

Tuesday, July 11<sup>th</sup>, 2023

BRIELLE PLANNING BOARD  
TUESDAY, JULY 11<sup>th</sup>, 2023

The Regular Meeting of the Brielle Planning Board was held on Tuesday, July 11<sup>th</sup>, 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, Corinne Trainor, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola

Absent – Councilman Frank Garruzzo, James Stenson, Chris Siano

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 June 13<sup>th</sup>, 2023, this done by Karen Brisben, seconded by Jay Jones, all ayes, no nays.

CORRESPONDENCE: Notice to DEP for 1000 Riverview Drive, Block 101, Lots 12-12.01, owned by Peter Herms, to allow retaining wall work to be legalized

OLD BUSINESS: Approval of a Resolution for Block 62.02, Lot 10, 807 Schoolhouse Road, owned by Michael & Dawn Kurc, to allow construction of a front porch.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF MICHAEL KURC AND DAWN M. KURC SEEKING VARIANCE RELIEF FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS ON THE PROPERTY LOCATED AT 807 SCHOOLHOUSE ROAD AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 62.02, LOT 10**

**WHEREAS**, Michael Kurc and Dawn M. Kurc (collectively, the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief for certain improvements on the property owned by the Applicants located at 807 Schoolhouse Road and identified on the tax map of the Borough of Brielle as Block 62.02, Lot 10 (the “Property”); and

**WHEREAS**, the Property is located within the Borough’s R-2 Residential Zone (the “R-2 Zone”); and

**WHEREAS**, the Property is currently developed with a one-story frame dwelling and paved driveway; and

**WHEREAS**, the Applicants are seeking variance relief to add a covered front porch to the existing house on the Property (as described more fully within the application, the “Project”); and

**WHEREAS**, the existing and proposed uses are conforming to the zone, but the existing home on the Property and the proposed improvements are not conforming to the zone; 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—40 feet minimum required; 37.1 feet existing; **31.9 feet proposed**; and

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

(a) Survey of the Property prepared by Charles Surmonte, P.E., P.L.S. dated revised February 7, 2022;

(b) architectural drawing (undated) (1 sheet) prepared by Michael Kurc;

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

(e) a Zoning Permit denial letter from the Zoning Officer dated February 7, 2023; and

**WHEREAS**, the Board was also provided with a letter dated May 25, 2023 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 June 13, 2023 and considered the following documents presented as exhibits at the hearing:

(a) Exhibit A-1 architectural drawing (undated) prepared by Michael Kurc;

and

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

Mr. Michael Kurc and Ms. Dawn Kurc, 807 Schoolhouse Road, were sworn in by Mr. Clark. Mr. Kurc stated that he had come before the Board seeking approval to build a covered front porch. Mr. Kurc presented a one-page document that showed the dimensions of his dwelling. Mr. Clark marked this document as Exhibit A-1, dated June 13<sup>th</sup>, 2023. This exhibit was prepared by Mr. Kurc who stated that he was a builder by trade. After a question was raised as to Mr. Kurc's preparation of the document, Mr. Clark confirmed that it is permissible for a homeowner to prepare documents that would provide information to the Board. Mr. Kurc described the details of the covered front porch and said that the proposed width was 19 feet, 2 inches and the depth was 8 feet. Mr. Kurc stated that he felt that the home has been in disarray for many years and the porch would look nice. Mr. Kurc stated that he had no other testimony to present to the Board.

Mr. Clark referenced Mr. Hilla's review letter and asked Mr. Kurc if he had any evidence to present to support front yard setback variance relief. Ms. Kurc answered that the grading in the back of the property was very steep and said the property tips back. Mr. Clark asked Mr. Kurc to address the wire fence at the rear of the property that Mr. Hilla referred to in his review letter. Mr. Kurc responded that the fence had been removed. Mr. Hilla stated he had no questions for the applicant.

Ms. Trainor announced it was time to hear questions for Mr. Kurc from the Board. Ms. Brisben referenced Exhibit A-1 and asked Mr. Kurc what was behind the "squiggly" lines and if he had considered lessening the front yard setback. Mr. Kurc replied that there are trees behind the lines on the Exhibit and explained that at the widest point the porch would be 8 feet but would narrow to 7 feet. There were no other questions from the Board members.

