

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

BRIELLE PLANNING BOARD  
TUESDAY, AUGUST 8<sup>th</sup>, 2023

The Regular Meeting of the Brielle Planning Board was held on Tuesday, August 8<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, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice

Absent – Chris Siano, Stephanie Frith, Amber Fernicola

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 12 people in the audience.

A motion was made to approve the Minutes of July 11<sup>th</sup>, 2023, this done by Jay Jones, seconded by Karen Brisben, all ayes, no nays.

CORRESPONDENCE: May/June issue of the New Jersey Planner

Ms. Trainor made an announcement that the application, 629 Higgins Avenue, on the new business agenda was being postponed to the September 12<sup>th</sup>, 2023 meeting and said that no new notices would need to be sent.

NEW BUSINESS: Application for variance to allow demolition and construction of a new home, Block 47.01 Lot 9, 319 Fisk Avenue, Squan Custom Homes, LLC., over building coverage, Minimum Side Yard – 10 feet required, 6.37 feet proposed and Maximum Building Coverage – 20% allowed, 14.19% existing, 25.13% proposed.

Attorney Michael Henderson, Henderson and Henderson, Manasquan, NJ stated he was representing the owner and applicants. Mr. Henderson stated he had three witnesses to present to the Board. Mr. Mark Herrmann, principle of Squan Custom Homes, LLC, - Mr. Joseph Kociuba, KBA Engineering Services, LLC, Manasquan, NJ and Mr. Paul Grabowski, Virtuoso Architecture, Wall, NJ were all sworn in by Mr. Clark.

Mr. Henderson called Mr. Herrmann to testify. Mr. Henderson asked Mr. Herrmann to describe to the Board what was being proposed. Mr. Herrmann answered that Squan Custom Homes, LLC acquired the property in June of 2022 and said that they were proposing to demolish the existing home and build a two story home, which would be above flood level. Mr. Henderson stated that he had no further questions for Mr. Herrmann.

Ms. Trainor asked the Board if they had any questions for Mr. Herrmann. Ms. Brisben asked Mr. Herrmann if he was aware that this was a substandard sized lot, only 7000 square feet. Mr. Herrmann answered that he was aware of that. There were no other questions for Mr. Herrmann.

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Ms. Trainor asked if there were any questions from the public. There were no questions from the public for Mr. Herrmann.

Mr. Henderson called Mr. Grabowski to testify. Mr. Grabowski began by saying he has been a licensed architect in New Jersey for the last 25 years and has testified before Boards throughout New Jersey and including this Planning Board. Ms. Trainor stated that Mr. Grabowski was accepted as an expert witness. Mr. Grabowski presented five documents which were marked for the Record by Mr. Clark.

Exhibit A-1- described as a front rendering of the home.

Exhibit A-2- described as alternate views of the front of the home.

Exhibit A-3- described as a rear rendering of the home.

Exhibit A-4- described as the crawl space plan.

Exhibit A-5- described as the first and second floor.

Mr. Grabowski stated that because of the flood zone, the design for the proposed home is an elevated design with parking underneath the home. Mr. Grabowski said that in a flood zone, a crawl space can be used for parking cars, access into the building and for storage. Mr. Grabowski stated that the proposed home would be a 2,719 square feet, 5 bedroom, 3 ½ bath home, and he further stated that the exterior would be a dutch colonial style. Mr. Henderson stated he did not have any other questions for Mr. Grabowski.

Ms. Trainor asked the Board if they had any questions for Mr. Grabowski. Mr. Hilla asked if the composite deck in the back would be constructed as a deck or a roof over the patio below. Mr. Grabowski replied that it would be a pervious composite deck that would allow water to flow through it. Councilman Garruzzo stated that he could see that the garage would be in the lower level and then asked if the front door would be in that space and if there would be a few steps from the front door into the house. Mr. Grabowski answered that there was a small, covered porch with a step up into the access area and then a staircase that goes to the first floor. Mr. Grabowski said there would also be a door there that closes it off from the back of the crawl space. Mr. Stenson asked if this area would count as a floor to which Mr. Grabowski replied that it counts as a crawl space and said that it was included in the square footage. Ms. Brisben asked if someone could walk into the crawl space. Mr. Grabowski answered that because there would be parking under the house the height of this space would be higher. Ms. Brisben asked if the crawl space would have a cement floor. Mr. Grabowski responded that it would be cement. Ms. Trainor referenced Exhibit A-4 and said it looked like the mechanicals would be in the crawl space area. Mr. Grabowski replied that what was shown was the furnace, the air handler. Mr. Grabowski stated that the generator and the condensers would be on the side of the house above the flood plain.

