

BRIELLE PLANNING BOARD
TUESDAY, MAY 9th, 2023

The Regular Meeting of the Brielle Planning Board was held on Tuesday, May 9th, 2023 at 7:00 p.m., in the Brielle Borough Hall, 601 Union Lane. Ms. Trainor read the OPMA compliance statement. After a moment of silent prayer and a Salute to the Flag, roll call was taken:

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

Absent – James Stenson, Jay Jones

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 6 people in the audience.

A motion was made to approve the Minutes of April 4th, 2023, this done by Chris Siano, seconded by Karen Brisben, all ayes, no nays.

OLD BUSINESS: Resolution concerning Dan Burke, 409 Union Lane, request for extension of filing subdivision deed.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY DENYING THE APPLICATION OF DANIEL J. BURKE, EXECUTOR OF THE ESTATE OF CHARLOTTE BURKE, SEEKING AN EXTENSION OF TIME TO PERFECT THE MINOR SUBDIVISION FOR THE PROPERTY LOCATED AT 409 UNION LANE WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 82.01, LOT 1

WHEREAS, Daniel J. Burke, the Executor of the Estate of Charlotte Burke (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking minor subdivision approval and variance relief for the property located at 409 Union Lane in Brielle which is identified on the Borough tax map as Block 82.01, Lot 1 (the “Property”); and

WHEREAS, the Board voted to approve the Applicant’s application for minor subdivision approval and variance relief with conditions on December 14, 2021 and thereafter adopted a resolution memorializing the approval of this application on January 11, 2022; and

WHEREAS, pursuant to N.J.S.A. 40:55D-47(d) of the Municipal Land Use Law (the “MLUL”), the Applicant had 190 days from the date of the adoption of the memorializing resolution to perfect the subdivision of the Property; and

WHEREAS, on December 30, 2020, Peter Donnelly filed a lawsuit against the Applicant, the Board, and the Borough of Brielle entitled Peter Donnelly v. Borough of Brielle Planning Board, et als., Docket No. MON-L-3566-22 alleging that the Applicant failed to perfect the subdivision of the Property within the 190-day statutory period and did not obtain an extension of time from the Board and that, therefore, the subdivision approval for the Property expired; and

WHEREAS, on January 16, 2023, the Applicant filed a letter with the Board Secretary applying for a four-month extension of time to perfect the subdivision of the Property and asked the Board to list his application on an upcoming Board meeting for consideration; and

WHEREAS, Timothy Middleton, Esq. filed an appearance with the Board on behalf of Peter Donnelly, an objector to this extension application; and

WHEREAS, the hearing on this extension application was scheduled to be heard at the Board’s February 21, 2023 public meeting; and

WHEREAS, prior to the February 21, 2023 meeting, Mr. Middleton sought a one-month extension of this hearing due to a medical issue and Ryan Murphy, Esq., the attorney for the Applicant, consented to his request; and

WHEREAS, the Board granted Mr. Middleton’s adjournment request and rescheduled the hearing on the extension application for its March 14, 2023 meeting; and

WHEREAS, prior to the March 14, 2023 meeting, Mr. Murphy sought a one-month extension of this hearing due to a medical issue and Mr. Middleton, the attorney for the objector, consented to this request; and

WHEREAS, the Board granted Mr. Murphy's adjournment request and rescheduled the hearing on the extension application for its April 4, 2023 meeting without the need to re-notice the hearing; and

WHEREAS, the Board marked the following exhibits into evidence at the April 4, 2023 hearing on this application:

- (a) Exhibit O-1 letter from H2M Associates to the Board dated April 14, 2022;
- (b) Exhibit O-2 letter from Ms. Brisben to Mr. Burke dated May 24, 2022;
- (c) Exhibit O-3 letter from Ms. Brisben to Mr. Burke dated May 31, 2022;
- (d) Exhibit O-4 email from Mr. Clark to Keith Henderson, Esq. dated August 2, 2022;
- (e) Exhibit A-1 letter from the Applicant to Ms. Brisben dated June 2, 2022;
- (f) Exhibit Board-1 February 17, 2023 letter from David A. Clark, Esq. to Timothy B.

