of calculating setback and other Borough Code requirements.
- o. The improvements proposed through this application are located to the back and side of the house facing Brielle Avenue in an area that would be considered the side yard but for the fact that the Property is a corner lot.
- p. If the side of the Property fronting on Brielle Avenue were considered to be the side yard and the side yard setback requirements of the R-4 zone were applied, the improvements proposed for this Project would be outside of the side yard setback and no variances would be required. Since this is a corner lot, however, the side facing Brielle Avenue is considered to be a second front yard for purposes of calculating setback and other code requirements.
- q. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicant 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.
- r. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.
- s. 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.

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WHEREAS, Councilman Frank Garruzzo moved to approve the application; this motion was seconded by James Stenson. At that time the application was approved by the following 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

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 four (4) sets of revised plans to the Board Secretary in order to correct the error in the plans identified by the Board Engineer during the hearing on this application.
- b. The Applicants agree that the fence that will enclose the Property shall be an open styled fence to allow water to pass through.
- c. The Applicants agree that the pump house/cabana/ pergola will not be used for living space and will not have a kitchen or heating (but will have a ½ bathroom with no shower). The prohibition from using the pump house/cabana/ pergola as habitable living space shall run with the land and shall be included as a deed restriction in any deeds conveying the Property from the Applicants to other persons or entities, or from those other persons/entities.
- d. To the extent, if at all, that the Applicants need to use off-site fill to construct the Project, the Applicants agree that they will only use clean off-site fill.
- e. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- f. 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;
- g. 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.

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A motion to approve the above Resolution was made by Chris Siano, seconded by Councilman Frank Garruzzo and then by the following roll call vote:

Ayes: Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Stephanie Frith, Jay Jones, Amber Fernicola

Noes: None

Not eligible to vote: Karen Brisben

OLD BUSINESS: Consideration of Resolution of approval for Block 1.01, Lot 2, 503 Lenape Trail, owned by Tereza Mirkovic, to allow construction of a new home.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF TEREZA MIRKOVIC AND JAMES PRIOLO SEEKING VARIANCE RELIEF FOR THE CONSTRUCTION OF A NEW HOME ON THE PROPERTY LOCATED AT 503 LENAPE TRAIL AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 1.01, LOT 2

WHEREAS, Tereza Mirkovic and James Priolo (collectively, the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief for the construction of a new home on the property owned by the Applicants located at 503 Lenape Trail in Brielle and identified on the tax map of the Borough of Brielle as Block 1.01, Lot 2 (the “Property”); and

WHEREAS, the Property is primarily located within Wall Township, but a small portion of the front yard of the Property is located within Brielle and is within the Borough’s R-3 Residential Zone (the “R-3 Zone”); and

WHEREAS, the Property currently contains a one-story frame dwelling with attached garage and minor accessories, all of which are located within Wall Township; and

WHEREAS, the Applicants are proposing to demolish the existing structures on the Property and to construct a new 2 ½ story frame dwelling with attached garage and minor accessories, all of which will be located within Wall Township; and

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WHEREAS, under applicable law, the development criteria for the municipality in which a property is located governs its development and, for that reason, the development criteria for Wall Township would govern most of the improvements that the Applicants are seeking to construct through this project; and

WHEREAS, the Property is undersized based upon the zoning standards of both Brielle Borough and Wall Township; and

WHEREAS, the Applicants have filed this application with the Board to seek variance relief as to the portion of the Property which is located within Brielle; and

WHEREAS, the Applicants have represented to the Board that they will also be filing an application with the Wall Township Planning Board to seek site plan approval and variance relief from that planning board for this proposed project; and

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

(a) Front Yard Setback—30 feet required; 19.9 feet existing; **17 feet proposed (to front steps); 19.9 feet proposed (to the new structure/porch)**; and

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

- (a) plot plan prepared by Joseph J. Kociuba, P.E., P.P. dated August 17, 2022;
- (b) topographic survey of property prepared by Marc L. Cifone, P.L.S. dated April 11, 2021;
- (c) architectural drawing prepared by Atlantic Modular Builders dated August 17, 2022;
- (d) an application package signed by the Applicants; and

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(e) a Zoning Permit denial letter from the Zoning Officer dated June 27, 2022; and

WHEREAS, the Board was also provided with a letter dated September 6, 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 September 13, 2022, and considered the following exhibits presented at the hearings in connection with this application:

- a. Exhibit A-1 pictures and surroundings of the existing home;
- b. Exhibit A-2 pictures of the proposed home and its surroundings;
- c. Exhibit A-3 plot plan; and

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

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 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.

