

BRIELLE PLANNING BOARD  
TUESDAY, FEBRUARY 6, 2024

The Regular Meeting of the Brielle Planning Board was held on Tuesday, February 6<sup>th</sup>, 2024 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 Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice, Amber Fernicola, Danie Turak

Absent – None

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer and Denise Murphy, Recording Secretary. There were 11 people in the audience.

Next on the agenda was approval of the January 9<sup>th</sup>, 2024 minutes. Ms. Trainor stated that a copy of the minutes were circulated to the Board for review and said that there were some changes suggested to the minutes. Ms. Brisben stated she received the changes late in the day and did not have time to correct the minutes and redistribute them to the Board members. She suggested that the approval of the January minutes be carried to the March meeting. A motion was made to carry the approval of the January 9<sup>th</sup> minutes to the March meeting. Mr. Siano made the motion, seconded by Mr. Jones, all ayes, no nays.

Ms. Trainor announced that the hearing on 417 Euclid Avenue was being postponed by the applicant to the March 12<sup>th</sup>, 2024 meeting and said there was no further public notice required.

Ms. Trainor also announced that tonight was Ms. Frith's last night on the Planning Board because she said Ms. Frith was intending to submit a resignation. The Board thanked Ms. Frith for her time and gave her a round of applause.

Correspondence: November/December 2023 issue of the NJ Planner.

NEW BUSINESS: Application for variance relief for Block 16.01, Lot 4, 617 Bradley Avenue, owned by Joseph & Colleen Accisano, to allow a deck in the rear yard setback. Minimum Side Yard Setback — 10 feet required, 8.3 feet existing (to house), 9 feet proposed (to deck). Minimum Rear Yard Setback — 35 feet required, 28 feet existing, 13 feet proposed.

Attorney Frank Accisano stated he was representing the Applicants and he called Colleen Accisano to testify. Ms. Accisano was sworn in by Mr. Clark. Ms. Accisano described to the Board the existing conditions at the property and presented to the Board a set of photographs that were multiple sheets stapled together. Mr. Clark marked as this as Exhibit A-1. Ms. Accisano described the existing conditions depicted on each page to the Board.

Mr. Accisano asked Ms. Accisano to explain to the Board the existing issues and what the Applicants are proposing. Ms. Accisano spoke about the existing impervious pavers and how they gather water, the existing steps that are steep and said that current conditions discourage the use of the back yard. She said that the main goal of the improvements is to eliminate the flooding issue and to create a safer ingress and egress out of the back door by removing the pavers and by placing stone in that area to improve drainage of the area. She said that the Applicants are seeking approval to construct a deck at floor level in the footprint of the paver patio so when exiting the backdoor it would not be a significant drop down which she said would increase the use of the backyard.

As Mr. Accisano had no more questions for this witness, Ms. Trainor turned to the Board for their questions and Mr. Siano asked how many steps were there now to which Ms. Accisano responded there were three steps. Ms. Brisben asked if the deck would be four feet high and if there would be any other ingress or egress off of the deck. Ms. Accisano said the deck would be four feet high, and when exiting the backdoor you would walk directly onto the deck. Ms. Accisano stated they proposed adding steps to the deck. Ms. Brisben stated the plans did not show steps. There was then a discussion where the Applicants wanted to place the steps and whether the placement could affect the variance and also if the height of the deck was truly four feet or not. Ms. Trainor asked if there was any other portion of the property that floods and asked if the Applicants knew who owned the property behind them. Ms. Accisano answered that there were no other areas that flood and said there used to be a house behind them that was torn down and said the owners of the property live to the south of that property. There were no other questions from the Board.

Ms. Trainor asked if there were public questions for Ms. Accisano. Hearing none, Ms. Trainor asked if there were any public comments in regard to the application. Alan Franke, 615 Bradley Avenue was sworn in by Mr. Clark. Mr. Franke said he was before the Board to show support for the application. He said that the back yard does have some issues and thinks that a deck would be a great improvement to the property.

