

# ***Borough of Brielle***

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**JANUARY 23, 2018**

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April 14 2018

***January 23, 2018***

BRIELLE PLANNING BOARD  
SPECIAL MEETING  
TUESDAY, JANUARY 23, 2018

A Special meeting of the Brielle Planning Board was held on Tuesday, January 23, 2018 at the Brielle Borough Hall, 601 Union Lane, at 7:30 p.m. In compliance with the Open Public Meetings Act, notice of this Body's special meeting had been sent to the Coast Star newspaper fixing the time and place of this hearing. After a moment of silent prayer and a Salute to the Flag, roll call was taken:

Present ♦ Joseph Bonacci, Thomas Condon, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Absent - Mayor Thomas Nicol, Councilman Frank Garruzzo, James Langenberger

Also present were Alan Hilla, Board Engineer, David Clark, Board Attorney and Karen Brisben, Secretary of the Board who recorded the Minutes. It was standing room only in the Council room with an overflow into the lobby and the Coast Star reporter was recording the meeting.

The Board went right into the reason for this special meeting, the continued hearing for Waypoint 622. However, Mr. Condon announced to the audience that the agenda was being changed a little as the applicant's attorney was going to be late so he was going to open the hearing to the public again for Public Comments. He asked that if anyone spoke at the last hearing they do not come up and speak again and he asked all that there be no outbursts, no clapping, this be conducted in a professional manner.

The first person to come forward was Terrence Fearon of 717 ½ Ashley Avenue in Brielle, he was sworn in. He was here in support of this application, he has known Mr. Grafas for 40 years and he was involved in the renaming of the Route 35 bridge; when Waypoint heard they had a problem in having an area to do this renaming ceremony he offered Waypoint, as well as hosting many charity events. He came back from Viet Nam 50 years ago and knew the old places, Casablanca, Ship Wheel, Union Landing and he saw the tourists in the summer here. He has seen the waterfront deteriorate, lived in Brielle Landing in 2006 and was close to Union Landing; he saw Mr. Grafas redo Union Landing into Waypoint and he enjoys what is there. He said Union Landing had music, as well as the River House and Sand Bar and Waypoint has the area landscaped better, he was in support of this application.

Next to come forward and be sworn in was Ronald Nowak, Jr. of 1009 Forrest Road in Brielle. He was here as a resident and a musician, he was a lifeguard in the area for 26 years and is a lover of live music. He has a duo called the Salt Brothers; he is an engineer by day and his partner is a doctor. Mr. Grafas gave them a chance and they are now solidly booked. He has seen the thousands of dollars Mr. Grafas put into the sound system and they use this and not theirs. Many Brielle residents come to Waypoint, it is a special and classy place.

Tom Bovino of 4 Lebanon Drive, Brielle came forward next and was sworn in. He has lived here since 1995 and felt the first two people described everything. His establishment draws the kind of people Brielle wants as well as employing the residents of the area and their children. He has demonstrated himself to be a solid part of this community.

Next to speak was Jane Sigler of 619 Homestead Road, who was sworn in. She has lived at 619 Homestead for over 42 years, prior to coming to Brielle she grew up in Manasquan and has always lived by the water. She knew the downside to this is being close to restaurants, boat traffic, etc. She remembered the Bimini, the Sand Bar and Union Landing and her property being subject to littering in the summer and late-night noise, she could hear the music from Union Landing. The music did get louder when Waypoint first came in but since that time this has been addressed and she does not hear the music she used to; parking and late-night noise has stopped as well. She felt Mr. Grafas was trying to be part of the town and spoke of change ♦ when she first moved to Homestead Road it was a small street but now is developed, you can't stop change. She asked what is the real issue? Are people still clinging to the past, do they remember the Friday, Saturday and Sunday nights at Union Landing? Changes have been made and Waypoint is continuing to benefit the town and residents. She finished by stating this is better than condos being built on the water.

The next person to come forward, be sworn in and speak was Amy Monte of 47 North Main Street, Manasquan. She worked at Union Landing for 10 years and now works at Waypoint. She said the bands at Union Landing were louder with 6-7 pieces and they did not stop at 10:00 p.m., they stayed open until 2:00 a.m.; they now close at midnight. The quality of guests has improved, there are families. She is a seasonal employee, a bartender and said Union Landing had music 7 nights a week; now the music is on Friday, Saturday and Sunday, this can't even compare. She ended by stating the place is cleaner now and she is not tripping over beer bottles, it is quieter.