Ms. Trainor asked if there were any questions from the public. Maureen O'Neill, 321 Fisk Avenue, was sworn in by Mr. Clark. Ms. O'Neill said that she noticed on one of the drawings that there was a lift and asked if it was an elevator. Mr. Grabowski replied that what she was referring to is a platform for two condensers and a generator. There were no other questions from the public for Mr. Grabowski.

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Mr. Henderson called Mr. Kociuba to testify. Mr. Kociuba stated he is a Licensed Engineer and Planner in New Jersey and has testified before numerous Boards in Monmouth and Ocean Counties. Ms. Trainor stated that Mr. Kociuba was accepted as an expert witness. Mr. Kociuba stated that this property is in the R-3 Zone, said the Lot is 7000 square feet which is undersized, it is 50 x 140, which is narrower than what is permitted in the zone. Mr. Kociuba stated the pre-existing home on the property is nonconforming for front yard and side yard setback.

Mr. Kociuba presented a document described as the plot plan prepared by his office. Mr. Clark marked this document as Exhibit A-6. Mr. Kociuba stated that the existing home would be demolished and said that the proposed home would comply with front, side and rear setbacks. Mr. Kociuba then detailed the variance relief the applicant was seeking for the mechanical deck. Mr. Kociuba said it was only the deck and the mechanicals there were pushing it over for the allowable building coverage.

Mr. Kociuba stated that the applicant is proposing a one car garage. Mr. Kociuba stated that the Borough's Ordinance requires two parking stalls and then said that the R.S.I.S. standards require three spaces for a 5 bedroom home. Mr. Kociuba said that the applicant wants to be compliant with the R.S.I.S. requirement so they could expand the driveway along the front of the property from 12 foot wide to 18 foot wide to allow for two cars in the front yard. Mr. Kociuba said that the only issue with that was that the Borough's Ordinance requires properties with less than 75 feet in width to obtain a design waiver to allow a driveway that is wider. Mr. Kociuba stated it was his opinion that widening the driveway to two cars would be beneficial, planning wise. Mr. Kociuba also stated that it was his opinion that the variances could be granted under the C-1 and the C-2 criteria and then detailed the reasons he felt this way. Mr. Kociuba stated it was his opinion that the Board should grant the variances as requested and said he felt there would not be any negative impact as result of the application.

Mr. Kociuba referenced Mr. Hilla's review letter and said that the applicant agrees with all the figures in item number 1, in item number 2, said that they would provide the extra parking stall and in item number 3, they are proposing to replace the sidewalk and the curb along the front and agree that it is in poor condition.

Mr. Hilla asked Mr. Kociuba if when he refers to widening the driveway, he is only referring to the driveway and not the curb cut. Mr. Kociuba answered that they would keep the curb cut the same width and flare out the two car driveway in the property.

Councilman Garruzzo asked Mr. Kociuba if the applicant is asking for this driveway or if this was just an idea. Mr. Kociuba answered that their plan was to install that driveway because they are not asking for relief from the parking, his position is that he does not believe they need relief for two cars and said he thought it was appropriate to provide for three. Mr. Kociuba said Mr. Hilla is correct that the R.S.I.S. states that for 5 bedrooms you need 3 parking stalls and then said the Borough Ordinance requires two. Mr. Hilla stated that he thought the R.S.I.S. by reference supersedes the Ordinance so it becomes a variance condition because it supersedes the Ordinance requirement. Mr. Clark stated he agreed with Mr. Hilla. Mr. Henderson stated he also agreed and they would agree to provide three off street parking spaces. Ms. Trainor asked Mr. Clark if this variance request needed to be noticed. Mr. Clark said it was not a variance it was a design

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waiver. Mr. Henderson stated that the applicant's notice said they were seeking any variances and waivers that came up during this hearing. Mr. Henderson stated he did not have any other questions for Mr. Kociuba.