Mr. Accisano began his final comments by saying that there were issues on the property that need to be addressed, said he felt the improvements would satisfy the positive criteria, said this would create a better situation and asked the Board to grant the variance.

Mr. Clark stated for the record that the lot is pretty severely undersized, both in lot size, minimum lot depth and lot width.

Ms. Trainor asked to hear comments from the Board regarding the application. Mayor Garruzzo said that he thought the application was fine, said that the applicant would not be extending the deck, said that he thought the standing water was a detriment to everyone and said adding stone to the area where the pavers is a positive step. Mayor Garruzzo finished by saying he did not have any issues with the application. Mr. Stenson said he had no issues with the application and thought it was a good solution to the problem. Ms. Brisben stated that the applicant had come before the Board in 2005 for variances to build their home which were granted, said that it was noted then that the lot was undersized and finished by saying she did not have any issues with the application. Mr. Jones stated he agreed with Mayor Garruzzo's comments. Mr. Turak stated he felt the application was a nice solution to their problem. Ms. Trainor stated that her comments echo the

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undersized and irregular shape of the property and by virtue of that she felt that the Applicants qualified for the variance being sought under the criteria.

Ms. Trainor asked Mr. Clark to review the items that the Applicants had agreed to. Ms. Trainor then asked for a motion to approve the application with the stipulations Mr. Clark had listed.

A motion to approve the above application was made by James Stenson, seconded by Mayor Frank Garruzzo and then by the following roll call vote:

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

Noes: None

Not eligible to vote: Daniel Turak

OLD BUSINESS: Continuation of hearing for application for Use Variance/ Site Plan, Block 33.01, Lot 1, 110 Union Avenue, M & D Ventures, LLC (site of LaMondina Restaurant) to allow addition to site.

Mayor Frank Garruzzo announced it was necessary for him to recuse himself from the next two applications.

Attorney Robert Shea came forward on behalf on the applicant. He said that at the last meeting, the Board heard testimony from Mr. Sewald, a professional engineer who is in charge of the project. He said that at the last meeting, the applicant heard certain comments from the Board and some recommendations that Mr. Hilla's report and now have had the opportunity to make some amendments to the plan and said he wanted Mr. Sewald to highlight the changes that have been made.

Mr. Clark stated that Mr. Sewald was still under oath and reminded the Board that Mr. Sewald had finished with his direct testimony but had not heard any questions from the public or the Board. That being said, Mr. Clark indicated that if the applicant wanted to continue with further direct testimony from Sewald, it could do so.

Mr. Sewald referred to Exhibit A-2, prepared by his firm, called "Site Plan Rendering", dated December 12, 2023. Mr. Sewald stated that the material changes he was going to summarize for the Board would not change the layout of the facility, so all of the testimony heard at the prior meeting about the building, the driveways on Route 71, the parking lot configuration all remains the same. Mr. Sewald stated that the summary he was going to advise the Board on was based on all of the feedback received from the Board members, the public, as well as addressing the items in Mr. Hilla's professional review letter. Mr. Sewald discussed in detail the changes to the landscaping and said they would be adding over 180 new plantings, various shade trees, ornamental trees, evergreen shrubs and deciduous shrubs that would wrap along Magnolia Avenue,

Route 71, and some in the interior. Mr. Sewald then presented a document called "Landscape Plan," which Mr. Clark marked as Exhibit A-3.