Daryl Zaslow came forward and was sworn in, he gave his address as 19 Oaks Drive, Holmdel. He is a Trial Attorney and is a slip owner at Hoffman's. He grew up spending summers in Manasquan and his boat is about 4 slips in from Waypoint. He doesn't like to hear music and does not hear it on the dock, he has had judges & attorneys on his boat and they don't hear anything either, there is no disturbance at all, he does hear music from the water taxi that goes by and not Waypoint. He has been all over the east coast and has stayed at nice places but none are cleaner than Hoffman's. He did not think there was any way someone can say their home values have been depreciated by being in this area, everything is kept clean. He was not familiar with the Land Use Law but knows the law is based on reasonableness and he felt Mrs. Sigler's testimony said it the best. He, too, did not want to see condos here and felt Mr. Grafas should be thanked.

Gary Packin of 241 Shore Drive in Highlands, also Orion Drive in Brick, came forward and was sworn in. He is in a band that plays at Waypoint, he is an attorney and his band plays for fun; he said that Waypoint is one of the finest establishments they play in. The type of people that come would make any town proud to have and he noted Mr. Grafas is concerned about this, he tells them to keep the sound low and they do; he is up front in the band and watches the people, they can talk to each other, no one is holding their ears, he said his drummer plays with bamboo sticks as they are quieter. This is well controlled and he did not understand the complaints that have been made, there are no "head bangers" here. He even comes to Waypoint on his nights off because he enjoys it so much and he hope the disgruntled few will not prevent the good environment that is there in the summer.

Kathryn Laurino of 608 Green Avenue, Brielle came forward and was sworn in, she lives in an apartment at Hoffman's. She said the first summer the music was loud, she is northeast of Waypoint, and she loved it; since then the music has become so quiet she doesn't hear it anymore. She invited anyone who wanted to come over to her apartment, they will not hear the music from Waypoint.

Scott Bellone of 29 Union Street, Matawan was next to be sworn in. He owns the business that installed the house sound system to monitor the bands. There is a unit upstairs and the bartenders have a button as well to control the sound, there is no loud music through this system.

Peter Gebhardt of 505 Chelsea Street, Forked River was next to come forward, he was sworn in. He stumbled on Waypoint a few years ago, he stopped going to a lot of places because of the loud music; at Waypoint they control the sound and there is more of a mature crowd, this is a great place.

John Brue was next to be sworn in, he gave his address as 1802 Boatpoint Drive in Point Pleasant. He is a musician and plays in a band called Brue Crew and has worked at Waypoint since it opened, he also had played at Union Landing. He felt it is amazing that this hearing is going on, Larry does not want loud music, he wants nice, good music and the volume is set low, people do not have to yell to speak. He also makes sure the band does not go past 10:00 p.m., they stop at 9:55 p.m. All bandmembers in the area have day jobs and the evening band jobs are important to their income, he asked to support Waypoint and all their employees as well, live music is vital to the Jersey Shore.

Colleen Rice of 552D Sheffield Court in Lakewood then came forward and was sworn in. She was from the River House, she was there as a manager for 7 years and was then hired by Mr. Grafas for Waypoint. She sees a lot of the same customers at Waypoint and said last summer Mr. Stuhmann came in to see her with complaints about Waypoint. At this point Mr. Condon stopped her and just asked her for her opinion on this application. She spoke of having a DJ at the River House on Thursdays and was asked not to put that on the marquee, but he did play. Since she has been at Waypoint there has not been a problem, she is very conscious about noise control.

John White of 1112 Front Street, Point Pleasant came forward and was sworn in. His band plays at Waypoint and they usually video their performances; when they play at Waypoint their volume is always checked. After review the videos, he noticed that the audience was louder than the music, they get comments of "we can't hear the band" and they answer they have to play soft. If they did not play this way they would not be called back, he has lived here for 40 years and felt Waypoint was one of the classiest places and safest environment for everyone.

Next to be sworn in was Mary Tkach of 1700 Riviera Court in Point Pleasant, she runs Rescue Ridge, an

animal rescue center. She said Mr. Grafas really gives back and helps them, they bring their dogs there and they would freak out if the music was loud. Waypoint is a wonderful place and Brielle should be proud.