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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 8th, 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, 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 17th, 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.

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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 that 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.

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 primarily located within Wall Township, but a small portion of the front yard of the Property is located within Brielle and is within the Borough's R-3 Residential Zone.
- d. The Property currently contains a one-story frame dwelling with attached garage and minor accessories, all of which are located within Wall Township.
- e. The Applicants are proposing to demolish the existing structures on the Property and to construct a new 2 ½ story frame dwelling with attached garage and minor accessories, all of which will be located within Wall Township.
- f. Under applicable law, the development criteria for the municipality in which a property is located governs its development. For that reason, the development criteria for Wall Township would govern most of the improvements that the Applicants are seeking to construct through this project.
- g. The Property is undersized based upon the zoning standards of both Brielle Borough and Wall Township.
- h. The Applicants have filed this application with the Board to seek variance relief as to the portion of the Property which is located within Brielle.
- i. The Applicants have represented to the Board that they will also be filing an application with the Wall Township Planning Board to seek site plan approval and variance relief from that planning board for this proposed project.

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- j. The Applicants are seeking the following variance relief from this Board through this application (the variances sought are highlighted in bold type below): (i) Front Yard Setback—30 feet required; 19.9 feet existing; **17 feet proposed (to front steps); 19.9 feet proposed (to the new structure/porch)**.
- k. 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.
- l. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variance sought herein outweigh any detriments.
- m. 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, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Noes: None

Not eligible to vote: Amber Fernicola

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. Due to the split-zoned nature of this Property, and the fact that the majority of the Property is located within Wall Township with only a small portion of the front yard located within Brielle, the Board's approval of this application is expressly conditioned upon the Applicants also obtaining approval for the application from the Wall Township Planning Board. If, for whatever reason, the Applicants do not obtain approval of this application from the Wall Township Planning Board, then the Board's approval of this application shall automatically terminate.

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- b. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- c. 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;
- d. 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 James Stenson, seconded by Stephanie Frith and then by the following roll call vote:

Ayes: Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Amber Fericola

Noes: None

OLD BUSINESS: Consideration of Resolution of approval for Block 33.01, Lot 1, 110 Union Avenue (site of La Mondina Restaurant), to allow a roof over the existing patio.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY APPROVING THE APPLICATION OF M & D VENTURES, LLC SEEKING PRELIMINARY AND FINAL SITE PLAN APPROVAL AND VARIANCE RELIEF FOR IMPROVEMENTS MADE TO THE PROPERTY LOCATED AT 110 UNION AVENUE WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 33.01, LOT 1

WHEREAS, M & D Ventures, LLC (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking preliminary and final site plan approval and variance relief for improvements to the property located at 110 Union Avenue in Brielle which is identified on the Borough tax map as Block 33.01, Lot 1 (the “Property”); and

WHEREAS, the Applicant is the owner of the Property; and

WHEREAS, the Property is an L-shaped lot which is approximately 1.5 acres in size with frontage along State Highway 71, Fisk Avenue, and Magnolia Avenue; and

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WHEREAS, the Property currently contains a restaurant with an outdoor dining patio, a parking lot, and various other structures and features that are common to this type of use; and

WHEREAS, the prior owner of the Property previously obtained variance relief from the Board, as memorialized within a resolution adopted on July 14, 2015 (the “2015 Resolution”), to construct an outdoor patio dining area which was approximately 811 square feet in size with seating for 38 patrons, along with certain changes to the parking, on the Property; and

WHEREAS, the Applicant is now proposing to construct a roof over the existing outdoor patio (as described more fully within the application, the “Project”); and

WHEREAS, during the pendency of this application, the Applicant learned that the outdoor patio dining area that was constructed by the prior owner was larger than what was previously approved by the Board (specifically, the patio area is approximately 1,396 square feet while the outdoor patio approved by the Board through the 2015 Resolution was only approximately 811 square feet); and

WHEREAS, the Applicant therefore is now seeking approval from the Board for this expanded and already existing outdoor patio area which allows for the seating of 44 patrons; and

WHEREAS, during the pendency of this application, the Applicant also discovered that there were changes to the parking configuration and to the location and the number of outdoor sheds and containers at the Property from what had been approved by the Board through the 2015 Resolution; and

WHEREAS, except as modified herein, the Applicant is now also seeking approval from the Board for these existing conditions; and

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WHEREAS, the Property is a “split-zoned” lot with the majority of the lot located within the Borough’s C-1 commercial zone, but with a portion of the lot along the rear of the site with frontage along Fisk Avenue located within the Borough’s R-3 residential zone; and

