

Borough of Brielle

SEPTEMBER 12, 2017

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September 12th, 2017

BRIELLE PLANNING BOARD

TUESDAY, SEPTEMBER 12, 2017

The Regular meeting of the Brielle Planning Board was held on Tuesday, September 12, 2017 at 7:30 pm in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a salute to the flag, roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, Joseph Bonacci, Thomas Condon, James Langenberger, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Absent – None

Also present were Karen S. Brisben, Recording Secretary, Joe Clark, Board Attorney and Alan Hilla, Jr., Board Engineer. There were approximately 30 people in the audience. Mr. Thomas Stuhmann and the reporter from the Coast Star newspaper were recording the meeting. There also was a transcriber for the Waypoint hearing.

Mr. Condon called the meeting to order and declared a quorum. He announced that, in compliance with the Open Public Meetings Act, notice of this Body's meeting had been sent to the official newspapers of the Board fixing the time and place of all hearings.

The Minutes of the August 8, 15 & 29, 2017 meetings were approved on a motion by Mr. Sarnasi, seconded by Mr. Lapham and approved by voice vote, all aye with Mayor Nicol, Councilman Garruzzo & Mr. Langenberger abstaining.

NEW BUSINESS:

The first item was an application for Block 104, Lot 31, 10 North Tamarack Drive, owned by Jeff & Ann Nissim, to allow a detached accessory pergola to remain. Building Permit allowed for a 5 foot side yard setback, pergola built 1.5 feet from side yard property line. Variance requested for 3.5 feet. The proper fees were paid, taxes are paid to date and the property owners within 220 feet as well as the newspaper were properly notified.

Mr. C. Keith Henderson, Esq. came forward to present this hearing. Before he started, Mrs. Brisben spoke and said she had taken the variance information from the Zoning Officer's report for the agenda, but when she looked at the engineer's report she discovered more variances: The pergola variance is on the agenda, there is a side yard variance requested for pool equipment, 5 feet is required & 4.3 feet is existing & proposed, Principal Accessory Structure – 10 feet required, less than 1 foot proposed. Also the requirement is that all driveways have to be 5 feet from abutting property lines, the existing driveway goes from 5 feet back to .3 feet at the garage. There is a wood deck that encroaches the Conservation Easement that is on this property, however, the Board does not have jurisdiction here, this has to be handled by the D.E.P.; Mr. Clark agreed that this is out of the Board's jurisdiction but the rest of the variances can be addressed.

Mr. Henderson first asked that all the proofs of mailings & notice to the paper be approved and Mrs. Brisben confirmed that all was in order. He then said that the deck encroachment has been taken care of as well as moving the pool equipment, so they do not need to be considered, the deck has been removed. The applicant has applied for three variances, the driveway, the separation between the driveway and the principal structure, and the pergola.

At this time the two witnesses Mr. Henderson had came forward and were sworn in, Jeffrey Nissim and Chuck Lindstrom. He then submitted 4 photoboards which marked Exhibit A-1 through A-4. Exhibit A-1 shows the front of the home before it was remodeled, Exhibit A-2 shows photos going down the driveway to the garage, Exhibit A-3 is another view of the driveway and Exhibit A-4 shows photos that were taken at an earlier time. Exhibit 5 was then presented, a final As-Built survey showing the removal of the pool equipment from the encroachment and the removal of the deck, this survey is dated 9/6/17.

Jeffrey Nissim, one of the owners, told the Board they had purchased the home in 2010 and realized there was a problem with the driveway after they bought the home. The home had a two-car, side entry garage and the driveway came down to the garage in the rear. They discovered that part of the gravel driveway went into the next lot, they were the first home to build here. A car had to turn to get into the garage and, when they found out the lot next door had been sold they put in a one car garage straight back and they turned the old garage into a mother-in-law suite. He referred to Exhibit A-3 which showed pavers and the apron to the driveway, he noted that Popovitch Builders were the builders of the garage but a separate contractor did the pavers. After it was done the neighbor, who was a member of a Planning Board, told him the new driveway was done in the side yard setback, so they added a fence and arborvitae to make it more private and the neighbor was happy with that. He told the Board that his fence and his neighbor's fence match as his neighbor has a pool. Mr. Nissim said this is a narrow driveway, it is 13 feet across and he is asking to keep the driveway as it is.