Tracy Garofalo of 113 Ashley Avenue, Brielle came forward and was sworn in. She has been a long-time resident of Manasquan and knows Leggett's and the Osprey, this is a different element. She has been here since Union Landing and said Mr. Grafas has updated this place. When she walks her dog she doesn't hear loud music, if she does it's from a boat. She agreed with others the area is safe.

John Monteverdi of 921 Riverview Drive of Brielle came forward and was sworn in. He is a retired Detective from Newark, worked there for 25 years and has now been retired for 5 years. His mother's uncle, Pat Dodd, owned Casablanca way back when; he attended Union Landing and felt Mr. Grafas has done everything he could, the place is better and cleaner, the doors have been opened to the town. He spent 25 years in Newark and felt we all should be grateful for what he has done.

Ken Hager of 22 Orla Court in Tinton Falls came forward and was sworn in. He is a lifelong resident of Monmouth County and came here when it was Union Landing and again for Waypoint, which is so much better than Union Landing. He went to Union Landing when he was younger and enjoyed the loud music and crowd, now there is an older crowd and, as he is older, he enjoys it. He also has a boat at Waypoint and has seen the sound wall, since it has been up the difference is like night and day.

Joe Mainero of 704 Evergreen Avenue, Brielle, came forward and was sworn in. He said he has been here for 8 years and the changes at Waypoint have been astronomical, this is the quietest bar in the area and is a great place.

As there were no more public comments, that portion of the hearing was closed and the Board took a 10 minute recess, from 8:30 to 8:40 p.m.

As the public comment period was over, it was time for Mr. Tim Middleton, one of the opposing attorneys, to present his Planner, Joe Kociuba, a Planner & Engineer licensed in NJ. As the Board was familiar with Mr. Kociuba he was accepted as an expert witness. He felt that additional relief was needed with this application and said the applicant has testified this is a D3 variance, however, he said a D1 variance is needed, a Use Variance; there are also the bulk variances added to this. He did not think enough proof was given for the use of the Hoffman's Marina lot for parking and the Board should deny this. He then went on to speak of the D3 variance Waypoint is asking for and referred to their Planner, Mr. Kenderian and him using the Coventry Square case. This type of conditional use is a greater burden and the deviation here is so substantial they need a D1 variance approval instead. They are asking for a Multi-Use Marine Complex and restaurants are subject to different sections of the Ordinance. At this time the Brielle Ordinance excepts that Mr. Kociuba referred to was marked as Exhibit O-28. He defined the restaurant under the Conditional Use section and said it must be conducted within the marina facility, which this is and this is where the docks come in. The key here is the use has to fit in that box, it needs to be a sit-down restaurant and referred to Section 21:19-4. He said the use must promote use of the waterfront and this does, the uses must be compatible with uses in the area and the Board has to find this, the Board has to ask how is this compatible with other structures in the area. He went on to state Mr. Kenderian stated he did not feel there will be an effect on property values but neither he, Mr. Kociuba, or Mr. Kenderian can verify this.

In regards to traffic congestion, the applicant attempted to alleviate this by using Hoffman's, the ordinance says, at Section 21:31-17 that neighboring uses may be common parking spaces and there shall be compliance with all other provisions of the Ordinance. Waypoint does not intend to comply, there is no paving or striping, so it is up to the Board to decide this. Mr. Kociuba said there has been no testimony that they have been given permission to share parking and the Marina needs to be closed at night and on Sunday, they have not requested relief. Mr. Jackson did not feel this applied as this use is temporary but the shared parking does not meet the requirements. Mr. Kociuba added that Hoffman's already needs a variance for parking.

He referred to Mr. Hilla stating he did not think he could get to the correct parking numbers here and the applicant did provide examples of areas that use shared parking but they were not in Brielle, other than Shipwreck Grill. The Ordinance says the parking lot has to be lighted and is safe and the Board has to address this; the applicant did speak about this but not the glare on additional properties. As far as adverse impacts, they have to submit a standard of proof that they do not create an adverse impact, but there has been testimony about the noise levels and the maximum allowed.

He went back to the sit-down restaurant and said the expected use is this and not a bar, tavern or night club. Certain times of day it does operate as it should but there are times it does not. He then addressed the seating compared to the docking berths and parking and felt they did not comply, they, in his figures, are allowed 92 seats and they are seeking over 200, this is under the Conditional Use as well and again referred D1 opposed to D3 variance requirements.