Middleton, Esq. enclosing the following communications regarding the subdivision:

- April 14, 2022 letter from the Board Engineer to the Brielle Planning Board copying the Applicant and his attorney indicating that the Applicant had achieved resolution compliance as to the engineering items only.
- May 13, 2022 email from Applicant to Board Secretary Karen Brisben requesting final signed subdivision plans.
- May 24, 2022 email response from Karen Brisben to Applicant requesting proof that the existing shed was removed before documents will be released and requesting subdivision deed.
- June 2, 2022 letter from Applicant to Karen Brisben.
- June 20, 2022 email from Keith Henderson to Karen Brisben attaching a proposed Subdivision Deed with supporting documents.
- July 13, 2022 letter from David Clark to Michael Henderson identifying issues with the proposed Subdivision Deed and

further indicating that the Applicant must provide proof of the demolition of the shed before any subdivision deed can be signed by the Planning Board.

- July 27, 2022 email from Keith Henderson to David Clark enclosing a revised Subdivision Deed.
- August 2, 2022 email from David Clark to Keith Henderson indicating that the revised Subdivision Deed is acceptable, but that the deed cannot be signed by Planning Board representatives until the Applicant provides proof of the demolition of the shed.
- September 8, 2022 email exchange between Keith Henderson and Karen Brisben regarding status of approval, and status of demolition of shed; and

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

February 21, 2023 hearing

An announcement was made at the public meeting that the Applicant's extension application was adjourned at the request of Mr. Middleton, with the consent of Mr. Murphy, and was rescheduled for the Board's March 14, 2023 meeting without the need to re-notice the hearing.

March 14, 2023 hearing

An announcement was made at the public meeting that the Applicant's extension application was adjourned at the request of Mr. Murphy, with the consent of Mr. Middleton, and was rescheduled for the Board's April 4, 2023 meeting without the need to re-notice the hearing.

April 4, 2023 hearing

Attorney Ryan Murphy, Gertner & Murphy, LLC, stated he was representing the Applicant in relation to the extension request.

Mr. Murphy stated that Mr. Burke had made an extension request of a minor subdivision plan that was approved on January 11, 2022 and said that the deed itself was not filed until November 3, 2022. Mr. Murphy referred to New Jersey Statute 40:55D-47(f) which he said provides Planning Boards with the authority to grant an extension of time when a delay is caused by a governmental or quasi-governmental entity. Mr. Murphy stated there was a complete list of

actions Mr. Burke had taken since the Resolution had been approved and then listed those actions for the Planning Board.

Mr. Murphy stated that as part of the Resolution approving the subdivision plan, the Applicant was required to demolish a shed. Mr. Murphy stated that on June 2, 2022, Mr. Burke sent an email asking that the demolition of the shed be reserved until the time he received the signed subdivision plan. Mr. Murphy stated that Mr. Burke had not received a response to the request. Ms. Trainor read Mr. Burke's email into the Record. Mr. Murphy stated that the shed was demolished on September 27, 2022 and said that after the demolition, Mr. Burke received a UCC report which was submitted to the Board. Mr. Murphy stated that the time between submitting the demolition report and receiving the deeds from the Board was 7 days. The deeds were promptly sent to the Monmouth County Clerk's office and filed on November 3, 2022.

Ms. Trainor asked Mr. Clark if he had record of all the dates Mr. Murphy referenced during his argument. Mr. Clark replied that he would discuss that and would also discuss the timing of the application being presented. Mr. Clark stated that the Applicant filed a request for time extension on January 11, 2023 and asked Ms. Brisben to list the matter on the next available meeting date which was February 21, 2023. Mr. Clark stated that shortly before the February meeting, Mr. Middleton had emergency surgery and had asked that the request be carried to the March meeting which Mr. Murphy had agreed to. Before the scheduled March meeting, Mr. Murphy had a medical issue and asked that the request be carried to April, which Mr. Middleton had agreed to. Mr. Clark stated that in terms of the referenced dates, Mr. Middleton had requested all correspondence between the Planning Board, the Applicant, and his attorneys, which he supplied to Mr. Middleton and Mr. Murphy. Mr. Clark acknowledged that most of the dates that Mr. Murphy recited were accurately reflected based on his records. Mr. Clark stated the only dates he was not familiar with were when the demolition of the shed occurred, what the delays were in regard to the demolition and those types of things.