WHEREAS, since the Property is a split-zoned lot, the improvements proposed by the Applicant for this Project are an expansion of a non-conforming use which require variance relief under N.J.S.A. 40:55D-70d (2); and

WHEREAS, the following existing non-conformities on the Property are not being changed or impacted by the proposed Project:

- (a) Front yard setback (Fisk Avenue): 30 feet required; 4.8 feet existing (to building);
 - (b) Front yard setback (Union Avenue): 30 feet required; 17.9 feet existing (to building);
- and

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

- (a) **Use variance relief under N.J.S.A. 40:55D-70d (2) for the expansion to the non-conforming use caused by the proposed Project;**
- (b) Front yard setback (Fisk Avenue): 30 feet required; **4.8 feet existing/proposed to the walk-in cooler;**
- (c) Front yard setback (Fisk Avenue): 30 feet required; **6.17 feet existing/proposed to the three storage sheds;**
- (d) Front Yard Setback (Fisk Avenue): 30 feet required, **6.17 feet proposed to the relocated dumpster;**
- (e) Front yard setback (Union Avenue): 30 feet required; **17.9 feet proposed to the patio roof;**

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- (f) Off-street parking: 99 spaces required, 86 spaces previously approved, and **93 spaces proposed**;
- (g) Front Yard Parking: Off-street parking in front yard area of commercial properties is permitted, provided a landscaped area with a minimum of five-foot depth is provided along the front and side property lines. **The existing landscaping areas do not comply with the width and/or landscape material requirements and variance relief is sought to leave these landscaping areas in their current condition.**
- (h) **Approval for three storage sheds, relocated dumpsters, and a walk-in cooler behind the building (along the Fisk Avenue frontage) to be located and/or to remain in locations as shown on the Applicant's plans;**
- (i) **Approval for parking configuration as shown on the Applicant's plans;**
- (j) **Approval for deletion of buffer area in parking lot required within 2015 Resolution (but never constructed); and**

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

- (a) architectural plans (6 sheets) prepared by Daniel Contadore, R.A. dated June 16, 2022;
- (b) boundary and topographic survey (1 sheet) prepared by Craig Black, P.E., P.L.S. dated May 18, 2022;
- (c) letter from Daniel Contadore, R.A. to Board dated July 27, 2022 responding to H2M Associates technical review letter;

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(d) architectural plans (4 sheets) prepared by Daniel Contadore, R.A. submitted to Board on July 27, 2022;

(e) application package signed by Applicant Zoning Board Application package which includes Zoning Permit denial letter dated June 7, 2022 from the Zoning Officer; and

WHEREAS, the Board was also provided with a letter dated June 28, 2022 prepared by the Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Planning Board held a hearing on this application on September 13, 2022, and considered the following exhibits presented at the hearings in connection with this application:

- a. Exhibit A-1 architectural site plan;
- b. Exhibit A-2 architectural elevations;
- c. Exhibit A-3 drawing showing what was approved through 2015 Resolution;
- d. Exhibit A-4 aerial and drone views of the Property; and

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

Attorney Matthew Posada, Sills, Cummis, & Gross Law firm, announced he was here to represent the applicant and stated that the applicant was 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 said that what was approved and what was built was inconsistent in 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 over the outdoor dining area for protection of the patrons, installation of 11 parking spaces, parking lot paving and/or restriping, a chain and “no entry” sign, and relocation of the dumpster, lighting fixtures, gas lanterns, ceiling fans, and heaters. 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.

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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 proposing 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. Hanrahan 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 on the Exhibit. Mr. Hanrahan pointed that out to Mr. Jones. Mr. Jones asked if the pad site were 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 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

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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 of 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 from the public 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. Leoncavallo stated he felt that the applicant had made 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.

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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 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. Fericola 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 31st, 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.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicant is the owner of the Property.
- c. The Property is an L-shaped lot which is approximately 1.5 acres in size with frontage along State Highway 71, Fisk Avenue, and Magnolia Avenue.
- d. The Property currently contains a restaurant with an outdoor dining patio, a parking lot, and various other structures and features that are common to this type of use.