Exhibit A-2 shows the pergola with different views. They have planted wisteria which should go over and around it, the car goes straight through it to the garage. Mr. Lapham questioned that the plans were done for a 5 foot side yard for the driveway but it was not done that way. Mr. Nisson explained that it is 5 in on the front yard but the property is angled and the driveway goes straight back, the house was built askew, so this happened. Mr. Lapham commented it did not make sense how it could be designed for 5 feet and then installed at 1.5 feet. Mr. Nissim said they have 10 feet in setbacks between the two lots but, again, the way it was set the side line gets smaller. Mr. Lapham asked about the mulch area, does that lessen as this goes back and Mr. Nissim said no, it is straight.

Mr. Langenberger said that all the construction being done, he had a hard time believing it was okay for this driveway, the Ordinance says 5 feet; when this property is sold in the future it is going to be an issue, Mr. Nissim did not check with Borough Hall, it was just done. Mr. Henderson said the Landscaper made a mistake, they went to the neighbor and asked what could be done after the error was discovered. Mr. Langenberger said that they did not stop there, they then put in the pergola; it was put in and it can be taken out; he felt it should be removed so it is not an issue down the road. Mr. Henderson said he understood the concern but felt the best effort was made to fix the driveway issue. If they fix the side yard setback requirement they may have to take part of the home out to do this. Mr. Langenberger countered with the fact that everything was done after the work on the home was finished and no one looked at this to find out if this was okay to do, neither the Zoning Officer or Engineer was asked.

Mr. Nissim was asked when the fence was built and was told this spring, the driveway was done 3 years ago. Councilman Garruzzo noted all this existed when they bought the property but they did not know this and Mr. Nissim said yes. Councilman Garruzzo asked if it was the neighbor that told him his original driveway was on his property and Mr. Nissim said no, the new driveway was done and the neighbor told him he was within the side yard setback. Mr. Condon asked when they purchased the home didn't the survey show the driveway on the other property and Mr. Nissim said he did not see that as the lot next door was wooded and he had no reason to know this was done. The person whom he had purchased the home from had lived there for 20 years. Mr. Condon asked if that previous owner did this and Mr. Nissim did not know but he made it as big as he wanted. Mr. Condon noted the comment made by Mr. Nissim that the neighbor was a Planning Board member and Mr. Nissim said yes, but it was in another town, he thought Mantoloking.

The hearing was then opened for questions from the audience and Mr. Robert Martin came forward to make a comment, he was told this was for questions only to Mr. Nissim so he sat down and, as there was no one else to come forward that portion of the hearing was closed.

Mr. Chuck Lindstrom, Civil Engineer and Planner, came forward to testify, he has been working as such since 1979. As the Board was very familiar with Mr. Lindstrom he was accepted as an expert witness. He said he was not the Engineer when this home was built but he did do work for Mr. Rathjen, the original developer of this major subdivision. He said there was a problem with the driveway and he got involved to have a straight-in driveway, he did not do the original home and agreed it is skewed on the lot, the lot is straight but the home isn't. Exhibit A-1 shows how the garage is pushed into the line of the home. The pergola is built on top of the driveway and probably not in line due to the driveway problem. He had a drywell put in as there was a problem when the neighbor's home got built and more drainage put in, now there is also a fence and arborvitae. He also commented that the deck has been removed and the pool equipment has been moved off the setback, as per Exhibit A-5, the as-built survey.

Mr. Henderson asked about the provisions for the C-1 and C-2 variances and Mr. Lindstrom said this is a hardship as the home is skewed on the lot, they can't do a side entry garage, the driveway goes straight back but it does narrow down. At the rear corner it is 16.1 feet from the property line to the building, to have a 5 foot setback would be very hard to navigate the driveway. He felt the home can also be considered a hardship. They wanted to create a better visual environment with the pergola, as per Exhibit A-2. It is open on all sides, it is just decorative and is between two walls, along with a fence and arborvitae; it is

aesthetically pleasing and it satisfies the negative criteria as there is no impact to the neighbor, Zone Plan or Master Plan.