Mr. Kociuba said for a D3 the property has to fit in the box that defines this by virtue of standards; does this property meet the criteria. If someone came in with a sit-down restaurant but does not have enough docking berths, it is ok? Once the requirements are exceeded by so much it goes into a different use and now a D1 variance need arises. The substantial deviation here takes it from a D3 to a D1. He said they also need to comply with the C2 variances, off-street parking, loading, landscaping, etc., these are all requirements for the C2 zone and the question is, has enough testimony been given on these. Is there enough screening, the building must be 25 feet from the water and they do not meet that. They built closer to Union Lane and Hoffman's and the water than permitted; did they provide more screening and put in plantings, railings, etc. to comply with the C2 zone criteria.

They need 2 acres and do not have that, they use the riparian grant and Hoffman's and they are not allowed to do this, the Riparian Grants are separate; 64 slips are required and they have 23. The lot is  $\frac{1}{4}$  of what is needed and 35% of what docking is required as well as parking. He disagreed with Mr. Kenderian referencing the Coventry Square case and did not feel the use is appropriate here. The standard of proof is by Ordinance and the Board will have to find that the site is suitable for a Conditional Use; Mr. Kociuba felt there is ample detriment to the public good and this is not what the Ordinance intended. He said the Ordinances were made to constrain the uses of the waterfront and not intended to expand use of properties, the Ordinances were intended to stop crowd noise.

He again said the Board can address the D1 use and this is paramount. There are different uses in buildings and here you have canopies and a bar and that is different from restaurant use. Approving this under D3 would require that everything they are doing at this site is compatible with this zone and complies with the definitions in the Ordinance. If the Board finds that music, amplifiers, etc. are okay then other places may apply to have this, he did not think the Board has heard any other testimony that these are accessory to the restaurant use. The Board has to ask what is the Use, is it D1 or D3? Brielle has two types of food establishments, restaurants and taverns; tavern is not defined in the Ordinance but taverns are not permitted in the C2 zone, only the C1 zone.

He noted that the Board engineer, Mr. Hilla, said a D1 variance is required, the applicant said they are not asking for a D1 variance. He then went on that the Board has not heard testimony on the size of the kitchen, number of tables, etc., only testimony on the rear deck and canopy. How does a 35-40 seat bar with a sound wall, etc. relate to a sit-down restaurant and is all this use permitted on this property? He reminded all that what the Board sets down here is what will apply.

Mr. Kociuba then spoke of accessory use, the bar is an accessory use and is added to the principal use, it is not a major part but supports it; as to the outside bar is it an appropriate use, the applicant has to explain why this is accessory and he didn't think they can do this. The outdoor use here should be looked at as the principal use and again referred to fitting in the box created by the Ordinance. He also said this includes the band area which sometimes makes this more of a tavern use and not a restaurant use, when the weekend is here and bands play to a packed house, this is not the definition of a restaurant. He has seen the videos and he did not see a sit-down restaurant and felt this needs to be discussed. He said that Mr. Grafas may not always be the owner and the Board has to take this into account in regards to the operation of this site.

Mr. Kociuba then presented Exhibit O-29, an overlay of the Union Landing/Waypoint outdoor area, a comparison. Mr. Jackson spoke and said they were not given this before this meeting and he did not feel this was fair, it also was not given to the Board 10 days before this hearing, however, Mr. Condon felt this was an Exhibit presented and was acceptable. Mr. Kociuba said the yellow lines are the expansion areas, the gray lines are what Union Landing was and the Red is what is there now. He felt they have expanded this decking area by 930 square feet, going by what has been provided and he said this was only his estimate. He said the concrete patio was extended and now looks to be 2.5 feet from the property line, there was a 6-foot area for the canopy but now that has extended to Union Lane and the whole line down is now 6 feet. The stair front was at 20.5 feet and is now at 12.6 feet, the water edge was 19.5 feet and now is 17.22 feet. The side by Hoffman's went from 8.2 feet to 4.29 feet. He noted they did asked for bulk variances for parking, front, side and rear yard setbacks, water edge, floor area ratio, signage, curb cuts, loading zone, exterior illumination, 5-foot buffer request for landscaping; these are C1 or C2 variances and can be approved. The C1 is a hardship due to the shape of the lot or unique situation and he felt this does not apply in this case. The application had testimony about an extraordinary situation because they did get a CO but Mr. Kociuba did not agree with this and felt they have a self-imposed hardship.