Ms. Trainor asked the Board if they had any questions for Mr. Kociuba. Mayor Nicol asked if the driveway was pervious. Mr. Kociuba replied that they planned on a paved driveway, impervious. Ms. Brisben asked how someone would get to the mechanical platform. Mr. Kociuba answered that when it needed to be maintained they would use a ladder. Mr. Tice asked how they would accomplish making the driveway 18 feet. Mr. Kociuba replied that they would expand 6 feet to the right side. There were no other questions for Mr. Kociuba.

Ms. Trainor asked if there were any questions from the public for Mr. Kociuba. Dennis O'Neill, 321 Fisk Avenue, was sworn in by Mr. Clark. Mr. O'Neill asked if the applicant would consider moving the setback a minimum of 4 feet from Fisk so they would not lose the complete view of the Glimmer Glass. Mr. Kociuba stated that they would agree to 34 feet. There were no other questions.

Mr. Henderson finished by saying he thought this application was very straightforward, seeking minimal relief, would be aesthetically pleasing to the neighborhood, meets the goals of the Municipal Land Use Act in that it provides safety from fire and flood and is in line with the neighborhood scheme.

Ms. Trainor asked if there were any comments in regard to the application from the public. Hearing none, Ms. Trainor asked to hear comment from the Board. Mayor Nicol stated he thought this was a reasonable application. Councilman Garruzzo said he appreciated that the applicant's flexibility when dealing with the neighbors, stated there was no negativity from the public and finished by saying he had no issues with the application. Mr. Stenson said he had no issues with the application. Mr. Jones stated he felt the application was very thorough and thought it would be a nice improvement. Ms. Brisben said she agreed with Mr. Jones, had no issues with the application and said she thought it would be a very nice home. Mr. Tice said he had no issues with the application and liked that the applicant worked with the neighbors. Ms. Trainor said she appreciated the faith and good will that the applicant brought to work with the neighbors, said she felt the applicant had met the requirements for the C-1 and C-2 variances that were sought and thought their design waiver would meet the R.S.I.S. requirements and were appropriate.

Ms. Trainor asked Mr. Clark if he could review the different things spoken about that would be a condition of approval. Ms. Brisben asked if there could be a stipulation added that the patio below the deck could never be enclosed. Mr. Henderson stated that the area could not legally be turned into livable space under FEMA compliance and said if the Board decided to add it as a stipulation the applicant would agree.

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

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

Noes: None

OLD BUSINESS: Continuation of hearing of 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.

Councilman Garruzzo announced it was necessary for him to recuse himself from this application. Ms. Trainor noted that Mr. Stenson had not had a chance to catch up on the prior testimony he missed but will review the recording.

Mr. Clark stated that at the last meeting, Mr. Burke had finished his direct testimony and presentation and that Mr. Middleton had finished his cross examination. Mr. Clark said the application had not yet been opened to questions for Mr. Burke.

Kim Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio asked Mr. Burke if he lived on the property and if it was the estate's intent to sell the property whether it was subdivided or not. Mr. Burke answered he did not live on the property and said selling was up for discussion with the co-executor. Mr. Burke said there was interest from two different family members who are heirs to the property. Ms. Nuccio then asked if Mr. Burke found any homes fronting on dead-ends that do not have a bulbous end. Mr. Burke responded that he thought he counted 27 dead-ends without bulbous ends or cul-de-sacs. Mr. Nuccio asked out of those 27 dead-ends without bulbous ends, is there development at the terminus like he is proposing on Melrose Avenue. Mr. Burke replied that there was but said he did not have that information handy.

Ms. Nuccio stated that Mr. Burke had testified that the mature trees on the property were in decline and asked if he had them professionally evaluated. Mr. Burke said he observed them himself and said he suspected that the Holly trees are over 80 years old. Ms. Nuccio stated that Mr. Burke testified that there were no environmental concerns and then referenced a review letter, dated December 13, 2021, from the Brielle Environmental Commission, read out loud that enumerated a few issues. Mr. Burke asked Ms. Nuccio what the issues were and then said there was not a letter written for this application. Ms. Nuccio replied that that is true but that he had testified that this application was the same as the last one. Ms. Nuccio presented the letter and asked that it be marked for the Record. Mr. Clark marked the letter as Exhibit O-4.

Ms. Nuccio stated that Mr. Burke had testified that the proposed subdivision comports with the objectives of the Master Plan number 3 which she read as to provide light, air and open space and asked if the subdivision would do the exact opposite. Mr. Burke answered that he thought the lot exceeds the lot area required in the zone, it provides trees outside the buildable footprint and said he did not believe the function of the lot was to provide neighbors with open space.