At this time the hearing was opened for questions by the Board and there was no response, so the hearing was opened for public questions and there was no response either, so these portions of the hearing were closed. The hearing was then opened again, this time for comments, and Mr. David Ambrosio of 17 North Tamarack Drive came forward and was sworn in, he was in favor of this, it is pleasing to see and all the construction happened before the neighbor broke ground; he felt the pergola enhances the area. Mr. Robert Martin of 14 North Tamarack Drive then came forward and was sworn in and said the Nissims have done a lot of work and mitigated the problem that was already there. They had to get cars in the driveway and he felt the pergola was beautiful. Mr. John Vitanzo of 15 North Tamarack Drive was next to be sworn in and speak; he said he was there before they moved in, the home that was there was a mess and now it is beautiful, they have done an amazing job. The neighbor's garage is facing this and looking at it now as compared to before the value to the property and whole neighborhood is better, it should be approved. Mr. Dino Peone of 13 North Tamarack Drive came forward and was sworn in, he thinks he has the best vantage point as he is right across the street, he, too, remembered where the driveway was and where it is now. If the driveway is made smaller it will not be able to be used and this would create on-street parking which may be an issue as there are small kids here. The pergola is awesome, he would like to have one, too. The Nissims have made nice improvements to the property.

As there were no more comments that portion of the hearing was closed and the Board went into discussion. Mr. Bonacci said he would be lying if he said the pergola did not look good and they did their best to correct the driveway problem. But the pergola is not a hardship, it is something decorative and aesthetics do not count in the Zoning Book; he had issues with that but not the driveway. Mr. Langenberger had a problem with the way it was done, if the proper permits were gotten they would not be here tonight. Mr. Stenson felt they did their best and he liked the pergola. Ms. Montalto felt this was a different situation and they have done an amazing job, she did not see it in anyone's best interests to have the pergola removed. Mr. Sarnasi noted there was a problem with the neighbors and they got together and resolved it, he would be for approval. Mr. Maclearie asked if the neighbor that is most affected here this evening and Mr. Henderson said no, but they shook hands on it. Councilman Garruzzo thought it was done with the best interests of the neighborhood, he didn't condone the fact that people just do what they want and then have to come before the Board, but after hearing the testimony he would be for approval. Mayor Nicol jokingly said the crooked home should be knocked down, but he had no problem with the application. Mr. Condon agreed with Councilman Garruzzo's comments, the neighbors agreeing does not bypass the Board approval. He felt the pergola softens the view, it is not going to be enclosed and he did not have a problem with it.

At this time Mr. Stenson made a motion for approval of the application, as presented, this seconded by Councilman Garruzzo and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Noes: None

The Board then turned to an application for Block 89.01, Lot 6, 606 Oceanview Road, owned by Mark & Susan Neuwirth, to allow construction of a 122 square foot addition in the rear of an existing home. Front Yard Setback – 40 feet required, 36.9 feet existing & proposed. Rear Yard Setback – 40 feet required, 35 feet existing & proposed. Lot Coverage – 20% maximum allowed, 19.5% existing, 22% proposed.

Mr. Timothy Middleton, Esq. came forward to present this application. The proper fees were paid, taxes are paid to date and the property owners within 200 feet and the newspaper were properly notified. Before starting, Mr. Middleton had his two witnesses sworn in, Mark Neuwirth and Architect Bryan Berzinskis. Mr. Middleton told the Board this property backs up to the Golf Course; they want to make the master bathroom larger, they are right at 20% now and the additional square footage for the bathroom is 68 square feet or less than 1/2%. They currently have a small porch of 43 square feet, it is more like a stoop and they want to make a 133 square foot front porch for aesthetic reasons. Mr. Middleton felt these additions were de minimis and the benefits outweigh any detriment.

At this time Mr. Berzinskis came forward, he is a licensed architect and has appeared before many Boards, he went to NJIT; the Board accepted him as an expert witness. He was familiar with the area and noted his clients wanted a master bathroom addition and had photos of the existing rear where there are slider doors, with the existing bathroom next to them, and said they also want to add two new gables. The Architectural plans were marked as Exhibit A-1 and the picture board was marked as Exhibit A-2. This 68 square foot addition is not going any further into the rear yard. Mr. Middleton asked about the view from the golf course

and if this will enhance aesthetics and the answer was yes. The neighbor to the north said wanted a "tweak" to the roof pitch and Mr. Berzinskis referred to Exhibit A-1, he wants the last gable to be made into a hip roof, this would bring down the sharp lines there.

Mr. Middleton asked about a bay window and Mr. Berzinskis said it is a typical bay window and they plan to make it larger and incorporate it into the kitchen, another 13 square feet. Exhibit A-2 was then presented, a view of the front porch with a small entry step; Exhibit A-1 shows the new porch with a barrel roof and also a covered roof. Mr. Middleton noted all this adds up to 214 square feet more in total for this project. Mr. Berzinskis said all this will enhance the home and there is no negative impact. Mr. Middleton said that Mr. Hilla raised the issue of a portion which is roofed now, Mr. Berzinskis said this is expanded to accommodate the bathroom and bedroom.