Ms. Trainor asked if there were any questions from the public for Mr. Kurc. Hearing none, Ms. Trainor announced it was time to hear comments from the Board. Mayor Nicol said he felt that the applicant should be allowed to build the porch. Councilman Garruzzo stated he did not have any issues with the application. Mr. Stenson said he felt the front porch would be an improvement and said he had no issues with the application. Mr. Jones stated he agreed with Mr. Stenson. Ms. Brisben asked Mr. Clark if it could be written in the Resolution that the porch must remain open. Mr. Clark answered that it could be added. Ms. Trainor stated that she appreciated the description of the steep pitch in the backyard and the uniqueness of the parcel and also appreciated the applicant's commitment to Brielle and the property.

Ms. Trainor asked if there were any comments from the public. Hearing none, Mr. Clark listed the stipulations that had been agreed to. Ms. Trainor then asked for a motion to approve the application with the stipulations Mr. Clark had listed.

**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-2 Zone.
- d. The Property is currently developed with a one-story frame dwelling and a paved driveway.
- e. The Applicants are seeking variance relief to add a covered front porch to the existing house on the Property (as described more fully within the application, the "Project").
- f. The existing and proposed uses are conforming to the zone, but the existing home on the Property and the proposed improvements are not conforming to the zone.
- g. The Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Front Yard Setback—40 feet minimum required; 37.1 feet existing; **31.9 feet proposed**.
- h. The Applicants presented testimony that the Property is unique and irregular because the back section of the Property has a steep slope that prevents or inhibits the use of that section of the Property and therefore limits the usability of the remaining portion of the Property. These conditions present a hardship to the Applicants in the use and development of their Property.
- i. The Applicants also presented testimony demonstrating that some of the neighboring properties to this Property have similar front yard setbacks and that therefore the proposed variance relief sought by the Applicants is consistent with other development in the neighborhood.
- j. The Applicants represented that they have already removed all portions of the wire fence located in the rear of the Property which were outside of the boundaries of the Property and which encroached on neighboring properties, but they agreed that if the Borough identifies any additional remaining fence

which is outside of the boundaries of the Property and which is still encroaching on neighboring properties, they will promptly remove it.

- k. The Board finds that 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 that the Project proposed by the Applicants is consistent with other development in the neighborhood. Additionally, the Board finds that the benefits of the variance sought outweigh any detriments and that the deviations from the requirements of the Borough Code proposed through this Project do 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. For these reasons, the Applicants meet the conditions for variance relief under N.J.S.A. 40:55D-70(c)(1).

**WHEREAS**, James Stenson moved to approve the application with the conditions listed by the Board Attorney; this motion was seconded by Chris Siano. 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, Jay Jones

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 Applicants agree that other than the installation of the roof over the front porch as authorized through the adoption of this resolution, the Applicants shall not enclose the front porch.
- b. The Applicants represented at the hearing that they have already removed all portions of the wire fence located in the rear of the Property which were outside of the boundaries of the Property and which encroached on neighboring properties. Notwithstanding this representation, to the extent (if at all) that there is any remaining fence at the rear of the property which is outside of the boundaries of the Property and which is still encroaching on neighboring properties, such fence shall be removed by the Applicants at their sole cost and expense.
- c. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.

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- 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 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 Jay Jones, seconded by Karen Brisben and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Corinne Trainor, Karen Brisben, Jay Jones

Noes: None

Absent: Councilman Frank Garruzzo, James Stenson, Chris Siano

Not eligible to vote: Stephanie Frith, Charlie Tice, Amber Fericola

NEW BUSINESS: Minor Subdivision application for Block 81.01, Lot 1, 409 Union Lane, owned by Daniel & Todd Burke, co-Executors, to allow creation of a two-lot subdivision. All Front Yards to front on a 50 foot Right-of-Way, 40 foot Right-of-Way on Melrose Avenue proposed. Minimum Lot Depth, proposed Lot 1.02, 125 feet required, 86.63 feet proposed. Existing Non-Conformity – Maximum Building Height, 2 ½ stories allowable, 3 stories existing.

Mr. Daniel Burke, applicant and Mr. Timothy Middleton, on behalf of Peter Donnelly, objector, were recognized by the Board.