Mr. Sewald said there was a lot of discussion about the lighting on site and questions of the existing lighting and what lighting was being proposed. He stated that the applicant is willing to modify the lighting based on what the Board recommends. Mr. Sewald spoke about the existing lighting and described a more modern LED lighting system option. He said the existing lights are nonconforming and said that the proposed lighting plan would need a variance because the Borough's Ordinance calls for .3 foot candle illumination as a minimum and a 1/2 foot candle on average across the entire site and said that both the existing and proposed lighting do not comply. Mr. Sewald stated they felt that it would be an improvement to change the lights to LED flush mounted, downward facing fixtures. Mr. Sewald then began to discuss square footage and said that the building would be 10,442 square feet and said that based on the parking space calculation, 104 spaces are required which would require a variance. Mr. Sewal said there are currently 93 spaces and said that with some reconfiguration they would be gaining 4 parking spaces.

Mr. Sewald stated that they have worked with Chris Willms, Fire Prevention Officer, and have modified the fire truck circulation. He said they do not have an official approval letter from the Fire Prevention Officer yet but said he does have an email that states Mr. Willms approves the new circulation. Mr. Sewald stated that this were the four items that they have done since the last meeting and said that concludes all of the new testimony.

Ms. Trainor asked if there were any questions for Mr. Sewald from the public. Kimberly Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio stated she is employed across the street from the site and began asking questions about the generator. She asked how they decided the location of the generator. Mr. Sewald answered that the property has two zones and said they determined it would be best to put the generator, which turns on once or twice a week for maintenance purposes or if the power should go out, in the commercial portion of the site away from the residential neighbors and said they also wanted it next to the building. Ms. Nuccio asked how tall the generator would be. Mr. Sewald responded he did not know the height of the generator but regardless he said that they would work with Mr. Hilla's office to ensure the proposed plantings will provide a screen around the generator so it would not be seen. He also said the generator would be pad mounted. Ms. Nuccio said during Mr. Sewald's testimony it seemed that all of the consideration, when deciding where to put the generator, was for the people who live near and not for the people who work near the site. Mr. Sewald answered that he would not say that there was no consideration and said after looking at the site plan and due to the reconfiguration of the rear, it was his opinion that it was the best location. Ms. Nuccio referenced the parking lot and asked, in addition to adding all of the landscape around the perimeter, if they would reconsider designing the parking lot to add more green space. Mr. Sewald answered that he did not know if there was a way to redesign it to increase parking but reduce impervious coverage. Ms. Nuccio said she did not have any other questions.

Hearing no other public questions, Ms. Trainor said that it was time to hear questions for Mr. Sewald from the Board. Mr. Stenson asked Mr. Sewald to confirm the number of parking spaces they were proposing. Mr. Sewald stated it was his opinion that there are 104 spaces required. Mr.

Stenson referenced the outdoor seating area and said he thought this space was supposed to be temporary and thought it has more seats than it was supposed to have. Mr. Sewald said that there was a previous application to get approval for the overhang and covered patio and said that in this application there would not be any additional seats added. Mr. Shea said that a previous Resolution approved 44 seats which is the number of seats there currently. Mr. Stenson asked if the outside portion would come down in the springtime. Mr. Shea answered that it will stay there and not come down.

Mr. Siano asked if it was true that the outdoor seating did not count towards the parking deficiency based on the Borough's Ordinance. Mr. Sewald replied that he did not believe based on the Brielle Ordinance that it would count towards the full parking amount. Mr. Sewald stated the Ordinance is not based on seats, it is based on square footage of a building. Mr. Hilla stated he thought the Board took that area as service area and that parking would be applied based not a seat count but on square footage of the patio. Mr. Shea stated that this may be where the square footage discrepancy is. Mr. Hilla stated there is one basis for parking at restaurants and it is based on square footage and said there is no way the Planning Board would have allowed the patio to be built without accounting for parking for the space of the patio. Mr. Siano stated that he thought the patio is not a patio anymore and said that it is part of the restaurant, it is enclosed with walls around it, has a roof, and said that even though the glass or screens can be rolled up and down seasonally, he did not agree with not using that area as part of the square footage. Mr. Siano said he just wanted to know the number of deficient parking spaces including the area of the patio. Mr. Sewald replied that it is 118 spaces, 97 proposed and 93 existing and said that he agreed with Mr. Siano that the math has to be correct based on the Borough's Ordinance. Mr. Sewald stated he wanted to re-summarize for the Board and said regardless of the calculation whether the patio is included or not, which he said they were happy to include it, it is their opinion that the reconfiguration that is being proposed is still an improvement to an existing condition. Mr. Siano then asked if the generator would back up the entire building so they would be able to operate during a power outage or would it be only for critical infrastructure. Mr. Sewald answered that currently it would be for full power.