Mr. Hilla had no other questions on this application; Mr. Stenson commented on the plan presented, they are saying the master bath will have 68 more square feet but the total is 121 square feet. Mr. Berzinskis explained that the current bathroom is now only 53 square feet. Mr. Sarnasi asked if there will be a cantilever for the kitchen or foundation and the answer was foundation, the porch currently is masonry.

As there were no more Board questions the hearing was opened to the public for questions to the architect and, as there were none, that portion of the hearing was closed. Mr. Mark Neuwirth then came forward, he is the owner of the property that he and his wife purchased about a year ago. The master bathroom is undersized and they want a front porch to spruce up the home. The new bathroom is important and they want to make the kitchen more functional. There were no Board questions to Mr. Neuwirth so the hearing was opened to the public for questions and, hearing none, that portion of the hearing was closed. The hearing was again opened for comments and, as there were none, that portion was closed and the Board went into discussion.

Mr. Langenberger asked if this was part of a subdivision about a year ago and Mr. Middleton said no, that was 2 homes to the north. Mr. Lapham asked Mr. Hilla about setbacks and felt there may be a typo on the plans. Mr. Hilla explained the front setback without the porch is measured to the area to the right of the door and is an existing non-conformity. What is being done is being pushed out, there is measurement to two different spots. Mr. Stenson commented that the bathroom is too small now and was for the application. Mr. Sarnasi said he could understand the need for the improvements and thought this will be an improvement and Mr. Condon saw it as a lifestyle upgrade.

At this time a motion for approval, as presented, as made by Councilman Garruzzo, seconded by Mr. Stenson and then approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Noes: None

Not Eligible to Vote: Joseph Bonacci

The next application was for Block 24.01, Lot 25, 526 Union Lane, owned by Douglas Bramley, to allow construction of an addition to an existing home. Minimum Lot Size – 11,250 square feet required, 7,475 square feet existing & proposed. Lot Width – 75 feet required, 50 feet existing. Side Yard Setback – 10 feet required, 9.97 feet existing, 9 feet proposed. Lot Coverage – 20% maximum allowed, 21% proposed.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Mr. Douglas Bramley came forward to represent himself and he was sworn in. He said the home was built in 1992 and has 1800 square feet, he has lived there since then. He wants to put a single story rear addition which will be a family room for his two children. He presented Exhibit A-1, a picture of the front of the home which is currently having a front porch put on which does not need a variance. Exhibit A-2 is the rear of the home and the addition will be to the left of the bay window in the photo, the addition will be 20'x20'. He noted the builder, on the plans, said 18'x22'. Mrs. Brisben told Mr. Bramley that revised plans will have to be submitted showing the correct dimensions.

Mr. Bramley said there are gutters on both sides of the peaked room and there will be 65 feet between his home and the home to his rear so there is no problem there. He does need a side yard setback variance, there is less than 10 feet there now. As far as lot coverage they are asking for 21%, this happens when the front porch is factored in but all this is an improvement to the home. Mr. Stenson asked about the porch and it will be 30'x6'.

Mr. Hilla said the ordinance does require mitigating storm water, the proposal probably will be okay but he would like to see his report followed. They got a permit for a porch which is under 400 square feet but now an addition is being added and he wants to see the Ordinance applied. Mr. Lapham asked if the gutters go to the side and Mr. Bramley said no, they go to the front and back. Mr. Maclearie asked where they are in the porch construction and Mr. Bramley said they need roofing, siding and electricity. Mr. Maclearie asked if the same contractor is doing the porch and rear addition and the answer was yes.

At this time the hearing was opened to the public for questions to Mr. Bramley and, as there was no response that portion was closed. It was then opened for comments and, again, there was no response so that portion was closed and the Board went into discussion. Mr. Lapham felt it would be nice to have a playroom for the kids. Mr. Langenberger this this was making the home much more functional and Mr. Sarnasi felt this was needed for a growing family; Mr. Condon was satisfied with the request for 21% lot coverage.

At this time Mr. Stenson made a motion for approval of the application, as presented, this seconded by Mr. Lapham and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Noes: None

Not Eligible to vote: Joseph Bonacci

OLD BUSINESS:

The Board the considered the continued hearing for the Use Variance/Site Plan for Block 52.01, Lots 1-8.01, 622 Green Avenue, known as Waypoint 622. Before starting this, Mayor Nicol, Councilman Garruzzo and Mr. Langenberger left the dais as they are not eligible to hear this Use Variance application.