Mr. Burke was sworn in by Mr. Clark. Mr. Burke began by saying he is a licensed engineer, professional planner and certified municipal engineer and then listed his credentials. Mr. Burke's credentials were recognized and he was qualified as such. Mr. Middleton had no objection.

Mr. Clark stated that Mr. Burke had asked him to inquire if there were any members of the Board that had a conflict that would prevent them from sitting for this application. Ms. Trainor asked Mr. Burke if he had a concern. Mr. Burke stated he thought it was important to ask as this application was being contested. Ms. Trainor stated she recognized the importance of this and wanted to make sure he had no concerns to be raised. Mr. Burke replied he was not aware of any conflicts. No Board members identified any conflicts that would prevent them from hearing this application.

Mr. Burke stated he was going to give some background information on the prior application he had submitted to the Board. He said that the Board heard the prior application during the months of November 2021, December 2021 and January 2022 meetings; the Board had approved the application in December and said that this approval was memorialized in a resolution adopted at

that January meeting. Mr. Burke stated he was unable to perfect the subdivision filing within the statutory time frame and said that the Board denied his request for an extension. He said that his current application was filed in April of 2023.

Mr. Burke indicated that his application is similar to the one which the Board approved in 2021/2022, but now the shed has been removed and the frontage along Melrose Avenue is proposed at 40 feet.

Mr. Burke displayed a document he stated was an excerpt from the tax map, sheet 7. Mr. Clark marked this document Exhibit A-1. Mr. Burke referenced this Exhibit and began to describe the current conditions of the property and the adjoining properties. Mr. Burke stated that his records show that the existing structure is a seashore colonial which was built in 1910. Mr. Burke discussed the current utility services and said that water and sewer laterals are already in place for the proposed subdivided lot. Mr. Burke stated that a traffic issue was raised in the prior application. Mr. Burke spoke about traffic on Melrose Avenue and discussed the NJ Residential Site Improvement Standards and detailed how he felt this related to the application. Mr. Burke stated that between November 27<sup>th</sup> and December 5<sup>th</sup> he conducted a traffic count using a motion sensor camera which resulted in capturing 89 recorded events, less than one per daylight hour during that period. Mr. Burke stated that there are currently 10 residences along Melrose Avenue and said that if the subdivision is approved as filed and a new home is built, there would still only be 10 residences.

Mr. Burke displayed a document that he said was the minor subdivision plan of the Estate of Charlotte Burke, dated April 25<sup>th</sup>, 2023. Mr. Clark marked this document Exhibit A-2. Mr. Burke spoke of the disposition of trees on the property and stated his opinion of any future tree removal. Mr. Burke then clarified three points of nonconformity in Mr. Hilla's report, the 3-story structure on Lot 1.01, the lot depth, and the frontage on proposed Lot 1.02. Mr. Burke stated that if the application was approved the applicant plans to perfect it by filing a subdivision deed. Mr. Burke stated that he is seeking relief on two other issues regarding Lot 1.02 and said that, in his opinion, the C-1 hardship variance and the C-2 flexible variance criteria both support the variances sought through this application. Mr. Burke read N.J.S.A. 40:55D-70 to the Board and then explained the reasons he felt that a C-1 hardship variance and C-2 flexible variance would apply to this application.

Mr. Burke referenced Lot frontage and then read Borough Code Section 21-9.13. Mr. Burke stated that he felt that this code section could be interpreted in many different ways and explained those different ways. Mr. Burke stated that the applicant has offered up the full width of the right-of-way which he believed was 40.17 feet and said that this falls into a hardship condition because it cannot be cured by the applicant. Mr. Burke alluded to testimony in the prior application in regard to whether a variance relief of 40 feet was offered up. Mr. Burke stated he was not going to interpret the Code and was going to ask for a variance just out of the preponderance of caution. Mr. Burke stated that he inspected the Borough's tax maps and noted no fewer than 37 other right-of-way driveways that were less than 50 feet. Mr. Burke further stated that adjacent Lots 5,6,8 are nonconforming in lot frontage just like proposed Lot 1.02 would be.