The C2 criteria states the benefits outweigh the detriments, does a larger deck benefit the public or just the applicant and why did the deck need to be expanded; there was testimony on raising it for safety and flood. Mr. Kociuba did not agree with this, there is no law on this and it is not necessary and he did not think this was better planning; the detriment to the public good and zone plan was not addressed either. He asked if the Board can identify each variance requested and do they address both the positive and negative criteria,

he then said the deck could have been built to the proper setbacks. The current use of the property is more intense than what is called for and he felt this exceeds what the Ordinance calls for as well.

He then addressed the parking again and did not feel Waypoint is using the right numbers, their traffic engineer said 151 spaces needed and Mr. Kociuba felt it was closer to 224, the parking lot should be paved at Hoffman's. At this point Mr. Kociuba was finished with his testimony, the Board had no questions for him so Mr. Jackson came forward to do a cross-examination.

Mr. Jackson told the Board Mr. Kociuba has gone well beyond what has been said at the meetings and asked for time to look into Exhibit O-29 and come back for a cross examination as he never got the exhibit to review. Mr. Middleton said that Mr. Kociuba is not available for the February 6th meeting and said that Mr. Jackson did not give him exhibits he had, he wants to get this done tonight and would like Mr. Jackson to proceed with the cross-examination. Mr. Clark said this is up to the Board and it is more of a practice not to submit exhibits in advance of a meeting, it can be done on a board at the time of testimony. He said there is a time issue here and Mr. Kociuba is not available for the next meeting. Mr. Jackson said this exhibit is based on information from various places and variances Mr. Kociuba says they need but have not ever been raised before. It would be appreciated and fair to give him time to respond to this. Mr. Condon felt the Board has given all plenty of time, the witness is here and the Board wants to get this done. He offered to give Mr. Jackson 5-10 minutes to get ready and the Board called a recess from 9:50 to 10:05 p.m.

The Board reconvened and Mr. Jackson first asked Mr. Kociuba who employed him, the answer was Tom Stuhmann and Anthony Knapp. Mr. Jackson then asked him if he has been to the site and to Union Landing and Mr. Kociuba said he has not ever been to Union Landing. Mr. Jackson asked him if he was aware this whole thing started out as an appeal of the Zoning Officer and Mr. Kociuba did not recall hearing about an appeal. Mr. Jackson then said he felt Mr. Kociuba was giving out a legal opinion on certain things and noted he is a Planner and Engineer and not an attorney, Mr. Kociuba felt this all interacts. Mr. Jackson asked him if he was a surveyor and the answer was no, but he relied on the surveys that were done to do his report. Mr. Jackson said that Mr. Kociuba indicated that Exhibit O-29 is roughly done and Mr. Kociuba said it was taken from the surveys, which he did not do, but he has been on the site.

Mr. Jackson noted Union Landing has been in existence since 1978 and received a liquor license in 1985. In 1992 they applied for a deck permit and Mr. Kociuba agreed. Mr. Jackson said they received a CO for using the deck in 1992 and Mr. Kociuba did not see that but assumed that was done. Mr. Jackson then commented that, for 22 years, this was a restaurant operation outside. He asked Mr. Kociuba if he was familiar with the River House and that also have outside seating area? Mr. Kociuba asked if they got permits and, at this point, Mr. Middleton objected as the River House is not before the Planning Board. Mr. Jackson said there is a restaurant at the River House and asked if they were required to get a D1 variance? Mr. Kociuba did not know and commented other restaurants do have outside seating. Mr. Jackson reminded Mr. Kociuba he said that, in the definition of restaurants, they have to be indoors and Mr. Kociuba said yes. Mr. Jackson then said that a restaurant that allows seating outside needs a D1 variance and Mr. Kociuba said no, his testimony was that they are accessory uses. Mr. Jackson asked for the part of the Ordinance that defines that outdoor seating for restaurants is allowed as accessory use and Mr. Kociuba said that is not defined in the Ordinance. Mr. Jackson asked if the Zoning Officer said a D1 variance is needed for outside dining and Mr. Kociuba did not know.