- e. The prior owner of the Property previously obtained variance relief from the Board, as memorialized within a resolution adopted on July 14, 2015 (the “2015 Resolution”), to construct an outdoor patio dining area which was approximately 811 square feet in size with seating for 38 patrons, along with certain changes to the parking, on the Property.
- f. The Applicant is now proposing to construct a roof over the existing outdoor patio (as described more fully within the application, the “Project”).
- g. During the pendency of this application, the Applicant learned that the outdoor patio dining area that was constructed by the prior owner was larger than what was previously approved by the Board (specifically, the patio area is approximately 1,396 square feet while the outdoor patio approved by the Board through the 2015 Resolution was only approximately 811 square feet).
- h. The Applicant therefore is now seeking approval from the Board for this expanded and already existing outdoor patio area which allows for the seating of 44 patrons.
- i. During the pendency of this application, the Applicant also discovered that there were changes to the parking configuration and to the location and the number of outdoor sheds and containers at the Property from what had been approved by the Board through the 2015 Resolution and, except as modified herein, the Applicant is now also seeking approval from the Board for these existing conditions.
- j. The Property is a “split-zoned” lot with the majority of the lot located within the Borough’s C-1 commercial zone, but with a portion of the lot along the rear of the site with frontage along Fisk Avenue located within the Borough’s R-3 residential zone.
- k. Since the Property is a split-zoned lot, the improvements proposed by the Applicant for this Project are an expansion of a non-conforming use which require variance relief under N.J.S.A. 40:55D-70d (2)
- l. The following existing non-conformities on the Property are not being changed or impacted by the proposed Project: (i) Front yard setback (Fisk Avenue): 30 feet required; 4.8 feet existing (to building); and (ii) Front yard setback (Union Avenue): 30 feet required; 17.9 feet existing (to building).
- m. The Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type): (i) **Use variance relief under N.J.S.A. 40:55D-70d (2) for the expansion to the non-conforming use caused by the proposed Project;** (ii) Front yard setback (Fisk Avenue): 30 feet required; **4.3 feet existing/proposed to walk-in cooler;** (iii) Front yard setback (Fisk Avenue): 30 feet required; **6.17 feet existing/proposed to three**

sheds; (iv) Front Yard Setback (Fisk Avenue): 30 feet required, 6.17 feet proposed to the relocated dumpster; (v) Front yard setback (Union Avenue): 30 feet required; 17.9 feet proposed to the patio roof; (vi) Off-street parking: 99 spaces required, 86 spaces previously approved, and 93 spaces proposed; (vii) Front Yard Parking: Off-street parking in front yard area of commercial properties is permitted, provided a landscaped area with a minimum of five-foot depth is provided along the front and side property lines. The existing landscaping areas do not comply with the width and/or landscape material requirements and variance relief is sought to leave these landscaping areas in their current condition; (viii) Approval for three storage sheds, relocated dumpsters, and a walk-in cooler behind the building (along the Fisk Avenue frontage) to be located and/or to remain in locations as shown on the Applicant's plans; (ix) Approval for parking configuration as shown on the Applicant's plans; and (x) Approval for deletion of buffer area in parking lot required within 2015 Resolution (but never constructed).

- n. The Board notes that the Property is a split-zoned lot. As the lot is a single economic unit used for a single purpose, there will always be uses on the lot which do not conform to one or the other of the zones governing the lot. Here, the majority of the area of the lot is located within a commercial zone with only a small sliver of the lot located within a residential zone. For that reason, the lot has historically been used for commercial use. The only reason why the Applicant needs to be obtain a D(2) variance for expansion of a non-conforming use is because a small portion of the lot is in a residential zone.
- o. The Board finds that positive criteria for D(2) variance relief is satisfied herein because the nature of the Property presents a hardship to the Applicant due to its split-zoning.
- p. The Board finds that the negative criteria for D(2) variance relief is also met by this application. First of all, this relief can be granted without substantial detriment to the public good because the proposed Project is just seeking approval to construct a roof over the existing outdoor patio dining area to enhance its use. This will have minimal impact on the site and certainly will not cause any substantial detriment to the public good. Likewise, the relief sought is consistent with the commercial zoning governing the majority of the area of the lot and it will not impair the intent and purpose of the Borough's zone plan to allow an expansion of the existing commercial use on this split-zoned lot.
- q. With regard to the multiple C variances sought by the Applicant herein, the Board notes that many of the variances sought relate to conditions which have existed at the site since the prior owner made improvements to the Property in or around 2015 and that the Applicant is merely seeking retroactive approval for conditions which have existed at the site for some time without any negative impact. Additionally, the Board finds that due to the size and shape of the lot,

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along with the split-zoning of the lot, the Applicant meets the hardship criteria for relief and that granting such relief furthers the goals of the MLUL and of the Borough Code and will not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance

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

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

Noes: None

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. The Applicant's plans will be submitted to the Borough's Fire Marshall for his review of the Applicant's proposed parking configuration and the deletion of the fire zone/buffer area required within the 2015 Resolution. The Applicant recognizes and agrees that if the Fire Marshall requires modifications to the parking configuration or to the deletion of the fire zone/buffer area, the Applicant will have to file another application with the Planning Board to seek Planning Board approval of any such modifications and the grant of any necessary modified variances.
- b. The Applicant agrees that there shall not be more than 44 seats in the outdoor patio area.
- c. The Applicant shall install, and shall thereafter retain in perpetuity, a chain with a no entry sign at the curb cut on Union Avenue to prevent the use of that curb cut for egress from the parking lot to Union Avenue or ingress from Union Avenue into the parking lot.
- d. By no later than December 31, 2022, the Applicant shall plant shrubs near the existing fence, in locations and using species of shrubs approved by the Board Engineer, and once such shrubs have been planted, the Applicant shall thereafter maintain and, if necessary, replace these shrubs.
- e. Within sixty (60) days of the date of the adoption of this resolution, the Applicant shall remove the trailer from the Property.

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- f. In the event that the Applicant or any future owner of the Property wishes to develop the Property with an office building on the commercial pad site identified within a prior site plan approval for the Property, the Applicant or the future owner (as the case may be) must abandon the outdoor patio uses on the Property approved through the 2015 Resolution and through this Resolution. In other words, the patio approvals are conditioned upon the current use of the Property, and these patio approvals must be abandoned in order to develop the commercial pad site.
- g. Except as explicitly amended through this Resolution, all of the conditions of the patio approvals set forth within the 2015 Resolution shall remain in full force and effect.
- h. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- i. The Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- j. All representations made under oath by the Applicant or its agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above Resolution was made by Chris Siano seconded by James Stenson and then by the following roll call vote:

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

Noes: None

Not Eligible to vote: Councilman Frank Garruzzo

NEW BUSINESS: Application for variance relief for Block 54.01, Lot 1, 632 Cedarcrest Drive, owned by Robert & Deborah Pellicane, to allow construction of a gable roof over a portico that now has a flat roof.

Attorney David Leone, Carton Law Firm, announced he was appearing for the applicant. Mr. Leone stated that the applicant proposed to replace a portico that currently has a flat roof with a gable roof in the same footprint. Mr. Leone referred to Mr. Hilla's letter and said that the applicant has agreed to relocate two sheds to conforming locations and to also move a portion of the fence on Cedarcrest Drive, so it is no longer in the right-of-way.

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Ms. Trainor stated it was time to hear questions from the Board in respect to the application. Councilman Frank Garruzzo asked Mr. Leone to confirm that the only change proposed is the construction of an angled roof in place of the existing flat roof. Mr. Leone stated that was correct. Ms. Brisben wanted to confirm that the fence would be moved. Mr. Leone stated it would be moved to comply. Mr. Stenson, Ms. Trainor, Mr. Siano, Ms. Frith, Mr. Jones, and Ms. Fernicola had no questions for Mr. Leone.

Ms. Trainor stated it was time to hear questions from the public. Hearing none, Ms. Trainor asked Mr. Leone if he had any witnesses to present to the Board. Mr. Leone answered that he did not have any witnesses to present.

Ms. Trainor stated it was time to hear comments from the Board. Councilman Garruzzo, Mr. Stenson, Mr. Siano, Ms. Frith, Ms. Fernicola stated they did not have any issues with the application. Mr. Jones and Ms. Brisben stated they felt the project would be an improvement and also did not have any issues with the application. Ms. Trainor thanked Mr. Leone for his expediency with the application, their willingness to work with the Board and said she also did not have any issues with the application.

Ms. Trainor stated it was time to hear comments from the public with 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 the sheds detailed in Mr. Hilla's letter are currently non-compliant and would be moved to a conforming location and the portion of the fence that is along Cedarcrest Avenue would be moved to a conforming location, out of the public right-of-way.

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.

Ayes: Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Amber Fernicola

Noes: None

Ms. Trainor stated before beginning with the new business agenda, she wanted to review the procedures of the Brielle Planning Board for any public who were not familiar with them. Ms. Trainor stated there would be a time for the public to ask questions and make comments, that they are taken in turn and it would be announced when that time arrived.

NEW BUSINESS: Major Subdivision for Block 104.01, Lot 7.02, Block 120, Lot 13.01 & 15, Tamarack Drive and Route 70, owned by Brielle Shores, Inc., to create 5 residential lots & a utility lot that will contain a drainage basin. Lot Area —15,000 square feet required, 14,499 square feet proposed for new Lot 7.08. Lot Depth — 125 feet required, 67.95 feet proposed for new Lot 7.08. Also, Environmental Impact, Stormwater, Tree Save, Retaining Walls & Grading issues.