Mr. John Jackson, Esq. came forward once again and told the Board that the tentative meeting date for continuing this application cannot be made, he can't be at a meeting on the 19th of September, which is the only day of this month all professionals can attend, so that hearing date has to be cancelled and the application will be continued at the next regular meeting of October 10th.

At this time Mr. Larry Grafas came forward and was sworn in, he is the owner of Waypoint 622. He wanted to submit Exhibit A-31, a notebook with many pages that he said outlines the improvements to the property. Mr. Collins had a problem with this as no one had a chance to review it, Mr. Condon suggested marking it page by page; it was decided to start the testimony and go from there.

Mr. Grafas said he owns Hoffmans Marina, Waypoint 622 and the River Café on Higgins Avenue and from the time he purchased Waypoint 622 he has tried to improve it, it has been there almost a century. He said that they have done their best to make Hoffman's Marina one of the best on the coast, there was space for 29 boats in 2011 with transient boats. Now there are over 500 transient boat there a year and many of them support the businesses. He referred to a map on the first page of Exhibit a-31, this given to people for all information on Brielle and the areas to go to as Waypoint 622 & Hoffman's promote all businesses. At this time Mr. Collins spoke up and said what should be talked about is the use of Hoffman's in regards to the restaurant. The testimony that is being given is irrelevant and he objected to Mr. Grafas' narrative. Mr. Clark asked Mr. Jackson if this is going to be a narrative and Mr. Jackson said yes, they just want to speak of the history. Mr. Collins looked through the Exhibit A-31 and said that pages 8 through 14 are totally irrelevant to the Municipal Land Use Law, they are letters of accolades; Mr. Middleton agreed. Mr. Clark suggested moving through this and addressing this as we go. Mr. Condon also said that, after the narrative, there will be questions, Mr. Jackson agreed. Mr. Collins asked for a ruling on the narrative so far and Mr. Clark said this is just giving history and can be heard.

Mr. Grafas continued on and said the former owners did not allow people to walk the waterfront and they do, they can walk along the marina and docks, this is an important amenity. He then told the Board to go to Tab 1 which gives a history of what was there, 14 pictures in all. He then started about purchasing the Marina and Mr. Collins objected but Mr. Jackson said the Marina use is part of the whole operation. Mr. Condon said the Board is here for Waypoint, the business end of Hoffman's can't be brought in. Mr. Jackson said the restaurant helps support the Marina and furthers the Marina District. Mr. Condon then said all restaurants in the area should be included. Mr. Jackson agreed it is appropriate to consider the success of all the restaurants, that is what this testimony is about, this is an economic center of Brielle and they want to show how it all is improved. Mr. Condon felt this was a stretch and wanted an opinion from Mr. Clark. Mr. Clark said this application is about Waypoint 622.

Mr. Jackson said here is a business that is successful and helps other businesses, he has had to address all objections and has been accused of not getting permits, etc., but the quality of life here has been made better. Mr. Clark commented they are spending more time on objections than the testimony and he wanted to move on. Mr. Jackson said he needed to make his case. Mr. Collins said to turn down the music and there will not be a problem. After discussion and objections Mr. Clark told all we have a limited amount of time here and all objections have been noted, can we please get to the application; Mr. Jackson said he wants to get through the testimony.

Mr. Condon said he had looked at some of Exhibit A-31 and does not think some of it is relevant and, if Mr. Grafas continues, he will let him know if he doesn't like something. Mr. Grafas went on to speak of Hurricane Sandy and how they rebuilt, there are pictures from the camera on the deck of the condos next door that show Sandy coming across the wall. They have had underground tanks and starting filling up gas cans for people after Sandy, they gave away over 4,000 gallons. The hurricane did not stop them from getting the Marina up and running.

He then referred to Section 4 of the notebook which speaks of the Marina, Marina store which had been there 10 years before he purchased the property, Marine Motor Works which has one mechanic and 2 trucks. Mr. Jackson asked why the koi pond was removed and Mr. Grafas said they discovered oil tanks in that location and had it remediated by taking out the tanks and they had concrete put over that. Mr. Grafas then went to Section 5 about the widening of Union Lane and explained that they did not do that, a road contractor did that through the town. However, they have put in 60 trees on Green Avenue to block the view of boats, all done with the Brielle Shade Tree Commission and to help with the noise.