Ms. Brisben referenced the Planning Board Resolution from 2015, page 8, item 12. She read item 12 which said in event that the applicant installs an awning over the outdoor area, which was granted in 2022, there will be no sides permitted so as to form any sort of full or partial enclosure and no heating will be permitted. She then read from the Resolution from 2022 which said that all the conditions of patio approval set forth in the 2015 Resolution shall remain in full force and effect. Ms. Brisben stated that Mr. Shea said that the applicant went to the Building Department and received a C.O. to enclose the patio which could have happened but said that the 2015 Resolution stated it should not have happened. Mr. Shea replied that he respectfully disagreed and said that he had gone through the entire Resolution and said that there were discussions during the course of the hearing and one of the representations from the applicant was that he was intending on using the space 365 days a year, winter panels, and heaters. Ms. Trainor asked Mr. Shea where this was in the Resolution. Mr. Shea answered it was on page 7 and referenced Paragraph G. Ms. Trainor asked Mr. Shea if what he had just said was written in the stipulations that the Board and the applicant agreed to this stipulation before the motion was made. She said she did not see it listed in the stipulations and if it is not there, the Board would not have voted on it. Ms. Brisben and Mr. Stenson stated that they did not remember that and thought that it was said it would be

temporary. Mr. Shea said this was part of the architectural plans which were ultimately signed off by the Planning Board, received Zoning Approval and Building Permit in 2022. Ms. Trainor asked Mr. Shea to look at Paragraph P and then in this paragraph when there were findings made about the negative criteria for the C-2 variance application, it said the relief could be granted without substantial detriment to the public good because the proposed project was just seeking approval to construct a roof over the existing outdoor patio dining area to enhance its use. Ms. Trainor asked Mr. Shea what his opinion was procedurally based on all of this and said she thought the questions were well founded. Mr. Shea agreed that the questions were well founded and said just vetting the whole issue out to make sure that perhaps in the future what is out there is exactly what is out there. He said as the project goes through a metamorphosis, hopefully it will get better and better and will be more in compliance with Brielle's Land Use and Development Regulations.

Mr. Tice asked if after all this discussion if the square footage calculation had changed. Mr. Sewald answered that the 1,396 square foot of the patio would be added to the 10,440 square feet that the plans represent. Mr. Shea said he thought the total was 11,816 square feet. Mr. Tice asked if there was any offsite parking at any other location in the surrounding area. Mr. Sewald replied he was not aware of any offsite parking at any location owned or leased by the applicant.

Mr. Turak asked if Mr. Sewald had said that they could improve the current lighting or add additional lighting. Mr. Sewald responded no and said that the lighting plan that are part of the civil drawings are their proposal which they believe is an improvement and said they modeled what is there today. He said the existing plan is not an improvement, they were saying what the lighting levels would be and said it was an existing nonconforming condition. He said they would be increasing the illumination on their proposed plan. Mr. Turak asked Mr. Sewald is he had a preference. Mr. Sewald answered his preference would be to change the lamps to a LED feature and even though there would be a slight increase in average illumination, 1.44 foot candles is still very, very dark so he did not feel it would be a negative impact for the residential neighbors and said that it would not spill over the property lines or into the roadway. He said he thought it would be a nice enhancement.