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Mr. Burke stated that Lot depth is defined in Chapter 20 of Land Use Codes, section 20.3 and then read the definition to the Board. Mr. Burke referred to Exhibit A-2 and discussed lot lines and street lines. Mr. Burke stated that every lot of Melrose Avenue is deficient in Lot depth saying that the bulk of them have 100 feet of Lot depth, one at 95.45 feet, and said that it is a common problem on Melrose Avenue. Mr. Burke testified that the requirement is 125 feet. Mr. Burke stated that the Lot depth variance being requested could be considered under the C-1 and C-2 variance as listed in Municipal Land Use Law.

Mr. Burke displayed a document he called a tax map with colored tabs and Mr. Clark marked this document Exhibit A-3. Mr. Burke described to the Board what the colored tabs referred to and also discussed aspects of the 29 parcels shown on this Exhibit.

Mr. Burke displayed a document that he characterized as a high-resolution aerial view of the subject lot, Evergreen Avenue, Ashley Avenue and Union Lane, dated March 6<sup>th</sup>, 2023. Mr. Clark marked this document as Exhibit A-4. Mr. Burke discussed this Exhibit and said it shows the development pattern and deficiencies in Lot area in the neighborhood around the subject property.

Mr. Burke stated that an applicant must prove or provide evidence to justify a variance and then listed the reasons why he felt relief should be granted. Mr. Burke read from the Borough of Brielle's Master Plan and stated that the Master Plan has 13 objectives and 5 principles and then began to enumerate the objections and principles that he said are satisfied by the application. Mr. Burke referenced the Municipal Land Use Law intent and read aloud reasons C, E, J, and M. Mr. Burke stated that this application provides the appropriate density, preservation of a historic building, is able to be serviced by existing utilities and roadways and is consistent with surrounding development patterns. Mr. Burke said the application would not negatively impact traffic or circulation and conforms with the objectives of the code, the Master Plan and the MLUL. Mr. Burke stated that it was his opinion that the positive criteria outweighs the negative criteria and that the Board could grant the relief requested without substantial detriment to the public good. Mr. Burke stated that in the prior application, he tried to acquire property from the owners of Lots 2 and Lot 7 in order to offset the Lot depth issue but received a negative response. Mr. Burke said as to the frontage issue that it is a 40 foot right-of-way which cannot be cured. Mr. Burke then stated that he had completed the presentation of his direct testimony.

Ms. Trainor announced that 45 minutes had passed and said that the Board's rules limit applications to 45 minutes per meeting unless there is motion from a member of the Board to hear the application for a longer period of time. Ms. Trainor asked if there was any Board member that wanted to make a motion to extend the 45-minute requirement and to hear this application for a longer period of time. Ms. Brisben answered that she would like to make a motion to hear more testimony until at least 8:30 pm. because she said the agenda for the next meeting was full. Mr. Jones seconded the motion followed by a roll call vote in which all Board members voted for this time extension.

Mr. Clark stated that he wanted to ask Mr. Burke a question for clarification. Mr. Clark then stated that during the prior application, one of the conditions that the Board placed on its prior approval was that all ingress and egress from Lot 1.01 would be on Union Lane only and that the only access

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on Melrose Avenue would be from Lot 1.02. Mr. Clark asked Mr. Burke if this is still what is still being proposed in the current application. Mr. Burke responded to Mr. Clark and when asked by Ms. Trainor if he was answering yes to Mr. Clark's question, Mr. Burke replied that was correct.

Mr. Middleton presented a document he said was a tax map with Lots 8 and 9 marked in color. Mr. Clark marked this document Exhibit O-1.

Mr. Middleton asked Mr. Burke if he had prepared the application submitted. Mr. Burke responded that he had prepared the application. Mr. Middleton stated that in the application and the notice Mr. Burke had identified the Lot depth as 86.6 feet and said that at this meeting, Mr. Burke had said 95 feet. Mr. Middleton asked Mr. Burke if his application was incorrect. Mr. Burke answered that after filing his application, he had gone to the Zoning Officer for guidance, advice and her interpretation of the code and stated that the outcome was that his prior interpretation and apparently the Board's professional interpretation was that the back lot line would be that Lot depth and said it was different from what was in the application packet. Mr. Middleton asked if the Zoning Officer was present at this meeting or if she had provided Mr. Burke with a letter. Mr. Burke replied he had not asked for a letter. Mr. Middleton asked Mr. Burke if Mr. Hilla's letter identified the Lot depth as 86.6 feet to which Mr. Burke replied he thought it did.