Mr. Henderson stated he was representing the applicant and began by expressing there was a threshold issue in regard to the variances required for what he called the basin lot. Mr. Henderson

stated that he was looking to resolve the issue with the Board because the testimony provided would be dependent of the outcome of that ruling. Mr. Henderson stated that Mr. Hilla had ruled that the retention basin lot must conform with the bulk requirements of the zone which creates two variances that the applicant thinks should not apply. Mr. Henderson then listed his reasons why this particular lot should not require the same variances as the other lots. Ms. Trainor asked Mr. Henderson if he had sent anything in writing to the Board secretary in regard to this issue to which Mr. Henderson answered he had not. Mr. Clark stated he felt that in fairness to the public, the Board and the Board's professionals, Mr. Henderson should submit a brief to the Board so it can be considered and reviewed. Ms. Trainor indicated to Mr. Henderson that anything he or the public wished to submit to the Board in regard to this argument would be required to be submitted by Thursday, November 3rd in keeping with the Planning Board's rules.

Mr. Henderson called Professional Engineer and Planner, Charles Lindstrom, from Lindstrom, Diessner & Carr, P.C., Brick Township, NJ., to testify. Mr. Lindstrom stated he was testifying as an engineer and a planner in this application and said that he had testified before the Board before. Mr. Lindstrom was then sworn in by Mr. Clark. Mr. Henderson asked if the Board accepted Mr. Lindstrom as an expert in engineering and as a planner. Ms. Trainor answered the Board did find Mr. Lindstrom an expert in those fields.

Mr. Lindstrom began by presenting Exhibit A-1, the site plan, previously submitted to the Board. Mr. Lindstrom used the exhibit to explain to the Board what the applicant was proposing and then explained the tree save conservation. Mr. Lindstrom stated that the NJ DEP requires a conservation restriction against the removal of any trees within the area that was shaded on the exhibit. Mr. Lindstrom described the stormwater basin that was proposed and the location of it in comparison to the proposed homes. Mr. Lindstrom stated the stormwater basin would not really be near any residential lots. Mr. Lindstrom said there are five residential lots that are significantly oversized for the zone and one undersized lot that was designed to accommodate the stormwater basin. Mr. Lindstrom stated he did not believe they should be required to seek variances for the basin lot because there would not be a home built there. Mr. Lindstrom stated the stormwater basin was designed with NJ DEP rules and regulations, had been completely approved and that a CAFRA permit for the project had been received. Mr. Lindstrom stated that the NJ DEP basically said that no water could drain towards North and South Tamarack, which is contrary to normal developmental patterns, but because so little water comes off the site in its pre-developed condition, the NJ DEP insisted that the water be collected, taken to a basin, treated in terms of stormwater quality, and then discharged less than what was coming off the property in its pre-developmental conditions. Mr. Lindstrom stated they had met all that criteria and felt there would be no impact on Tamarack Drive or the neighbors in terms of stormwater because all of the stormwater would be directed to a basin in the back of the site, not near the homes.

Mr. Henderson asked Mr. Lindstrom to address the variance that may be required for the stormwater basin lot in terms of lot size. Mr. Lindstrom said that in terms of lot area they are very close, that they could add 500 square feet, making the lot 15,000 square feet and the 150-foot depth of this would severely impact the residential lots adjacent to it. Mr. Lindstrom said the footage is not needed for a lot that is not going to be developed in any way except to have a stormwater basin. Mr. Lindstrom said the basin would be part of a Homeowner's Association that would be owned and maintained by the Association. Mr. Lindstrom stated that in his view there would not be a

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negative impact and would serve the 5 homes in a manner that the NJ DEP saw fit. Mr. Henderson asked Mr. Lindstrom if, in terms of the lot depth variance, he was satisfied that it met the goal of the Municipal Land Use Act. Mr. Lindstrom answered that he was satisfied. Mr. Henderson asked Mr. Lindstrom if he knew who was responsible for the Zoning change of multi-family to a single-family zone. Mr. Lindstrom replied that Bill Rathjen requested the change because to him it made sense that it should be a single-family development instead of a multi-family development.

Mr. Henderson referenced Mr. Hilla's letter and asked Mr. Lindstrom to comment on any other details of the letter that the applicant would need to comply with, other than the two variances which had been previously discussed. Mr. Lindstrom referenced certain items regarding the drainage and the calculations of the drainage and said that the calculations were done and approved by the NJ DEP and said that the basin would have some additional capacity. Mr. Henderson asked Mr. Lindstrom to explain where the water going through system would go. Mr. Lindstrom replied that the water collected from the roof drains and in front of the driveways would be collected and piped to the basin, flow to Route 70 in a very slow rate and what water that did not permeate would run down Riverview Drive and into an inlet that was built many years ago by Mr. Rathjen and then run to the Manasquan River.