Mr. Jackson then referred to a letter his client had written to the Code Enforcement Officer and he had a letter from that person saying all was in order and there were no variance violations. Mr. Middleton objected to this question and Mr. Clark felt it was fine to ask if Mr. Kociuba knew of this letter. Mr. Middleton countered with the point that Mr. Jackson should produce the letter, Mr. Kociuba said he has not seen this letter. Mr. Jackson asked him if he reviewed Mr. Hilla's report and Mr. Kociuba said yes. At this point Mr. Jackson found his copy of Mr. Langenberger's letter and Mr. Kociuba read it, it is dated 12/26/2014. Mr. Kociuba said the letter says there are no violations at this time and Union Landing complies with the zoning requirements. At this time Mr. Middleton spoke and said Mr. Langenberger, as Code Enforcement Officer, had no right to say this. Mr. Jackson said he is addressing the need for a D1 variance. Mr. Condon said Mr. Langenberger's statement was not involved with the sit-down dining issue. The testimony was that, at 11:00 p.m., people are not there for dinner. Mr. Clark felt the issue is what Mr. Kociuba saw and reviewed, if Mr. Kociuba did not see it he can't testify on it. Mr. Jackson noted that now Mr. Kociuba has read the letter and Mr. Clark asked the impact of it. Mr. Jackson said the letter said there were no zoning violations, Mr. Kociuba said no existing code violations and it conforms. Mr. Kociuba said his testimony was outdoor seating is an accessory use but no testimony has been given on this. Mr. Jackson said they went over the seating, tables, etc. for the outdoor area. Mr. Kociuba agreed but the "accessory use" was not addressed. Mr. Jackson noted it is attached to the building and Mr. Kociuba said being attached and the use are not one and the same.

Mr. Jackson then referred again to Exhibit O-29 and the deck expansion. He asked Mr. Kociuba if he was aware of the square footage increase the Board identified and Mr. Kociuba asked if the Board calculated their figures. Mr. Jackson stated Mr. Kociuba had testified that he had read the transcripts and Mr. Kociuba said he

did but he did not do the appeal hearing. Mr. Jackson then spoke of the 1/10/17 transcript and Mr. Kociuba said he was present at that time and heard Mr. Lurie's testimony. Mr. Jackson asked him if he was to be impartial and review all testimony and the answer was yes. Mr. Jackson then read from page 58 of that transcript regarding the removal of the planters which took up 380 square feet, therefore, this increases the usable square footage by 380 square feet; he said nowhere else is it stated more than 380 square feet. Mr. Kociuba said his understanding was the Board was given this figure but there was more expansion when the planters were removed and said that Exhibit O-29 represented the variance relief needed. Mr. Condon had asked this back then and his question was if the deck was expanded it was by the planters; if more than that was done he was not aware of it.

Mr. Jackson said this all has been reviewed and discussed in past meetings, Mr. Kociuba said he had used the surveys from the DW Smith surveys, 4/19/14 and 2/23/17. Mr. Jackson asked if he did his review on the existing approved deck verses the as-built deck and Mr. Kociuba said yes. There is a difference between what the Zoning Officer approved and what was built, what he did was compare Union Landing and Waypoint. Mr. Jackson noted the Zoning Officer said timber decks could be built and issued permits, did Mr. Kociuba agree and the answer was yes. Mr. Jackson asked if he disagreed with Mr. Lurie's survey, Exhibit O-8 and Mr. Kociuba did not know, he can't do an analysis by eyeing it and again referred to the Zoning Officer's letter, it did not give permission for the deck to be expanded. Mr. Jackson said the difference in square footage, as per Exhibit O-8, is 2 square feet, from 1490 to 1492 square feet. Again Mr. Kociuba said his figures were based on pre-existing conditions, there was a drawing presented and the deck was to be replaced.

At this point Mr. Stuhmann handed Mr. Kociuba some papers and Mr. Jackson had a problem with this, a client handing documents to the engineer, however the Board was agreeable to having this done. Mr. Kociuba had the letter from Elissa Commins, the Zoning Officer, he did say it was not from his briefcase and was given to him by Mr. Stuhmann. It was a letter and approved stamped plan, a total of a lot of pages, 40-60 pages. Mr. Jackson asked if he had the drawing that given to Ms. Commins and Mr. Kociuba said yes, the drawing has limited dimensions with no setbacks shown on the east side and some single dimensions and a letter saying the deck can be replaced in the same footprint. Mr. Jackson asked if he did see the area that was increased by 2 square feet and Mr. Kociuba said he did but the letter states "within the same footprint".