They had submitted paperwork to the DEP, the Army Corp, the Borough of Brielle, etc. and they built what they had and opened in May of 2015. Most bands that came in played when it was Union Landing; they went to the Zoning Officer with a set of drawings and submitted prior to the purchase of the property, they had all permits, he believed he was represented by Keith Henderson at that time. Union Landing had no sound walls or trees, etc. He referred to a picture in Tab 7, the sound wall that is skimmed with Masonite and it has made a big difference. He believed this works, as well as landscaping, the bar has internal control and the sound will not go past level 5, it has a governor and only the Manager has control of it. Bands have to plug into their speakers that push the sound out and away from the building and it has been successful and is much quieter than it was in 2015. The bands stop at 10:00 pm, sometimes they stop at 8:00 pm.

Mr. Grafas said Waypoint has won awards and he listed them in the Exhibit, they also have been written up in magazines; they had over 200 residents for the new bridge opening. At this time Mr. Collins objected as this is all about improvements with Waypoint and not about the Municipal Land Use Law. Mr. Jackson said this shows how Waypoint has helped Brielle but Mr. Collins stated this is all irrelevant. Mr. Condon agreed and said that Mr. Grafas should be commended for his good works but this does not have anything to do with what the Board is considering here. Mr. Jackson said that Mr. Grafas has been referred to as a "rogue operator" and Mr. Collins again objected but Mr. Condon thought Mr. Grafas should be able to speak. Mr. Grafas said he has spent a great deal of time in Brielle, he is not a "rogue operator" but a positive impact to Brielle.

He went on to comment that there is a concrete patio that they say is a dance floor. Union Landing was difficult to get around, they are now ADA compliant as shown in the photos. Many of the employees are students and some ride their bikes, some take taxis or Uber. They are not the only restaurant, there are 3 others in this area and people park in their lot and walk around to other places. Mr. Grafas says he allows it as they want to support the businesses. Green Avenue is a main thoroughfare, the same cars park there every day and the neighbors can see this. Mr. Jackson asked if they have had any issues with parking when using the Hoffman's lot and Mr. Grafas said no. The River Café on Higgins Avenue can use other lots and Du Amici can use their lot at night. He also said there are no issues with boaters at Hoffman's and there is no parking issue. The restaurant is busy from 11:00-noon and then from 3:00 on it gets busier, evenings and weekends are the busiest. He commented the employees pick up debris and clean the street every day, they go right down Hoffman's lot.

Mr. Collins then objected to the testimonials that started on page 11 of Exhibit A-31 and Mr. Clark agreed, it's like letters that can't be questioned. Mr. Jackson again used the term "rogue operator" and these testimonials refute this. Mr. Condon noted a letter on page 14 and it is from him thanking Waypoint from the Brielle Fire Company. Mr. Collins said it is a very simple concept, the Board is deciding if they can get variances, it is not about who the operator is. Mr. Condon agreed with Mr. Clark this is like heresy, they can't give credence to the letters. Mr. Jackson again referred to being assaulted by people who have accused them of disturbing the neighborhood. Mr. Clark said the Board can figure this out, a letter from the Elks does not apply to what the Board is considering for approval. He felt this was prejudicial.

Mr. Condon said page #14 is a letter from the Brielle Fire Company thanking Waypoint for supporting them,

he signed this letter. For the record that is his concern, the letters are nice and articles nice but they don't apply here. Mr. Middleton agreed they are here for a Site Plan/Use Variance and have to show positive and negative criteria, it has nothing to do with applause from others and is taking away from the purpose of this application. Mr. Jackson felt the letters show proofs that they are positive criteria. Mr. Condon felt this all can be done without the testimonials and Mr. Jackson said they want to show people what they attract. Mr. Clark felt all this has been made clear, it is of limited relevance; there are hundreds of pages here and it was given out at the last minute, he didn't know if goes to the contention that this is positive criteria and agreed with Mr. Condon. Mr. Jackson said that Mr. Middleton had referred to this place as a "disco" and Mr. Clark did not think the letters speak of a "disco". Mr. Collins said that all say he is a good guy but that does not mean he should get approval.

Mr. Grafas said he put this notebook together himself and did not have Mr. Jackson do it, he apologized if it was not done correctly. He then referred to the parking at Hoffman's and said, it is not striped as it is gravel but he does have signs in the middle to each spot that says "park your car in the middle of this sign". Mr. Maclearie asked about handicapped parking in the Hoffman's lot and Mr. Grafas said they added another handicapped spot at Waypoint and are ADA compliant. Mr. Maclearie commented that, as far as getting into the Marina lot it would have to be in close proximity and Mr. Grafas had no problem with this. Mr. Maclearie did not think 2 handicapped spots was enough. Mr. Jackson said that Mr. Lurie, their engineer, has reached out to Mr. Hilla on this and he has not yet heard back from him. Mr. Maclearie felt that perhaps some minor changes can be made to address this and Mr. Grafas said they will work with this issue with the Board engineer.