Mr. Henderson asked Mr. Lindstrom if the subdivision was fully compliant in all other respects with Brielle's Ordinances. Mr. Lindstrom answered yes and said that the lots are extremely oversized and meet all of the requirements. Mr. Henderson asked Mr. Lindstrom if there were any other stipulations in Mr. Hilla's letter that the applicant would agree to. Mr. Lindstrom stated Mr. Hilla recommended that the road be overlaid because there would be some cuts in the road for the water and sewer service for the 5 lots, and said that the applicant would agree to that. Mr. Lindstrom stated there would be a small retaining wall along the 50-foot tree save area that would be installed to collect water that would then run off the site. Mr. Lindstrom stated there would not be any fill brought in for the project, that there would not be any new road construction, and that water and sewer already exist. Mr. Lindstrom stated that the applicant has received a CAFRA permit, Monmouth County approval, NJ DOT approval, and is working on approval from Freehold Soil. Mr. Henderson asked Mr. Lindstrom if the NJ DEP invented the tree save term. Mr. Lindstrom answered they did not, he thought Mr. Rathjen invented the term and said that Mr. Rathjen has been building that way as long back as the 1980's, and that the tree saves have been restrictions written in the titles. Mr. Henderson stated he had no further questions for Mr. Lindstrom.

Ms. Trainor asked Mr. Hilla if he had any questions or clarifications to make. Mr. Hilla referenced the various drainage pipes that are internal to the lots and asked if there would be an easement for any of those. Mr. Lindstrom replied that they thought that each individual homeowner would be responsible for their own roof drainage and said they have not added an overall drainage easement to the common collector pipe but it could be added to the back so that could be maintained. Mr. Hilla stated there would be pipes that cross certain properties closer to the basin that could create problems for houses further away. Mr. Lindstrom agreed and said they could provide easements to those. Mr. Hilla asked if they would tie them together to the Homeowner's Association because the Borough would not want to inherit the enforcement of people not maintaining this stuff. Mr. Henderson stated he would submit that to Mr. Hilla for review. Mr. Hilla asked Mr. Lindstrom to describe the security around the basin. Mr. Lindstrom answered they would agree to provide a

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fence around the basin to prevent anyone from entering the area of the basin and added that it would be a dry basin for the most part. Mr. Hilla asked where the access for the basin would be. Mr. Lindstrom replied that access would be from Route 70 which would be drawn on the plan. Mr. Hilla asked if the NJ DOT was privy to the fact that they were going to discharge into the right-of-way. Mr. Lindstrom answered that this was all submitted to the NJ DOT and that the NJ DOT had issued a subdivision permit for this. Mr. Hilla stated there would need to be a maintenance and repair plan for the basin. Mr. Lindstrom answered that they did that through the NJ DEP so they would provide that to the Board. Mr. Hilla asked for detail about the outlet structure. Mr. Lindstrom answered that if it were not on the plan, they would add that because the intention is to have one. Mr. Hilla asked if there would be an opportunity to create onsite parking or staging for trucks, personal vehicles, and materials to ensure that Tamarack Drive would remain passable and not create any traffic issues. Mr. Lindstrom answered that he thought that would be possible.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Lindstrom. Councilman Garruzzo asked how a problem with the basin would be discovered and who ultimately would discover it. Mr. Lindstrom answered that the Stormwater Maintenance Manual they had to create for the NJ DEP has a reporting requirement and an inspection requirement that has to be done on a regular basis, so the Homeowner's Association would have to designate people to do that. Councilman Garruzzo stated the reason he raised the question was because there are not a lot of retention basins in Brielle and said that one of them has been neglected at times. Mr. Henderson stated that if the Borough ever felt like the Homeowner's Association was not handling the basin properly, the Borough would have the right, not the obligation to step in and do what needed to be done. Councilman Garruzzo asked if the homes would be built all at the same time or would they sell each lot separately. Mr. Henderson answered that they did not know yet and said these homes would not be spec homes that would fly up overnight, they would be custom homes.

Mr. Stenson asked Mr. Lindstrom to explain how the water in the drainage pipes under the homes gets to the basin. Mr. Lindstrom replied that each house would have roof leaders connected to piping underground that would run by gravity to the back of the lots and along the back of the lots and drain by gravity into the basin.

Mr. Siano asked to confirm that Mr. Lindstrom said that the basin is designed for a 100-year storm and asked for the definition of what constitutes a 100-year storm. Mr. Hilla answered that it is 9.5 inches over a 24-hour period. Mr. Siano asked if that was a NJ DEP requirement. Mr. Lindstrom answered that it was a requirement.