Mr. Hilla stated that he agreed that the enhanced lighting that is proposed, while slightly brighter, would not have any impact around the perimeter and will definitely benefit the site. He then asked if there was any other equipment that would be ground mounted. Mr. Sewald answered that there are some things on the roof but said they would be screened.

Ms. Trainor announced that each application that comes before the Planning Board is 45 minutes so the rest of the application will be carried to the March 12<sup>th</sup> meeting.

Chris Siano announced it was necessary for him to recuse himself from the next application.

#### OLD BUSINESS:

The Board then turned to the last item on the agenda, the continued hearing for a Minor Subdivision for Block 81.01, Lot 1, 409 Union Lane, owned by Daniel & Todd Burke, Co-Executors. Mr. Dan

Burke was present to continue his testimony and Mr. Tim Middleton, Esq. representing an objector, Peter Donnelly, was also present.

Mr. Burke wanted to continue his rebuttal testimony and he started with the topic of the lot merger. He showed on the map where the driveways of the lots were located and said that this was established in the prior application he had filed and gave a brief history of the two lots by the Burke home that were the topic of the lot merger question. He said there were always driveways here on these lots as there was a storage garage at that location back before the Burke family had purchased the lots. He also spoke of a drainage easement between lot 8 and lot 9 and indicated that, as per his conversations with the Tax Assessor (as set forth in the emails that Mr. Burke submitted to the Board), the lots could not be merged due to this easement. There also is a utility easement from Jersey Central Power & Light here. Mr. Middleton objected to this as Mr. Burke is not an attorney and cannot give legal statements but Ms. Trainor wanted to hear Mr. Burke's testimony; Mr. Middleton said that Mr. Burke's statements were absurd about a utility easement not allowing a merger. Ms. Trainor felt that Mr. Burke should be able to continue even though he is not an attorney and that the Board will give the testimony whatever weight it deems appropriate. Mr. Burke said that lots 8 and 9 were originally merged from 5 lots to 2 and Mr. Clark referenced Exhibit A-5 on this, a survey from 1999. Mr. Burke then went through some exceptions in the merger law and again referred to the Tax Assessor agreeing with him and had paperwork on this which was marked as Exhibit A-13, an email exchange between himself and the Tax Assessor on the lots being created.

Mr. Burke then quoted Borough Code 21-9.3 which speaks of grandfathering legally established lots that pre-date the current code. These lots were established in 1971 (Mr. Burke felt it may have been earlier) and the Borough Code was adopted in 1972, so Mr. Burke contends that the lots pre-dates the code and are grandfathered. He said the Burke family had owned these lots for 5 decades and, if the Borough felt that a merger should have been done, it should have been done before this subdivision application. Mr. Burke said that the responsibility to merge lots lies with the municipality.

Mr. Burke then spoke of the lawsuit that Mr. Middleton had filed against him regarding Mr. Burke's previous subdivision last application. The resolution of that lawsuit resulted in a consent agreement, dated May 12, 2023, that stipulates that all complaints are dismissed along with the requirement of a lot merger and this consent agreement was marked as Exhibit A-14. He did not have copies to distribute and Mrs. Brisben asked that he please email this exhibit to her for the file and Mr. Burke said he would do so. He said the lot merger matter is moot as there are now two homes on these lots.

The next matter that Mr. Burke addressed was the Environmental Commission letter entered into evidence as Objector Exhibit A-4. Ms. Trainor said the Environmental Commission representative is not here so this is a hearsay document even though it was accepted as an Exhibit for the original application and she reminded all that the Covid rules relaxing the requirements for personal appearances at Planning Board hearings have been suspended. Mrs. Brisben spoke and said this document is from 2021 and Mr. Burke agreed it is from the first application. Mr. Burke said he had asked Mr. Clark if a representative could be here and was told it can be addressed through his rebuttal which is why he is bringing it up. Mr. Clark thought he had told Mr. Burke if he wanted