Mr. Sarnasi asked for more information on the fuel tanks by the koi pond and Mr. Grafas said they saw 2 lines and found oil tanks against the koi pond. Mr. Sarnasi then asked if there is a lighting plan for Hoffman's and Mr. Lurie spoke and said he will work that out with Mr. Hilla. Mr. Bonacci asked about the testimony that live music stops at 10:00 pm, is there recorded music after 10:00 pm? Mr. Jackson said there is background music, but no live music or DJ. Mr. Bonacci asked when this happens and was told it depends on the crowd, Mr. Grafas also said there is no sound volume on the tvs and it is not a sports bar. Mr. Condon asked if tournaments are held here and Mr. Grafas said yes, maybe a dozen a year. Mr. Condon asked about crowds at fishing tournaments and weigh-ins and Mr. Grafas said that happens at Hoffman's East, not at Hoffman's Marina.

Mr. Condon then asked if one golf cart going to be enough to take people to their cars at Hoffman's and Mr. Grafas felt it is but if they find they need another one they are get one. Mr. Condon then asked about valet parking and Mr. Grafas said he does not like to have other people drive a car, that is just him. Mr. Hilla asked about the circulation of a golf cart and Mr. Grafas said they pull out of the lot and into the Marina, they are street legal.

The applicant then presented Exhibit A-32, a schematic of the objectors' homes. The blue pins Waypoint and the other is for Hoffman's. Mr. Collins said his client has a pink pin and is on Leslie Avenue; the pin on Ocean Avenue is for Mr. Stuhmann, Mr. Middleton's client. The green pin is Mr. Knapp's home and the yellow is the Holmquist house. All the condos at Brielle Landing never complained and that is right next door.

Mr. Collins then went back to Exhibit A-31 and wanted to have each page marked, Mr. Clark said this will be addressed later. Mr. Grafas said he went to the railroad tracks and got a report that a train horn is 96 decibels, he has not walked on Ocean Avenue but has been down Leslie, he can sit at Hoffman's East and hear the Patio Bar at Wharfside in Point Pleasant. Mr. Collins asked Mr. Grafas if he agreed with the noise expert and Mr. Grafas said he did not remember everything that was said. Mr. Collins then asked if he disagreed with any of the testimony given by the Sound Engineer and Mr. Grafas again said he did not remember it all. Mr. Collins then asked if he disagreed with anything Mr. Kenderian said and, again, Mr. Grafas said he did not remember it all. Mr. Condon asked Mr. Collins to please be more explicit on what he was asking, the questions are too broad. Mr. Collins answered by telling Mr. Condon he can speak for the next 4 hours to ask questions and Mr. Condon then said he felt the questions were already answered. Mr. Clark said if he does not recall all, he may need to review the transcripts.

Mr. Collins then referenced comments made about the Marina and restaurant and asked Mr. Grafas if the Board should treat him the same as other restaurants and Mr. Jackson objected as each application stands on its own merit. Mr. Collins said the restrictions placed on other restaurants should be considered, he just wants to make sure all are treated fairly. Mr. Jackson objected to Mr. Collins coming forward again and Mr. Condon said he has given both sides bites of the apple, he felt Mr. Jackson can bring it up in his rebuttal. Mr. Middleton asked Mr. Grafas if the Zoning permit was obtained before there was work on the koi pond and concrete put in. He noted that food is being served there and Mr. Grafas said no, only alcohol on occasion. Mr. Middleton said this area has tables, chairs & umbrellas, it is an area used by patrons. You are now requesting to use this area as it stands today and the answer was yes. Mr. Middleton says this changes the use as a passive sitting area, permits were not gotten to use this area so why still use it today; Mr. Grafas said it is a

place to wait for tables to open up. Mr. Condon did not believe they were using that area and Mr. Jackson said the application was amended to be able to use it for passive seating and drinks can be served while waiting for a table.