Mr. Jones stated he wanted to get more information on lot coverage for the primary structure. Mr. Lindstrom stated that the lots are large but added that he did not know how large the homes would ultimately be and said they were going to go back through the numbers and model the basin on what could potentially be built there and get the answers.

Ms. Brisben stated that there is a drainage lot on South Tamarack drive, known as Lake Arlene, which has created problems over the years with lack of maintenance. Ms. Brisben said the Code Enforcement Officer was out there because the fencing was in disrepair and no one was taking care of it. Ms. Brisben said Mr. Rathjen said it was not his responsibility, it was the Homeowner's Association's responsibility and that it was written in the deeds. Ms. Brisben said she looked at

some of the old deeds at the County and there is no Homeowner's Association. Ms. Brisben stated she wanted to make sure that this would not happen with this retention basin and asked Mr. Henderson if he had an opinion on that. Mr. Henderson stated he did not have an opinion but said that when those homes were originally built it was probably not a requirement but currently it is a requirement. Ms. Brisben stated she was told by Mr. and Mrs. Rathjen that there was a Homeowner's Association on South Tamarack. Ms. Brisben asked Mr. Henderson if the Homeowner's Association would be reflected in the deeds to which he replied that it would be. Ms. Brisben said she was mentioning this now so the Board is aware and that this does not happen again. Mr. Clark interjected and stated that the Board wants to be sure that if a lot is built that is going to be a detection basin lot that would serve the other lots that there would be some responsible party to take responsibility for the lot. Mr. Clark said it could be an individual person or a Homeowner's Association and if it is a Homeowner's Association, the Board could require as part of its approval that as part of the subdivision that Mr. Henderson will submit the Homeowner's Association deeds to be reviewed by the Board.

Ms. Trainor stated that Mr. Lindstrom had suggested that if they adjusted the depth for the basin lot that it would mean that the basin would automatically be moved closer to the road and the other homes and asked why the basin would have to be moved if they increased the depth of the lot. Mr. Lindstrom answered that it would not necessarily have to be increased but the lot lines would have to come 50 feet closer to the road which would impact two lots pretty severely and make them irregularly shaped but the basin could stay where it is. Ms. Trainor referred to Exhibit A-1 and asked Mr. Lindstrom what was on the other side of Route 70 and if they had taken into account any drainage issues or contributions that may be caused to the basin based on the other side of Route 70. Mr. Lindstrom replied they had not because their basin takes water in from their site only and said there was not a way for water from the other side to get into their basin. Ms. Trainor asked what the elevation of Route 70 was. Mr. Lindstrom answered that it is 55 in that area, the spillway is 58 but it would not backflow into their basin based on the models of a 100-year storm to which Ms. Trainor responded that it was not based on the models for a 500-year storm. Ms. Trainor asked Mr. Lindstrom if he could explain where the Rathjen water runoff system drains, through which neighborhoods and where it flows into the river. Mr. Lindstrom replied that he was not originally involved in that and that said he did not know the full extent of it but said that Mr. Rathjen told him he built the drainage system that runs into the Manasquan River. Ms. Trainor asked if there would be an insurance requirement for the Homeowner's Association. Mr. Henderson responded that he believed there was but would like to reference his files. Ms. Trainor asked how, in respect to the Homeowner's Association, the statutes address the solvency or insolvency of the Homeowner's themselves and the Association. Mr. Henderson answered he did not think they did and said most people use a not for profit 15A corporation.

Ms. Fericola asked if they would be building the basin at the same time as the lots. Mr. Lindstrom replied that the basin would have to be in effect before the lots are built and impervious coverage starts forming on the lots.

Ms. Brisben asked Mr. Lindstrom to explain the reason they are asking for a waiver on the environmental impact statement. Mr. Lindstrom responded the main reason was because they had already gone through a rigorous review by the NJ DEP and they saw fit to approve it. Mr. Lindstrom added that the NJ DEP not only looks at the drainage but they also look at the

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development, the environment, and threatened and/or endangered species. Ms. Trainor stated that because the application had gone beyond the 45 minute timeframe and because the Board had asked for some new information, it was her suggestion that Mr. Henderson ask Mr. Lindstrom to return to the next meeting to present any additional information. Ms. Trainer stated that then the Board could ask any other questions they may have. Mr. Henderson agreed with Ms. Trainor's suggestion.

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 8:19p.m.

Denise Murphy, Recording Secretary

Approved: November 8th, 2022