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Ms. Nuccio stated that Mr. Burke had testified that acquiring a portion of the adjacent properties was not practical and asked if he had approached her and the other property owners for this application. Mr. Burke responded that he had approached the adjacent property owners in the prior application and both parties said no. Mr. Burke said that even if they had agreed it would have caused variances on those properties which would have exacerbated the issue. Ms. Nuccio stated that the situation is very different now asked Mr. Burke again if he approached the adjacent property owners in this application. Mr. Burke asked Ms. Nuccio if she would sell. Ms. Nuccio answered that she and her husband would have to discuss that. Ms. Nuccio said that she did not have any other questions for Mr. Burke.

Ms. Trainor asked if there were any questions from the public for Mr. Burke. Hearing none, Ms. Trainor asked to hear questions from the Board. Mr. Jones asked if the shed was removed. Mr. Burke answered that it was removed. Ms. Trainor asked Mr. Burke if he had said that the parcel was acquired in 1962 and asked who the purchase owner was at that time. Mr. Burke answered that it was his understanding that the subject parcel was purchased then and the owners were Edward and Charlotte Burke. Ms. Trainor asked if it were true that Edward and Charlotte Burke also owned Lot 8 and Lot 9. Mr. Burke replied that it was true and said he believed they acquired those lots around 1967. Ms. Trainor asked when Lots 8 and 9 were sold. Mr. Burke answered he thought they were sold in 2020 and 2021. Ms. Trainor asked if the parcels ever changed title from Edward and Charlotte Burke between 1967 and 2021. Mr. Burke replied that he did not believe so. Ms. Trainor said that Mr. Burke had referenced a garage on Lot 9 and asked when it was removed. Mr. Burke answered that it was removed when the current owner went to build upon it. Mr. Burke said there were no improvements on Lot 8. Mr. Trainor asked if there were ever any improvements that spanned the boundary line. Mr. Burke said that the Borough had a drainage pipeline that ran right along the Lot line. Ms. Trainor referenced a driveway and Mr. Burke said when the property, Lot 1, was originally acquired, the driveway access was out to the dead-end of Melrose Avenue and after the other two Lots were acquired, the gravel driveway was removed and relocated.

Ms. Brisben asked Mr. Burke if because the Lot he is creating is so small and the other Lot is of a larger size, did he consider making the smaller Lot a little larger. Mr. Burke responded that the Lot they are seeking exceeds the 11,250 square feet requirement and said it is their desire to sell the existing house with an appropriate piece of property and they think a good sized backyard is part of that.

Mr. Middleton referenced the merger issue and read out loud Ordinance number 2156.2 and asked Mr. Burke if he had reviewed this Ordinance before tonight or before he sold Lots 8 and 9. Mr. Burke answered he was not familiar with the Ordinance. Mr. Middleton asked if at the time they were sold, were these Lots undersized. Mr. Middleton asked if one Lot was 7500 square feet and one Lot was slightly under 7000 square feet. Mr. Burke answered that was correct. Mr. Middleton stated he had no further questions for Mr. Burke. Mr. Burke then read Ordinance number 21-9.3 out loud to the Board.

Mr. Burke stated he did not have any other witnesses to present. Mr. Middleton stated he had other witnesses but said Ms. Nuccio would be giving her own testimony first. Ms. Nuccio stated she would also like to be her own expert witness, recited her degrees and said that she was a