Attorney Timothy Middleton stated he was representing resident Peter Donnelly who resides on Melrose Avenue. Mr. Middleton stated that the Applicant did speak about the deed and plat submitted for approval in the emails and letters and said most importantly the emails and letters reminded the Applicant that before the Planning Board would sign or approve anything, the shed had to be removed which went on for six months. Mr. Middleton stated that in the January 11, 2022 Resolution of approval, the Board required the Applicant to remove the shed before the Applicant would be permitted to file the deed or plat that would memorialize and perfect the subdivision. Mr. Middleton stated that a minor subdivision requires that the plat or deed be filed within 190 days to perfect it. Mr. Middleton noted that when the Board approved the application on January 11, 2022, it did not subdivide the property, it gave the Applicant the ability to subdivide by filing the deed or plat. Mr. Middleton said the Applicant had until July 20 to file and as noted by the Applicant's attorney, the deed was filed on November 3, some 296 days after the Resolution of Approval was adopted, 106 days late. Mr. Middleton referenced the NJ Statute 40:55D-47 which he said provides that the approval of a minor subdivision expires if the deed or a plat is not filed in a timely fashion.

Mr. Middleton presented to the Board a letter from H2M Associates written to the Planning Board, dated April 14, 2022. Mr. Clark marked the letter as Exhibit O-1 and said the letter regarded

Resolution compliance. Mr. Middleton presented a letter from Ms. Brisben to Mr. Burke, dated May 24, 2022. Mr. Clark marked the letter as Exhibit O-2 and said the letter regarded the subdivision. Mr. Middleton presented a letter from Ms. Brisben to Mr. Burke, dated May 31, 2022. Mr. Clark marked this letter Exhibit O-3 and said this letter also enclosed previous letters from March 29, May 24, and May 25, 2022. Mr. Middleton stated that all of the letters received by the Applicant speak of removing the shed. Mr. Middleton presented to the Board an email from Mr. Clark to the Applicant's attorney, Keith Henderson, dated August 2, 2022, marked as Exhibit O-4. Mr. Middleton stated that this email stated that the Applicant had elected to perfect the subdivision by deed instead of by plat. Mr. Middleton stated that in this email, there was a reference that the shed must be removed before the deeds were released.

Mr. Middleton referenced the Statute and said it allows the Board in certain limited situations to extend the deadline if the developer was barred or prevented directly or indirectly for filing because of delays in obtaining legally required approvals from other governmental agencies. Mr. Middleton gave the Board examples of delays that could occur and said there were no issues in this case that would have prevented the Applicant from timely filing a subdivision deed.

Ms. Trainor announced it was time to hear questions from the Board for Mr. Murphy and Mr. Middleton. Ms. Trainor began by asking Mr. Murphy what the date of the letter was in which Mr. Burke requested that the shed's demolition to be adjourned until a future time. Mr. Murphy said that the Applicant made the request directly to the Board on June 2, 2022 and asked if the letter could be marked as an Exhibit A-1. Mr. Clark marked the letter and said it was a letter from the Applicant to Ms. Brisben. Mr. Middleton stated that in the letter the Applicant had asked the Board to delay the demolition of the shed until he received the signed subdivision plans.

Mr. Clark stated he had sent a package to Mr. Murphy and Mr. Middleton with every piece of correspondence that he had back and forth between himself, Ms. Brisben, Mr. Burke and his attorney at the time and said it gives a chronology and suggested it be marked as an Exhibit for the Record. Mr. Clark marked the package sent as Exhibit Board-1. Ms. Trainor stated it made sense especially because of the standard being discussed and if the Board caused some sort of a delay, it would be good to know that. Ms. Brisben stated she did receive the letter and said she did not see in the letter where Mr. Burke was asking for an extension and asked Ms. Trainor if she would like to read it into the Record. Ms. Trainor then read the letter into the Record.

Mr. Jones asked who caused the delay. Mr. Murphy replied that he thought there were several issues and then discussed with the Board issues with the deed and the demolition of the shed. Ms. Brisben stated that she has the certificate from the Construction Code Division which states the shed was removed on October 5, 2022, not the date in September that had been testified to. Ms. Brisben stated that the Board was waiting for this document to prove the shed had been removed. Mr. Clark said he wanted to remind everyone that one of the conditions of the Resolution was not only to remove the shed but to also provide proof to Ms. Brisben that the shed had been removed. There were no other questions from the Board members.