Mr. Jackson then asked Mr. Kociuba to go over the criteria for a D3 variance and this was done: it is a Conditional Use standard, the applicant has to show the use is permitted in the zone and the nature of the deviation from the conditions, positive criteria taken and the board can permit it in the zone. The point was when the conditions allowed were exceeded, as per Coventry Square and it affects the suitability of the site ♦ Mr. Kociuba did not think this was done. Mr. Jackson felt this was up to the Board to decide if a D1 variance applies and commented the "particular suitability" is not in D3 as it is in D1, a D3 can be given, it is more stringent, particular suitability is about how the site is used and said they did give notice for a D1. Mr. Kociuba agreed they did but they did not present the proofs to the Board. Mr. Jackson said the Coventry Square question is - can the applicant show conditions that can ameliorate the existing conditions, it was never said this can't be for a restaurant.

Mr. Middleton went back to the Zoning Officer's letter and said that was for Union Landing and Mr. Jackson noted this was dated 8/2015; Mr. Middleton said he was talking about the original letter. There was a discussion on conditional use criteria and Mr. Kociuba said the use of the waterfront should be compatible with no impact on property values and restaurants are subject to these conditions. He mentioned Section 21:19-4 to 21:51-15. Mr. Jackson asked if this use supports the Marine Commercial district and making the docks more attractive and attract people and Mr. Kociuba said yes. Mr. Jackson asked if this amenity is good for fishing tournaments and the answer was yes. Mr. Jackson asked if Mr. Grafas made these improvements and the answer again was yes but he disagreed if the design was compatible and said the Board has to make this determination. Mr. Jackson referred to Exhibit A-16, a photo of Waypoint area and asked if it looks out of place, again Mr. Kociuba said it is up to the Board to determine and he did not give testimony on the size of the building. Mr. Jackson asked about property values and Mr. Kociuba said he is not an expert on this and no one has addressed it. Mr. Jackson spoke of the traffic issue and asked if the applicant has satisfied this, Mr. Kociuba said he estimated 930 more square feet on the deck; Mr. Jackson noted that would be about the side of the Council room and Mr. Kociuba agreed.

Mr. Jackson said bands were at Union Landing and the outdoor seating was packed, Mr. Kociuba agreed but still said more than 900 square feet has been added. Mr. Jackson then asked if adequate parking is nearby and Mr. Kociuba said yes and agreed the comments make about marina parking at night was unreasonable. Mr. Jackson asked if another 900 square feet would amount 10 more parking spaces and Mr. Kociuba said yes; Mr. Jackson then asked if Hoffman's can accommodate 10 more cars and Mr. Kociuba asked if it was in pavement or gravel but did say the space exists when the marina is closed. Mr. Jackson asked how long Hoffman's has been in business and the answer was a long time. Mr. Condon noted it used to be Brielle Marine Basin but is the same area as Hoffman's. Mr. Jackson asked if Mr. Kociuba ever heard of no parking available because Hoffman's lot is full and Mr. Kociuba did not know. Mr. Jackson then asked if there are

another 10 spaces available will this be better parking than what was at Union Landing and Mr. Kociuba said if the Board approved it, then yes. He noted that Hoffman's has to be Ordinance compliant. There was then a brief discussion on off-street parking and referral of Ordinance Section 21:53-15i (parking). Mr. Jackson said if the Board approves this use of Hoffman's lot then a variance is not needed and Mr. Kociuba disagreed, bulk variance relief is still needed. Mr. Jackson said this can be added to the D variance relief and Mr. Kociuba said okay, it does say "may include" in the Ordinance, but this does not alleviate the variance need but it can be granted. Mr. Ray's testimony (the traffic expert) was that there are 151 spaces available and 109 are required and Mr. Kociuba said he did not do an investigation on the parking at Hoffman's.

Mr. Jackson then went onto the screening issue for landscaping. He said they provided information on the trees along Union Lane and Green Avenue and Mr. Kociuba agreed this was done but he did not know if it was adequate, the screening at Hoffman's was less than at Waypoint. Mr. Jackson asked him if he has seen the sound wall and Mr. Kociuba had not. He then asked if Mr. Kociuba had been there when bands were playing and the answer was no, he was not asked to report on noise. Mr. Jackson asked about adequate utilities, fire and safety and Mr. Kociuba felt this was adequate but he did not know about glare and spillage on lighting, it was not his burden to address. Mr. Jackson said no objections have been made on this and Mr. Kociuba said the Ordinance does talk about it.