to subpoena the Chairman of the Environmental Commission he could do so if he felt his testimony would be needed, that was his recollection but he did say Mr. Burke could address the facts if he wanted to in his rebuttal and Mr. Burke said that is what he wants to do. He says the letter states the application is incomplete as a topographic map was not submitted; that was true of the prior application but the current application does have one. Mr. Burke said the size of the proposed lot mentioned in the report is inaccurate and it says the parcel would be landlocked if subdivided and that, too, is inaccurate. He went on to say that Ms. Nuccio, the objector, had submitted this exhibit and her husband was on the Environmental Commission when this was written, as well as being a property owner within 200 feet, and he felt this was a conflict and an ethical violation and taints anything Ms. Nuccio puts in front of the Board to date or in the future.

He then moved on to the objector's expert witness, Mr. DiFolco and referred to the lot frontage issue and Mr. Burke spoke of Section 21-9.13 which speaks of cul-de-sacs and dead-end turnarounds which need a lot to face 30 feet of frontage. He said his proposed lot provides for 40 feet of frontage right-of-way on Melrose Avenue. He felt the lot frontage requirement has been met and spoke of Exhibit 10 from the 2021 original hearing. He then talked about the driveway development for the new lot and that it was stated by the objector's expert witness it would be a dangerous condition, but Mr. Burke explained vehicles would be able to exit "nose out." He felt it was speculative to state one would have to back out and that this would be dangerous. He also commented that some homes on Melrose have to back out of their driveways to get to the street, this is true of other roads in town such as Riverview Drive which is a busy road.

Mr. Burke indicated that he was done with his rebuttal so Mr. Middleton began to question Mr. Burke on his rebuttal testimony. Mr. Middleton came forward and spoke of page 536, paragraph 2, volume 2020 of the Cox book which speaks of lot mergers and asked if Mr. Burke agreed with what it said, Mr. Burke did not. He and Mr. Burke then had a discussion on what a subdivision is and who can grant it, this in regards to lot 8 and 9 and consolidation of lots. Mr. Middleton asked Mr. Burke if he had any case law on lots not being merged due to a drainage easement and Mr. Burke said he did not look that up.

Mr. Middleton then turned to his traffic expert's testimony, Mr. DiFolco, and asked Mr. Burke if he recalled Mr. DiFolco saying that backing out of the proposed lot to Melrose Avenue could be dangerous and Mr. Burke did. He said he did submit a schematic that showed a car can come out nose first, but said this is a subdivision and not a site plan and he is not developing this lot. Mr. Middleton said this shows that there is no guarantee that a developer would design this lot so that cars would have to back out onto Melrose Avenue. Mr. Burke said he did present two concept drawings and Mr. Middleton objected to them. Mr. Burke objected to this questioning but Mr. Middleton said he was questioning the driveway issue and what has been said.

Mr. Middleton indicated that he was done at this point with his questioning and would summarize when it is time. Mr. Burke then went over his lot merger points again and felt that issue was done and what was done was consistent with the law and that was all he had to say at this point.

Ms. Trainor then asked if anyone from the public had any questions based upon the rebuttal testimony from Mr. Burke and there was no response so she went to the Board and no one had any questions. Ms. Trainor then asked for closing remarks from both Mr. Burke and Mr. Middleton.