Mr. Middleton asked Mr. Burke if he could identify any lot on Melrose Avenue with a lot depth with 86.6 feet or less. Mr. Burke replied that there are no existing or proposed Lots on Melrose Avenue with a lot depth of 86 feet. Mr. Middleton asked if there are any lots with a lot frontage of 40 feet. Mr. Burke responded that there were lots with 50 feet, 69 feet, 72 feet, all nonconforming. Mr. Middleton asked which lots were 50 feet. Mr. Burke answered Lot 5 is 50 feet, Lot 6 is 72.7 feet, Lot 8 is 69.0 feet. Mr. Middleton asked Mr. Burke if he was aware that Lot 5 and 6 were owned by Mr. Donnelly and if he was familiar with the legal term known as the "Merger Doctrine". Mr. Burke stated he was familiar with the term but as for its legality issues, he said he did not know what Mr. Middleton meant. Mr. Middleton asked Mr. Burke as a planner of 20 or 30 years in the City of Jackson, in the City of New Brunswick, if he had come across the term merger as it applies to contiguous lots that are substandard in size. Mr. Burke replied that he is familiar with the doctrine of merger. Mr. Middleton and Mr. Burke then had a discussion in regard to the term merger and Lots 5 and 6.

Mr. Middleton asked Mr. Burke if there were any other Lots on Melrose Avenue that are located at the terminus of the dead end. Mr. Burke answered that it was obvious to a casual observer and said he had provided that testimony and would rely on the record he created.

Mr. Middleton stated that Mr. Burke had indicated that he had done a traffic study. Mr. Burke replied that he had used photographic motion sensitive equipment to detect traffic movement between the dates of November 27<sup>th</sup> through December 5<sup>th</sup>, 2021. There was then discussion regarding Lot 8 and Lot 9 and whether or not those lots were under construction at the time of the traffic study and if the traffic that would be generated now from these two homes on a normal day was not reflected in Mr. Burke's traffic count. Mr. Burke stated that currently there is construction at Lot 8 and said that Lot 9 was under construction at the time of the count. Mr. Middleton asked if it wouldn't be more accurate to reflect the actual traffic that would be generated at these two

houses on a normal day. Mr. Burke answered that he felt that the traffic count generated was higher than what is likely to be the current conditions because the activity is less now. Mr. Burke stated that the car count he came up with was 89 events over an 8 day period and it was his estimate that during the daylight hours there was less than one trip per daylight hour including repeats. Mr. Middleton asked Mr. Burke how many vehicles of those counted were contractors and how many were homeowners. Mr. Burke replied that he did not make that breakdown. Mr. Burke stated that he did the traffic count at that time because Mr. Donnelly made comments at the November 2021 meeting during the prior application and he wanted to have traffic count numbers in order to respond to Mr. Donnelly's concerns.

Mr. Middleton stated that Mr. Burke had testified that he would be utilizing the C-1 hardship for Lot depth and asked by creating a Lot, isn't he creating the hardship. Mr. Burke responded that he was not because the lot is three times the size required by code and cannot be subdivided without a variance.

Mr. Middleton referenced Exhibit O-1 and asked Mr. Burke if Lot 8 and 9 were owned by the Estate. Mr. Burke replied that was correct. Mr. Middleton stated that there was uniformity in title between the subject lot and Lots 8 and 9 and asked if that was correct. Mr. Burke stated those lots were owned by his parents. Mr. Middleton asked Mr. Burke if it was accurate that the Estate sold Lot 8 in April of 2021 and sold Lot 9 in February of 2021. Mr. Burke said that the lots were under contract prior and that those could be the closing dates but said that he could not confirm the dates without looking at the closing documents.

Mr. Middleton presented two documents that he asked to be marked into the Record. The deed for Lot 9 recorded on April 20<sup>th</sup>, 2021, was marked as Exhibit O-2, and the deed for Lot 8 recorded on April 29<sup>th</sup>, 2021, was marked as Exhibit O-3. Mr. Middleton stated that his planner would be going into a great deal of detail on the merger issue. Mr. Middleton said the fact is that Lots 8 and 9 were illegally subdivided, that the applicant should have appeared before the Board and/or got a certification from the Land Use officer that both Lots conformed to the Zoning requirements.