Ms. Trainor announced it was time to hear questions from the public. Kim Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio asked if there was a request for an extension before the expiration date. Ms. Trainor answered that although this was a great question,

she did not think the statute required the request to be before the date and then read the last sentence in NJ Statute 40:55D-47(f). Mr. Clark stated that the first and only extension request was dated January 11, 2023. Ms. Nuccio asked if the delay did not involve a governmental delay, would it matter what the delays were. Mr. Murphy read a section from NJ Statute 40:55D-47(f) and said that the Planning Board and the professionals that represent the Board are a quasi-governmental entity and that technically the delay the Applicant was seeking to correct was partially because of a governmental entity. Ms. Trainor asked Mr. Murphy in the part of the Statute he referenced, does it matter who caused the delay, how the delays were caused or does it only matter that there were delays. Mr. Murphy answered that it matters only that there were delays, not who caused the delays. Mr. Middleton stated he thought it was a real stretch after filing the deed 106 days late to come in and try to blame the Board. Mr. Middleton stated that the shed did not come down in time and said it did not matter when the deeds were provided to the Board because the shed did not come down in time and there was no one to blame except Mr. Burke who he stated was an expert, an engineer and a planner. Mr. Middleton stated Mr. Burke knew the shed had to come down, was reminded four or five times by the Board and still did not demolish the shed.

Mr. Daniel Burke (the Applicant), 1013 Cedar Lane, was sworn in by Mr. Clark. Mr. Burke stated he has been a resident of Brielle for about 60 years and said he wanted to add some information to clarify what was happening. Mr. Burke stated all of this was in the midst of Covid, Board meetings were virtual and things slowed due to Covid. Mr. Burke stated his wife was in the hospital from February 28 until March 2 and that he was in the hospital in May which he said took some time away to pursue the approvals. Mr. Burke referred to his request to delay the shed demolition and explained that he requested this because there was a lawsuit filed against the approval. Mr. Burke stated that Mr. Middleton did not provide him with a copy of the lawsuit for 50 days which changed his outlook on how he was going to proceed. Mr. Burke said he had to hire a new attorney because his attorney did not practice litigation law. Mr. Burke then stated he worked diligently and said he received quotes in February for the removal of the shed and then again in July because the previous ones had expired. Mr. Burke said that those things were on him but were also due to Covid. Mr. Burke stated the approval of the deed from the Board was after the approval date and said that was not his fault. Mr. Burke said the timeline shows that he did everything he could to move things along. Mr. Burke stated he had no control over the time it took the professionals to review things but said that it did amount to a considerable amount of time. Mr. Burke stated that on the day the shed was demolished, he sent Ms. Brisben a picture to show that it had occurred. Mr. Burke stated that Ms. Brisben asked for a UCC approval which took a week or 10 days to get the inspection and said that was something he also could not control.

Mr. Middleton asked Mr. Burke if he initially filed for a demolition permit in February. Mr. Burke replied the he sought quotes for the demolition of the shed in February. Mr. Middleton asked Mr. Burke if he had just testified that to some degree the fault lies on him for not pushing this quicker to which Mr. Burke replied that he did everything he could do to move things along and said whenever there was an action that was required of him, he did it. Mr. Middleton asked Mr. Burke if he acknowledged receipt of the emails he had referred to indicating that the shed needed to be removed. Mr. Burke answered that he was aware that the shed had to be removed.

Ms. Trainor asked if there were any questions from the public for Mr. Burke. Hearing none, Ms. Trainor asked if there were any questions for Mr. Burke from the Board.

Mr. Siano asked Mr. Burke if he could go back, would he change the condition of the approval to not remove the shed before receiving approval. Mr. Burke said he thought he had requested during the meeting not to take the shed down until everything was done. Mr. Burke said he had asked the Board to consider allowing him to post a performance guarantee. Mr. Siano asked if that was after the fact. Mr. Burke said it was part of the testimony. Ms. Trainor noted that if this was part of the testimony, it was not part of the Resolution. Mr. Burke stated the Board did not favor his request. Mr. Siano asked Mr. Burke if he was aware of the expiration date. Mr. Burke answered he was aware and that is why he was pushing things.

Mr. Tice asked Mr. Burke to acknowledge whether he received the two emails from Mr. Hilla and Ms. Brisben. Mr. Burke answered that he had received the letter from Mr. Hilla and email from Ms. Brisben.

Ms. Brisben said that in the Resolution that Mr. Henderson stated that the Applicant would demolish the shed and said she thought it was the Board's opinion that the shed should come down immediately.