Mr. Burke came forward and said he is seeking variance relief for a proposed lot for fronting on a right-of-way less than 50 feet on Melrose Avenue, also for lot depth. He referenced that the other lots on Melrose Avenue are deficient on lot depth. He quoted the Borough Code on the purpose of the R-3 Zone which is to provide for smaller lot sizes and he felt his application does this. He commented on other subdivisions on Tamarack Drive and Donnelly Place that, he felt, were on smaller right-of-ways so his application is consistent. He stated again that the original lot 1 is large enough to support 3 lots and will be compliant as to lot size and he is looking for a 2-lot subdivision as he wants to keep the historic structure that is there now, if they went for 3 lots the structure would have to come down. He said proposed Lot 1.02 is larger in square footage than the other lots on Melrose Avenue and he did not feel there is a traffic problem with this proposed lot. He felt there is a hardship here and this meets the C1 variance criteria as well as the C2 criteria, this was all discussed during previous testimonies. Mr. Burke wanted to read comments from Mr. Clark when the first application was heard in Freehold for the lawsuit and Mr. Middleton objected and it was sustained by Ms. Trainor, that litigation was dismissed. Mr. Burke did not go into detail but said Mr. Clark made arguments for the subdivision when it was before the judge. Mr. Burke finished by stating that, in his opinion, relief can be granted without substantial detriment to the public good and it will not substantially impair the zoning and he requested the Board to approve this which is identical to the original application which was approved in December 2021.

Mr. Middleton then came forward to give his closing remarks, he represents Mr. Donnelly who lives adjacent to the proposed lot. He said this application needs variance relief for lot depth and lot frontage. The applicant had to prove his case and he testified as a Planner and Engineer and had to prove both the positive and negative criteria. Usually the applicant's experts are to be impartial but, in this case, the expert is the applicant who will have significant financial gain which can interfere with judgement. He said Mr. Burke is declaring a hardship, which would have to do with the size of the property, the shape, so on; however, the key to a "hardship" is that it cannot be self-created and Mr. DiFolco stated, in his testimony, that the hardship is being created by the proposed subdivision. He referenced the application for the Centrella subdivision on Crescent Drive where the Board granted a subdivision for 3 lots, one of the lots was deficient and the neighbors took this to court and won and the Centrellas came back to the Board and were granted a 2-lot subdivision, the judge said the 3 lots were a self-created hardship. He also mentioned two other case laws on this and all this shows there is no hardship in this application.

Mr. Middleton then reminded the Board that Mr. Donnelly was so concerned with the proposed subdivision, he went to Mr. Burke in July, 2021 and offered him \$350,000 to purchase the back portion of the lot; Mr. Burke rejected it and said he wanted \$550,000 and nothing moved forward from there. Mr. Middleton said that lot 8 on the other side of the street right by the Burke home was sold for \$380,000 so the \$350,000 was an appropriate amount and the offer would have taken away any hardship.

Mr. Middleton then addressed the C2 criteria, the applicant has to prove that granting the variances promotes the zoning and the community will benefit. He also has to prove that the benefits he creates substantially outweigh any detriments which is a formidable hurdle and the C2 criteria does not apply to many cases. He then went into the zoning and what Mr. Burke said he was promoting but Mr. Middleton said he never went into the details of the benefits and Mr. Middleton had a reader board showing some of the zoning requirements and referred to them. He used the one part

of proving light, air and open space and said this proposed lot doesn't do it, it eliminates open space by putting in a home where trees are now. He used the example of taking down a hotel and putting up a home, this would give more light, air and open space to the neighborhood.

Mr. Burke stated the lot is oversized and should be allowed to be subdivided and Mr. Middleton read about appropriate population densities in the MLUL that says it has to be for the wellbeing of the neighbors, communities and preservation of the environment, he did not think this proposal does this as the mature holly and oak trees would be removed. Mr. Middleton then spoke briefly on the lot merger issue again. He then commented on the wording of "historic structure" Mr. Burke used in describing the home on the lot, 409 Union Lane, and Mr. Middleton said the home does not meet the requirements to be considered historic.

Mr. Middleton could not find any benefit to this subdivision and, even if there was one, does it outweigh the detriment and there is substantial detriment here. He then showed again the photos of Melrose Avenue and the cars on the street which Mr. DiFolco referenced and said was a safety issue, as well as the 4 driveways at that end of Melrose Avenue with one of them right by the dead end. Most of the lots on Melrose have a 100-foot frontage and the proposed lot would have 40 feet which makes it out of character with the neighborhood. He then spoke of the proposed building envelope and said it does not match what is existing on the street, it is long and narrow. After a few more comments on the size of the existing homes on Melrose Avenue, Mr. Middleton was done. Mr. Burke wanted to comment on some of Mr. Middleton's statements but Ms. Trainor felt that he should have objected when they were stated and now it was time for public comment.