Mr. Jackson asked Mr. Kociuba if he had reviewed the Master Plan and the answer was yes, the Master Plan does provide information on the area that serves the marina and encourages re-development. There was then a brief discussion on who can issue a letter as the Code Enforcement Officer did and Mr. Kociuba said he would have to pull out the Municipal Land Use Law. Mr. Jackson quoted 55D-68 where it says the application can be made to the Administrative Officer and he asked Mr. Kociuba if he knew who that was in Brielle; Mr. Kociuba said he would have to look it up. Mr. Jackson then quoted Ordinance Section 40:55D-3 where it says it is the Borough Clerk unless otherwise designated. At this time Mr. Middleton and Mr. Jackson went back and forth on definitions and legalities. Mr. Clark felt they were asking for opinions on the fly, this is an issue but this seems to be getting out of bounds. Mr. Jackson said that Mr. Kociuba does not know so how is Mr. Grafas to know. Mr. Clark asked them all to please move on.

Mr. Jackson said the truth is if you have a prior non-conforming use you need a permit from the Administrative Officer or designee and someone is supposed to know who this is. There is a one-year period to get the Certificate and after that the Zoning Officer can say no and then there is an application to the Zoning Board. Mr. Grafas wrote to the town and he got an answer that all was okay, then they have been accused of doing things without permission.

The Master Plan says it is encouraging development in the Marine Commercial area and Mr. Kociuba agreed. Mr. Jackson said Waypoint has re-developed the dock area that was dilapidated and silt infested when he purchased the property. Mr. Kociuba did not know that but maybe the Board did. Mr. Jackson then addressed the use of Riparian lands and Mr. Kociuba felt they were separate. Mr. Jackson said the Supreme Court has determined that land underwater belongs to the landowner; Mr. Kociuba said he did not know this. Mr. Jackson then said to Mr. Kociuba that they can use the boat slip ratio but not the riparian grant and Mr. Kociuba said yes. Mr. Jackson asked him about the base flood elevation and Mr. Kociuba did not know but this applies to structures that are not floodproof, using a patio and deck under this does not apply. Mr. Jackson then asked if boating facilities are encouraged under the Master Plan and the answer was yes; he then asked if Waypoint has a variety of uses for the waterfront and the answer again was yes. Mr. Jackson asked if this zoning power comes from NJ Statutes and Mr. Kociuba said yes; Mr. Jackson then said the Board should know the requirements and Mr. Kociuba said yes. Mr. Jackson asked if the Board has to consider this for the community as a whole and the answer was yes. Mr. Jackson said the Zoning refers to community wide resource, the Municipal Land Use Law talks of sufficient spaces for different uses in order to meet the needs of the citizens.

At this time Mr. Condon spoke and noted the time was now 11:30 p.m. Mr. Jackson said he had just a few more questions but then withdrew and said he was through with his cross-examination. At this time the hearing was opened to the public for questions to Mr. Kociuba and, hearing none, that portion was closed.

Mr. Bonacci asked Mr. Jackson about Exhibit O-29 and is this what they are asking for? Mr. Jackson said no, they have shown what they are asking for and do not agree with Exhibit O-29. Mr. Maclearie asked if Mr. Lurie can look at this Exhibit and do a comparison so the Board knows which is accurate, Mr. Condon wanted to know what was at Union Landing and what is there now and Mr. Kociuba said that is what Exhibit O-29 shows. Mr. Jackson objected to this exhibit as it was not done to scale and Mr. Maclearie felt a comparison should not be that hard. Mr. Jackson said he had all the information in his summary report and is in a Power Point. Mr. Condon felt this would be fine if it is his summation and that Mr. Clark will be speaking to the attorneys involved on the final summations.

Mr. Condon once again opened the meeting to the public for general comments and, hearing none, closed the

public portion of this hearing. As there was no further business to come before the Board this evening a motion for adjournment was made by Mr. Stenson, seconded by Mr. Lapham and unanimously approved, all aye. The meeting was adjourned at 11:35 p.m.

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Karen S. Brisben

Approved: February 6, 2018