Mr. Burke stated he wanted to add, in regard to the delay, that he is a co-executor in the process, his brother, Todd Burke, is the other executor who in June moved to Wyoming which made the signing of documents a longer process.

Ms. Trainor asked Mr. Clark if in his research, was there case law that would indicate that it matters what causes the delay or just that a delay occurred and not-with-standing that delay the developer applied promptly for and diligently pursued the required approvals. Mr. Clark answered that the developer not only has the burden of proof on the application to extend but must show that it was barred or prevented directly or indirectly from filing because of delays and that the developer applied promptly for and diligently pursued required approvals. Mr. Clark stated that if the developer were the cause of the delay then they would not meet the standard. Mr. Clark stated it does matter what caused the delay because only delays that were caused by legally required approvals from other governmental or quasi-governmental entities are reasons that are allowed to be a cause of an extension.

Ms. Trainor stated it was time to hear comments from the public. Kim Nuccio, 711 Ashley Avenue, began by saying that everyone conducted business during Covid and said she did not feel that the Board missed a beat. Ms. Nuccio stated the approval is expired and said she opposed the extension. There were no other comments from the public.

Mr. Murphy stated that the shed is only one piece of the puzzle and said there were delays caused by a quasi-governmental entity, the deed was not approved until August 2, 2022 so regardless the applicant would be outside of the time and asked the Board to grant the extension.

Mr. Middleton stated that Mr. Burke made it clear that he was not blaming anyone in the municipality for the delays and said the fact of the matter is that the Statute is the Statute. Mr. Middleton stated that the shed was not demolished until well after the date and said the date is the date and there are no excuses.

Ms. Trainor stated it was time to hear comments from the Board.

Ms. Trainor stated that based on Mr. Clark's advice that causation does matter, Mr. Burke's testimony was that he did not want to demolish the shed because he was concerned how a lawsuit filed by Mr. Middleton would turn out. Ms. Trainor felt this was a decision that was squarely in Mr. Burke's control. Ms. Trainor stated she felt that the applicant had not demonstrated that he acted promptly or diligently to obtain the required approvals.

Mr. Jones stated that the shed is removed and that is what had to happen.

Mr. Stenson stated that Mr. Burke went out for bids to demolish the shed in February but waited seven months to remove it and then waited until January to ask for an extension. Mr. Stenson stated he did not feel the Board should approve the extension.

Mr. Siano said he agreed with Ms. Trainor and said he understood why Mr. Burke did not take the shed down. Mr. Siano stated that the statute is the statute and did not think it could be interpreted any differently than what Mr. Clark had explained to the Board.

Mr. Tice said he agreed with Mr. Stenson and said he felt that the circumstances were in Mr. Burke's control. Mr. Tice stated that he thought Mr. Burke should have filed for the extension earlier.

Ms. Brisben stated she would not have a problem granting the extension but said the law is the law and the Board must abide by that law written by the State of New Jersey.

Hearing no other comments, Ms. Trainor asked if any member of the Board would like to make a motion to approve the application to extend the time to perfect the deed from the July 20 deadline to November 3. Hearing none, Ms. Trainor asked for a motion to deny Mr. Burke's application.

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 property owners within two hundred (200') feet, as well as the newspaper, were properly notified of this extension application.
- b. The Applicant is the owner of the Property.
- c. The Board adopted a resolution on January 11, 2022 approving the Applicant's application for minor subdivision approval and variance relief with conditions on the Property.