Mary Burke, 1013 Cedar Lane, came forward to speak and was sworn in. She commented on the hardship issue and said if the subdivision is not approved the applicant may subdivide the lot into 3 lots, they are trying to work with the town; she said Mr. Donnelly made an offer for a strange cut of the property, an angled piece and she asked the Board to approve the subdivision as they did the first time it was presented. As there were no further comments that portion of the hearing was closed and the Board addressed this matter. Mr. Stenson had no comments, Mrs. Brisben commented on Mr. Burke's earlier statement of subdivisions on Tamarack Drive and Crescent Drive and she said those properties had conforming lots and this one does not, it is undersized. She could not see how this can be divided into 3 lots without creating a flag lot which would have to be approved by this Board. She felt Mr. DiFolco gave excellent testimony concerning traffic and the impact on neighbors; she had also suggested to Mr. Burke back in the beginning that he make that lot larger for room for a turn-around and he did not want to do that so he has an oversized front lot and an undersized back lot, she agreed with Mr. Middleton this is a self-created hardship. She thought that Mr. Donnelly's offer of \$350,000 would have solved this, she did vote to approve a subdivision of this property the first time but, after all the new testimony she did not think it would benefit the community and would not be for approval. Mrs. Frith had no comments, Mr. Jones had no comments, Mr. Tice also agreed the hardship is created by the subdivision, he did not think the benefits outweigh the detriments, seeing the pattern of the two smaller lots at the end of the street plus this one and the driveways there are a concern, he saw more parking problems and was concerned about the small frontage and the safety element, concerns on where the snow would be plowed to and emergency vehicle access, he would not be in favor. Ms. Fernicola agreed with what has been said and Mr. Turak was not going to comment as he is the new member of the Board and has not heard the months of testimony. Ms. Trainor commented on Mr. Hilla's report

that two variances were needed, frontage on a right-of-way was her first to comment on and the C1 criteria. She felt this is a self-imposed hardship as it could have been planned differently and a cul-de-sac or dead-end turnaround could have been created. She referenced the point that the lot next door, lot 8, had a part used for a driveway for the Burkes and, rather than use that lot to help with the subdivision, it was sold. As far as the C2 criteria, she felt Mr. Burke used part of the MLUL to say this subdivision should be approved and she did not think that the positive criteria is satisfied. She was concerned about the impact of the frontage in regards to safety. She then spoke about Section 21-9.3 about uses and she did not think this is a use issue, it is a residential use and will continue to be the same use. The second variance is for lot depth and, by virtue of the way the lot is positioned, that is also a self-created hardship; even if it isn't the C1 criteria does not apply due to the way the lot is measured. She went over the reason for not finding the C2 criteria after hearing from the neighbors, the benefits do not outweigh the detriment.

At this time Mr. Clark gave a recommendation to ask for a motion to approve the application and, if there is not a motion or a second to a motion, the Board can consider a Resolution of denial. Mr. Clark went over the conditions of the subdivision if approved: it would be perfected by deed and meet the time requirement, and there would be no variance relief asked for by a developer at time of building, no one can ask for hardship relief due to the size of the lot. He then asked that a motion be made and there was no response. Ms. Trainor then asked for a motion to deny the application and this was done by Mr. Tice, seconded by Mrs. Brisben and the denial was approved by the following roll call vote:

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

Noes: None

Not Eligible to Vote: Dan Turak

As there was no other business to come before the Board a motion to adjourn was done, seconded and approved, all aye. The meeting was adjourned at 10:02 p.m.

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Denise Murphy, Recording Secretary

Approved: March 12, 2024