Mr. Middleton then asked if they got a permit for the sound system and Mr. Jackson said this does not require a zoning application but Mr. Middleton thought this is needed; Mr. Jackson stated the Zoning Officer did not tell him it is needed. Mr. Middleton then went on to explain that the Board heard the Sand Bar application and the Shipwreck application and they denied the sound system; they also heard the Rella's application and there is no sound system allowed outside, it is the same decision by the Board for these. It was Mr. Middleton's position that the Site Plan approval is required before outdoor sound speakers can be put in and he said he can reference the other Resolutions on this. Mr. Condon again said that this Board will decide on this application only and Mr. Jackson once again said a zoning permit is not needed. Mr. Condon agreed with him and said the Board can judge this application based on its own merits. Mr. Middleton asked Mr. Grafas how many speakers there are and the answer was 6 for the house system and 2 for the band. Mr. Middleton asked if a professional designed them and Mr. Grafas said yes. Mr. Middleton then asked the wattage and Mr. Grafas did not know. Mr. Middleton asked if, when the bands play, they hook into the Waypoint sound system and Mr. Grafas said yes. He asked if the music comes out of the other 6 speakers and Mr. Grafas said no, they are not connected to this. Mr. Middleton asked if the sound is controlled by the bartenders and Mr. Grafas, once again, said the Manager does, the system has a governor and stays at 5. Mr. Middleton asked him if he is there to ensure the bands are hooking into the system in the last 3 months? Have bands always hooked in? Mr. Grafas said yes, he is there as much as he can be but admitted he is not there every time a band plays, but the Manager knows they have to hook into the Waypoint sound system. He said he knows of an occasion when the band did not hook in but does not remember when.

Mr. Jackson intervened and wanted it on the record that Mr. Collins just received a transcript and Mr. Collins objected to this statement and said he is not responding to Mr. Jackson any more. Mr. Middleton then went on and asked Mr. Grafas if he got zoning approval for the bar and Mr. Grafas said yes, he got a building permit and got it. Mr. Middleton asked if he got a zoning permit and Mr. Grafas did not think so. Mr. Middleton asked if the canopy got a zoning permit and Mr. Grafas said it is retractable; Mr. Jackson said there are no zoning permits needed for the bar or canopy, a separate permit is not needed for a bar, this is deceptive questioning. Mr. Condon noted the bar is part of the total establishment. Mr. Middleton then went into the bar having radiant heat and this is an expansion of the use. He asked if there are insulated panels that are put up around the steel canopy and Mr. Grafas said no. Mr. Middleton said that is what is said on the Waypoint website and Mr. Grafas said he did not do the website. Mr. Middleton did admit that Union Landing did have canvas canopies and Mr. Condon added they also had portable heaters.

At this time Mr. Jackson said the cross examination is irrelevant, the Zoning Officer said they expanded over 300 square feet and that is what this application is about. They do not meet all the conditions for Conditional Use, what permits are needed or made does not matter and this is taking up time. Mr. Middleton is trying to show they did not get permits and this is not true. Mr. Middleton said the case is what it was originally filed but then they had to do amended notices and the last notice was approval of the awnings. Mr. Jackson countered with mentioning the letter that Mr. Middleton sent to Council on what they were asking for, so he put in everything, some of it does not need a variance. They need a Site Plan approval for Conditional Use, the Board has to find out if this is appropriate. Mr. Clark felt Mr. Jackson had a valid point. Mr. Middleton asked how he is supposed to know that some of it is "bs"? He looked at the notice and think he needs approval for the bar. Mr. Condon told Mr. Middleton he is here to ask questions and not give opinions. Mr. Grafas spoke up and said he had looked at his website and there is nothing about any heated enclosures.

Mr. Middleton went on and said there was a lot of testimony proffered that the deck was not a permanent structure and Mr. Condon said the DEP considered the deck a temporary structure. Mr. Jackson said the DEP talked about a temporary deck because it is a seasonal deck, this has already been stated and Mr. Hilla has confirmed this. Mr. Middleton wanted to continue and said he had about another 20 minutes for questions to Mr. Grafas and Mr. Condon felt, as time was getting late, this can be carried. Mr. Clark agreed this can be carried and continued at the October meeting and Mr. Collins said he was going to go over the transcript for some of the Professionals that testified and he will be able to have questions for the next hearing date. He also said a zoning permit is needed for any heating system and Mr. Middleton said he was going to provide proof of DEP issues.

As it was now 10:55 pm Mr. Condon announced that this hearing is being carried to the October 10th meeting of the Planning Board at 7:30 at the Borough Hall with no further notice being given. A motion was then made to adjournment, this done by Ms. Montalto, seconded by Mr. Bonacci and unanimously approved, all aye.

Karen S. Brisben, Recording Secretary
Approved: October 10, 2017