- d. Pursuant to N.J.S.A. 40:55D-47(d) of the Municipal Land Use Law (the “MLUL”), the Applicant had 190 days from the date of the adoption of the memorializing resolution to perfect the subdivision of the Property.
- e. Since the Board adopted its memorializing resolution approving the Applicant’s minor subdivision application on January 11, 2022, the 190-day statutory time period to perfect the subdivision of this Property expired on July 20, 2022.
- f. The Applicant did not perfect the subdivision of this Property on or before July 20, 2022. Rather, the Applicant recorded the subdivision deed with the Monmouth County Clerk on November 3, 2022 (approximately 106 days after the expiration of the statutory time period).
- g. On December 30, 2020, Peter Donnelly filed a lawsuit against the Applicant, the Board, and the Borough of Brielle entitled Peter Donnelly v. Borough of Brielle Planning Board, et als., Docket No. MON-L-3566-22 alleging that the Applicant failed to perfect the subdivision of the Property within the 190-day statutory period and did not obtain an extension of time and that, therefore, the Board’s subdivision approval for the Property expired.
- h. On January 16, 2023, the Applicant filed a letter with the Board Secretary applying for a four-month extension of time to perfect the subdivision of the Property. Since the Applicant had already recorded the subdivision deed on November 3, 2022, the Applicant was essentially seeking a retroactive approval from the Board for the 106-day delay in the recording of the subdivision deed. The Applicant asked the Board to list his extension application on the next available Board meeting for consideration.
- i. N.J.S.A. 40:55D-47(f) of the MLUL provides that “[t]he planning board may extend the 190-day period for filing a minor subdivision plat or deed pursuant to subsection d. of this section **if the developer proves to the reasonable satisfaction of the planning board (1) that the developer was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and (2) that the developer applied promptly for and diligently pursued the required approvals.** The length of the extension shall be equal to the period of delay caused by the wait for the required approvals, as determined by the planning board. The developer may apply for the extension either before or after what would otherwise be the expiration date.” [emphasis added].
- j. The Board finds that since N.J.S.A. 40:55D-47(f) allows a developer to apply for an extension of the time to perfect a minor subdivision approval “either before or after what would otherwise be the expiration date”, the Applicant’s request to extend the time to perfect the subdivision approval granted by the Board for the Property may be considered by the Board.

- k. The Board notes that it is the Applicant's burden of proof to demonstrate to the reasonable satisfaction of the Board (1) that the Applicant was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities and (2) that the Applicant applied promptly for and diligently pursued the required approvals.
- l. The Board finds that the Applicant has failed to satisfy this burden of proof for the reasons described more fully herein.
- m. First, the Applicant was aware that one of the conditions to perfect this subdivision was for the Applicant to demolish the shed on the Property and to provide proof thereof to the Board Secretary prior to the filing of a subdivision deed (both because this requirement was listed as a condition within the memorializing resolution, and because Board representatives reminded the Applicant and his attorney on numerous occasions that the shed had to be demolished before the subdivision deed would be released by the Board to the Applicant for recording). Although the Applicant testified that he obtained quotes for this demolition work in February of 2022, he did not contract with anyone for this demolition work in February, and instead the shed was not demolished until either September or October of 2022 (after the expiration of the 190-day period to perfect the subdivision). The delay in the demolition of the shed was within the Applicant's control and was not caused by any delays in obtaining legally required approvals from other governmental or quasi-governmental entities.
- n. Additionally, the Applicant did not submit a proposed subdivision deed to the Board until June 20, 2022 (approximately one month before the expiration of the 190-day statutory time period to perfect the deed). The Board provided comments to the proposed subdivision deed on July 13, 2022 (within the statutory time period), but the corrected revised deed was not submitted until July 27, 2022 (after the statutory time period expired). This delay was within the control of the Applicant as he chose when to submit the proposed subdivision deed and the delay in finalizing the deed was not caused by any delays in obtaining legally required approvals from other governmental or quasi-governmental entities. Moreover, the Applicant was advised that even though the form of the proposed subdivision deed was accepted by the Board as of August 2, 2022, the deed could not be released by the Board to the Applicant for recording until the Applicant demolished the shed on the Property and provided proof thereof to the Board Secretary.
- o. Finally, the Board further notes that even if the Applicant had satisfied the burden of proof to show that an extension of time to perfect this subdivision was warranted—which the Board finds that the Applicant did not do--the MLUL only allows an extension of time “equal to the period of delay caused

by the wait for the required approvals.” The Applicant has not provided any justification for the 106-day delay in the recording of this subdivision deed and failed to demonstrate that this delay was equal to the period of delay caused by the Applicant’s wait for any required governmental or quasi-governmental approvals.

- p. For all of these reasons, after carefully considering the evidence presented in favor of and in opposition to the extension application, including but not limited to the testimony of witnesses, the arguments of counsel, and the exhibits marked into evidence at the hearings, the Board finds that the Applicant has failed to meet its burden of proof to demonstrate to the reasonable satisfaction of the Board (1) that the Applicant was barred or prevented, directly or indirectly, from filing because of delays in obtaining legally required approvals from other governmental or quasi-governmental entities; and (2) that the Applicant applied promptly for and diligently pursued the required approvals.
- q. The Board therefore denies the Applicant’s request for a four-month extension of time to perfect the subdivision of this Property.