Landscape Architect, employed at Melillo, Bauer, Carman Landscape Architecture, Brielle. Ms. Nuccio stated she has appeared before this Board and other Planning Boards including Belmar, Spring Lake and Wall Township. Ms. Trainor stated the Board recognizes Ms. Nuccio's credentials as a Landscape Architect. Ms. Nuccio began by saying she is before the Board for her family and other members of the community and said she has five specific points to make. Ms. Nuccio stated the first point was hardship and said there is no hardship on an existing conforming Lot, creating a nonconforming Lot with such a narrow building envelope is certainly a self-created hardship which she said under the Municipal Land Use Law 29-2.9 is not permitted. The second point Ms. Nuccio said was frontage and said it has been argued by her and others that the Board's previous approval of frontage at the terminus at the dead-end was arbitrary and unlawful. Ms. Nuccio said there is no provision in Brielle's Ordinance where frontage on a dead-end street that is not a cul-de-sac and said she would like to see proof of other homes that are developed at the terminus of a dead-end without a bulbous end. Ms. Nuccio discussed the trees and said she wanted to explain to the Board why they are so important. Ms. Nuccio said that mature vegetation defines the character of a neighborhood and said local ecology matters. Ms. Nuccio referenced black walnut trees that are present and said that these trees inhibit the growth of new trees. Ms. Nuccio said that to really understand what the trees are doing, a detailed site analysis would be necessary. Ms. Nuccio read out loud 29-2.8, "Negative Criteria", and read from the Zoning Ordinance 21-3, "Purpose". Ms. Nuccio said that a new house on the proposed lot would replace the vegetative buffer that the surrounding properties now enjoy, specifically the people swimming in her pool, cooking at her barbecue, sitting around her firepit, the people jumping on Mr. Donnelly's trampoline. Ms. Nuccio said they would no longer have the privacy of buffering afforded to them in the open space standards of Brielle's Zoning regulations, instead a new house would have views directly down into those recreational spaces. Ms. Nuccio said that the basic fabric of their existence would be disrupted, impacting the very things that not only contribute to their wellbeing but bring them joy and happiness. Ms. Nuccio said she would argue that this subdivision would impact that and be detrimental to the public that would be affected. Ms. Nuccio stated she is not a Planner but had spent some time reading the big yellow book and said she did not think that a variance was the right planning tool for this subdivision to go forward. She said that both Mr. Burke and Mr. Middleton stated that all of the lots, except one, on Melrose Avenue were 100 feet deep. Ms. Nuccio finished by saying that the application could go a number of ways and said that the Board had some discretion. She then pointed out that the MLUL provides guidance on that discretion and then referenced 29-2.6. Ms. Nuccio stated that one outcome would favor the estate and said that the people that live in the neighborhood would suffer would bear that burden or an outcome that would favor the people that live in the neighborhood, that the character of the neighborhood would be preserved and said that the Zoning Law and the Master Plan would be upheld.

Mr. Burke asked Ms. Nuccio how many trees she had taken down on her property in the last five years and did any of those trees border the common property line. Ms. Nuccio answered that she has taken down one or two. Mr. Burke asked what the distance was from the back of Ms. Nuccio's house to the common line to the proposed lot. Ms. Nuccio answered she did not have the measurement. Mr. Burke asked Ms. Nuccio to estimate it. Ms. Nuccio estimated 80 feet. Ms. Burke stated that Ms. Nuccio had taken down some trees along their common property line over the past several years and asked if she agreed. Ms. Nuccio said she did not agree and said they had taken one tree down because a portion of it had fallen and another one of Mr. Burke's trees

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that had fallen also and had destroyed her greenhouse. Ms. Nuccio stated her primary home is closer to Ashley Avenue but said her recreational space is a barbecue and then presented a document she prepared a Site Analysis, which was marked as Exhibit O-5. Ms. Nuccio said the important part of this exhibit show their recreational space, their pool, barbecue, fire pit, and greenhouse, all close to the proposed subdivision. Mr. Burke asked Ms. Nuccio if it was her position that they should not be able to build a house because she has recreational spaces in the rear of her property. Ms. Nuccio answered that was not her position. Mr. Burke stated he had no other questions.

Mary Burke, 1013 Cedar Lane, came forward and was sworn in by Mr. Clark. Ms. Burke stated that the property has the potential to be divided into three separate lots and asked Ms. Nuccio how that would change things for her. Mr. Middleton objected to this question and said there is no plan before this Board showing three Lots. Ms. Trainor said the there was no foundation for the question and said that the objection was sustained. Ms. Burke had no other questions.

Ms. Trainor asked if there was anyone else from the public that wanted to ask questions. Hearing none, Ms. Trainor announced it was time to hear questions from the Board. Ms. Brisben asked Ms. Nuccio if she had a buffer area in her rear yard. Ms. Nuccio answered that she had a garden that runs along the edge and some black walnut trees there as well. There were not any other questions from the Board.

Ms. Trainor announced that the Board hears testimony for applicants for 45 minutes and said that 50 minutes had passed on this application and said the Board would like to observe the 45 minute rule unless someone wanted to extend the time. Mr. Clark stated that due to a conflict that Mr. Middleton has in September this application would be carried to October 10, 2023 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 8:37 p.m.

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Denise Murphy, Recording Secretary

Approved: September 12<sup>th</sup>, 2023