Mr. Middleton asked Mr. Burke if the Estate, prior to selling Lots 8 and 9, came before the Board to obtain a subdivision. Mr. Burke answered that prior to these sales, the sale documents were reviewed by both the Estate's and the buyer's attorneys and their title companies and said that the sale documents were approved by all who reviewed them. Mr. Burke said that the properties were subdivided at the time when they were sold and that they must have been previously subdivided because they were separate lots when his parents bought them as well as when they were sold. Mr. Middleton asked Mr. Burke if it was fair to say that the Estate did not go before the Board for a subdivision. Mr. Burke answered that it did not do so and that the lots were already subdivided into two separate lots. Mr. Middleton asked Mr. Burke if it was fair to say that the applicant did not obtain a certification from the Zoning Officer that both Lots 8 and 9 conformed to the Zoning regulations. Mr. Burke replied they were not advised to do so by counsel. Mr. Middleton referenced a case entitled *Pasaro Builders v. Piscataway Township* which defined what is and isn't a subdivision and when a subdivision is required. Mr. Middleton stated that it is his client's position that the Estate should have come before the Board for a subdivision and said that both lots were

substantially under sized, one lot being 6,700 square feet and the other 7,500 square feet, where 11,200 square feet is required. Mr. Middleton stated that in March of 2023 he had sent a letter to Borough Attorney Mr. Montenegro alerting him of this illegal subdivision. Mr. Middleton stated that the point he was trying to make was that the subdivision application which is now before the Board could not be looked at in isolation but must be looked at and considered in light of what the applicant did in February and April of 2021 when he sold the other Lots.

Mr. Middleton stated that Mr. Burke had referenced the NJ Residential Site Improvement Standards and testified that the R.S.I.S. requires 28 feet in terms of road way. Mr. Burke responded that he had relative to the roadway classification and the 34 foot width as to its function under a residential access road. Mr. Middleton asked Mr. Burke if when he mentions the width he is referring to the pavement being 28 feet wide. Mr. Burke replied that was correct and said they had measured it out to be 30 but it varies because it is an uncurved right-of-way or uncurved cart way. Mr. Middleton asked Mr. Burke if it would surprise him that Mr. Donnelly and Mr. Angello, who lives on Lot 9, measured the cart way today and it was between 24 1/2 and 27 feet. Mr. Burke answered that nothing surprises him and said he measured it prior to the prior application in the vicinity not far off the dead end of the roadway. Mr. Middleton asked Mr. Burke if 28 feet is required and there is 24 feet, would that require a variance from the R.S.I.S. Mr. Burke answered no and said it was not his obligation to provide it nor does the R.S.I.S. stipulate that it has to be a 28 foot roadway. Mr. Burke then clarified he would have to check the R.S.I.S. and said he was not prepared to make that statement at this time.

Mr. Middleton asked Mr. Burke if it were correct that the front yard setback is 30 feet and the rear yard setback is 35 feet. Mr. Burke responded that was correct. Mr. Middleton said in Mr. Hilla's review letter, he pointed out that this would leave the buyer of the property with a 25 foot building envelope for width of the house. Mr. Burke disagreed and said he believed it was more around 32 feet. Mr. Middleton asked Mr. Burke what direction a house on the proposed subdivided Lot 1.02 would face. Mr. Burke replied that would be up to the developer and said it could be oriented in many different ways. Mr. Middleton asked Mr. Burke if he thought he had an obligation to come before the Board with some sort of plan as to the orientation of a house. Before Mr. Middleton could finish his question, Mr. Burke stated that he did not have an obligation to supply a site plan if that is what Mr. Middleton was saying and then said his obligation is to subdivide the property and that is what he is doing. Mr. Middleton asked Mr. Burke if it were true that he would not be presenting a proposed elevation and a proposed location of the house. Mr. Burke responded that it was not a requirement of the subdivision and said he was going to comply with the requirements for a subdivision. Mr. Middleton referenced Exhibit A-2 and discussed with Mr. Burke the building envelope depicted on this exhibit.

At that point, Ms. Trainor announced that the hearing had gone beyond the extended time period that the Board had granted for tonight's hearing and indicated that the application would be carried to the next month's meeting.

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 8:35 p.m.

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Denise Murphy, Recording Secretary

Approved: August 8<sup>th</sup>, 2023