WHEREAS, Chris Siano moved to deny the Applicant’s application seeking an extension of time to perfect the subdivision of this Property; this motion was seconded by Charlie Tice. At that time the motion to deny this application was approved by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice

Noes: None

Absent: Mayor Thomas Nicol, Councilman Frank Garruzzo, Stephanie Frith, Amber Fernicola

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

Ayes: Corinne Trainor, Chris Siano, Karen Brisben, Charlie Tice

Noes: None

Not eligible to vote: Mayor Thomas Nicol, Councilman Frank Garruzzo, Stephanie Frith, Amber Fernicola

Absent: James Stenson, Jay Jones

NEW BUSINESS: Application for variance relief for Block 33.01, Lot 22, 518 Fisk Avenue, owned by Carly Burrus, Christopher Curry-Edwards & Cheri Curry, to allow an

addition/alteration. Side Yard Setback — 10 feet required, 3.1 feet existing. Building Coverage — 20% maximum allowed, 22.7% proposed. Existing Nonconformities — Lot Size — 11,250 square feet required, 7,500 square feet existing. Lot Width — 75 feet required, 50 feet existing. Side Yard Setback — (accessory shed) 5 feet required, 3.3 feet existing, (accessory mechanical equipment) 5 feet required, -0- feet existing.

Attorney Mark Aikins, of Mark R Aikins LLC, Wall Township, stated he was representing the applicants. Mr. Aikins began by describing the home as an existing one story bungalow style home that dates back to the mid 1930's. Mr. Aikins said that because the house is about 80 years old it has a limited and obsolete floor plan. Mr. Aikins asserted that the applicants were proposing an addition to the rear of the structure to create a new kitchen, enclosing the existing right and left front porch area as part of a bedroom and a living room.

Architect Ankella Malellari was sworn in by Mr. Clark. Ms. Malellari stated she was a licensed architect in New Jersey and has testified before other Planning Boards. Ms. Malellari was accepted as an expert witness by the Board.

Ms. Malellari displayed document A00.00-Coversheet. This document was marked as Exhibit A-1. Ms. Malellari began by describing the existing plot plan, the current conditions of the property and the proposed changes. Ms. Malellari presented a document she called A01.00-Floor Plans which was marked as Exhibit A-2. Ms. Malellari referenced the exhibit and gave the Board a detailed explanation of how the inside of the house would look with the proposed changes. Ms. Malellari presented a document she called A02.00-Proposed Elevations which was marked as Exhibit A-3. Ms. Malellari stated the house would remain one-story and said that the height would not change. Ms. Malellari displayed document A-Streetscapes which was marked as Exhibit A-4. Ms. Malellari stated this Exhibit showed the front of the property and the two adjacent properties. Ms. Malellari displayed document B-Streetscapes which was marked as Exhibit A-5. Ms. Malellari stated that this Exhibit showed the scale of the property in relation to the adjacent properties. Mr. Aikins stated he had no further questions for Ms. Malellari.

Ms. Trainor announced it was time to hear questions from the Board for Ms. Malellari. Mr. Siano asked how the proposed vestibule would line up with the adjacent homes. Ms. Malellari replied that the new vestibule would be within the setback. Mr. Siano asked if there was any consideration to take the new addition and make the wall conforming so the applicants would not have to ask for as much relief with the 3-foot setback on the side yard. Ms. Malellari answered that they did try but it would have created more challenges. Ms. Brisben asked if a second floor was considered. Ms. Malellari responded that a second floor was not considered. Mayor Nicol, Councilman Garruzzo, Ms. Trainor, Ms. Frith, Mr. Tice and Ms. Fernicola did not have any questions. There were no questions from the public.

Planner Maeve Desmond was sworn in by Mr. Clark. Ms. Desmond stated she was a licensed Professional Planner in New Jersey, is employed at Insite Engineering and has testified before other Planning Boards. Ms. Desmond was accepted as an expert witness by the Board.

Ms. Desmond presented a document she described as an aerial exhibit of the property and also showed properties within 200 feet. This document was marked as Exhibit A-6. Ms. Desmond presented a second document she called an overhead rendering which was marked as Exhibit A-7.

Ms. Desmond referred to Exhibit A-6 and said they discovered a mix of older and newer homes and that many of those homes had multi-stories. Ms. Desmond stated that the proposed project was within scale and is compatible with the neighborhood. Ms. Desmond then described the variances being sought. Ms. Desmond indicated that the proposed variances did meet the C-1 and C-2 hardship criteria and then detailed the reasons to the Board. Ms. Desmond then referenced the Borough's 2016 Master Plan and the recommendations of impervious coverage limits and said that the project would have 35% impervious coverage, well below the recommendation in the Master Plan. Ms. Desmond stated that after balancing both negative and positive criteria, it was her opinion that the benefits of the application substantially outweigh the detriments and because of this the variances should be approved.

Mr. Aikins referenced number 1 in Mr. Hilla's letter and asked Ms. Desmond if she would explain to the Board where the mechanical equipment would be placed. Ms. Desmond referred to Exhibit A-7 and showed the Board where the mechanicals would be located and added that the mechanicals would be relocated to a compliant location. Mr. Aikins referred to number 2 and said the property owner stated the accessory structure mentioned is an existing wooden platform and would be removed as a condition of approval if the Board were to require that. Mr. Aikins referenced number 3 and said that the applicant would agree to have the curb, sidewalk, and driveway apron repaired if necessary. Ms. Trainor asked Mr. Hilla if he had any questions or comments. Mr. Hilla replied that he did not and said that all of his concerns were addressed.

Ms. Trainor announced it was time to hear questions for Ms. Desmond from the Board. Ms. Brisben asked Mr. Hilla if moving the mechanical equipment to the rear of the property would require revised plans. Mr. Hilla stated that ultimately the Zoning Officer would receive plans with the equipment in a conforming location and also said this Board was not granting relief for that. Mr. Clark then stated it would be written in the Resolution that the applicant is moving the equipment to a compliant location and the Zoning Officer would see that. Ms. Brisben asked if the vegetation on the side would remain. The applicants responded that it was on the adjacent property. Mr. Aikins stated that the applicants would stipulate that if the vegetation was on the applicants' property it would not be removed. Mayor Nicol, Councilman Garruzzo, Ms. Trainor, Mr. Siano, Ms. Frith, Mr. Tice and Ms. Fernicola did not have any questions. There were no questions from the public.

Ms. Trainor announced it was time to hear comments from the Board in regard to the application. Mayor Nicol said he felt the applicants would enjoy a new kitchen and said it would be an improvement. Councilman Garruzzo stated he thought it would be an asset to the community and said he had no issues with the application. Mr. Siano stated that typically he prefers to see the pre-existing, non-conforming condition be corrected when doing an addition to meet the side yard requirement but said he understood there is a hardship and finished by saying he did not see any issues with the application. Ms. Frith stated she felt the application looked great. Ms. Brisben stated that she felt the galley kitchen definitely needs to be enlarged, had no issues with the application and said the main addition was going out the back which would not affect any of the

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neighbors. Mr. Tice stated he was in favor of the application and said he thought the design looked great. Ms. Fernicola said she was glad the applicants were keeping the house a ranch style and said she had no issues with the application. Ms. Trainor stated she thought the professionals' testimony was very thorough. Ms. Trainor also said she accepted Ms. Desmond's testimony with respect to meeting the C-1 and C-2 variances and as a result of the hardships she thought that the plans made good sense.

Ms. Trainor asked Mr. Clark if he could review the stipulations made regarding the application. Mr. Clark then listed for the Board the stipulations that the applicant had agreed to with respect to Mr. Hilla's letter.

Ms. Trainor asked for a motion to approve the application with the stipulations Mr. Clark had listed. Chris Siano made a motion, seconded by Stephanie Frith, and followed by the roll call vote:

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

Noes: None

Ms. Trainor asked if anyone had any other business they would like to bring before the Board. Hearing none, Ms. Trainor announced that the Board would be going into a closed executive session. The reason the Board went into an executive session was to discuss issues requiring attorney-client advice and litigation. Mayor Thomas Nicol and Councilman Frank Garruzzo recused themselves from this session. A motion to enter into Executive Session was made by Chris Siano at 7:46pm. Mr. Clark announced that the Board was out of closed session at 8:21pm.

As there was no other business to come before the Board, a motion to adjourn was made and seconded with unanimous vote, all aye. The meeting was adjourned at 8:22 p.m.

Denise Murphy, Recording Secretary

Approved: June 13th, 2023