

Borough of Brielle

FEBRUARY 6, 2018

May 17 2018

February 6th, 2018

Tuesday, February 6, 2018

BRIELLE PLANNING BOARD

TUESDAY, FEBRUARY 6, 2018

The regular meeting of the Brielle Planning Board was held on Tuesday, February 6, 2018 at the Brielle Borough Hall at 7:30 p.m. After a moment of silent prayer and a Salute to the Flag roll call was taken: Present — Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham (arrived 8:10 p.m.), James Maclearie, Stacey Montalto, Charles Sarnasi

Absent - Joseph Bonacci, James Stenson

Also present were Alan Hilla, Jr., Board Engineer and David Clark, Board Attorney. Board secretary Karen Brisben recorded the Minutes. There were 15 people in the audience; the Coast Star reporter and Mr. Thomas Stuhmann were recording this meeting.

The Minutes of the January 9, 2018 and January 23, 2018 meetings were approved on a motion by Mr. Maclearie, seconded by Ms. Montalto and unanimously approved by voice vote, all aye.

OTHER BUSINESS:

The first item to be considered was a corrective amendment to a Resolution for 30 Crescent Drive, Block 61, Lot 3-3.01. Mr. Clark explained this application was heard on 10/11/2016 and it was discovered, when the work started, that there was an error in the Resolution in the reference to drywells; the Resolution stated that they needed a 10 foot setback and it should have said a 5 foot setback. The following Resolution amendment was then presented for approval:

WHEREAS, Glenn, Alan, Olivia & Allison Cancro (collectively, the "Applicants") previously applied to the Planning and Zoning Board of the Borough of Brielle (the "Board") seeking site plan approval, including minor subdivision and variance relief, to allow for the construction of a single family dwelling on the property located at 30 Crescent Drive and identified on the Brielle tax map as Block 61, Lot 3- 3.01 (the "Property" or the "Parcel") located in the R-3 residential zone; and

WHEREAS, the Board adopted a Resolution on October 11, 2016 approving the Applicants' application for a minor subdivision and variances, subject to certain specified conditions; and

WHEREAS, the Applicants' attorney, C. Keith Henderson, Esq., subsequently contacted the Board's attorney and advised the Board that there was a typographical error in the October 11, 2016 Resolution of Approval in that condition c(4) in the "NOW, THEREFORE" section of the Resolution requires that "Proposed drywells will be moved so as to meet 10 foot setbacks" and that this requirement should have been that the proposed drywells will be moved so as to meet 5 foot setbacks; and

WHEREAS, the Board's engineer/planner, Alan P. Hilla, has reviewed this issue and has confirmed that this was a typographical error and that proposed drywells should be moved so as to meet 5 foot side yard setbacks.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that condition c(4) in the "NOW, THEREFORE" section of the Board's October 11, 2016 Resolution of Approval is hereby rescinded and replaced by the following revised condition c(4): "Proposed drywells will be moved so as to meet 5 foot setbacks"; and

BE IT FURTHER RESOLVED that all of the other terms and conditions of the October 11, 2016 Resolution of Approval shall remain in full force and effect

The foregoing is a true copy of a Resolution adopted by the Planning Board of the Borough of Brielle at its meeting on February 6, 2018, as copied from the Minutes of said Meeting.

A motion to approve this amendment was made by Councilman Garruzzo, seconded by Ms. Montalto and then by the following roll call vote:

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

Noes: None

NEW BUSINESS:

The Board then turned to an application for variance relief for Block 22.01, Lot 19, 609 Agnes Avenue, owned by Christopher Dorko, to allow construction of a new single-family dwelling and detached garage. Lot Area — 11,250 square feet required, 7,500 square feet existing. Lot Width — 75 feet required, 50 feet existing. Front Yard — 30 feet minimum required, 25.5 feet existing, 16.6 feet proposed. Side Yard Setback (right side) — 10 feet minimum required, 6.9 feet existing, 7 feet proposed. Lot Coverage — 20% maximum allowed, 17% existing, 22.5% proposed. Building Height — 35 feet maximum allowed, 38 feet proposed.

The proper fees were paid, taxes are paid to date and the properly owners within 200 feet as well as the newspaper were properly notified. Mr. John Jackson, Esq. came forward to present this application. He had made a Power Point presentation and this will help move the application along, a written copy was marked as Exhibit A-1, 9 pages.

Mr. Jackson said the front yard setback is similar to others on this block as shown on an overhead view in the Power Point and this home will be more efficient; the existing home is to be demolished with the new home having the same front yard setback. The next part of the Power Point showed the elevations, the pool and upgrading of the garage.

At this time Mr. Richard Ramirez, Engineer, came forward and was sworn in. He has an office in Toms River and is licensed in New Jersey as an Engineer and Planner; he stated he has done over 2,500 renovations since Hurricane Sandy. The Board accepted him as an expert witness. He started by stating the current front yard setback is 17.58 feet and they are proposing a 17.5 foot setback, basically the same, this home will fit the street area.

He presented a copy of the Plot Plan colored in showing the requirements needed, this was marked as Exhibit A-2. Mr. Condon questioned the lot coverage, the application says a lot coverage of 22.5% but the plan says 24%. Mr. Ramirez said they rounded it up to 24%, they would rather ask for a higher number. Councilman Garruzzo also questioned this as the application itself states a coverage of 23.7% and Mr. Hilla's report says 22.5%. Mr. Hilla said he did his calculations himself and not through the computer, Mr. Ramirez felt he was right, his calculations came to 23.7% so he rounded it off to 24%. He added that his figures were done through a computer and Mr. Hilla's were not. The architectural dimensions are correct and this is how the home will be built. He noted they are redoing the garage and it will end up being 183 square feet less than what now exists.

Mr. Jackson asked if they were asking for relief based on hardship and Mr. Ramirez said the lot is only 50 feet wide where 75 feet is required and the lot area is only 7,500 square feet where 11,250 square feet is required; this is causing the issues.

He went over the variance needs again and commented that they are reducing the size of the garage. He also felt that Agnes Avenue is a hodge-podge of different sized lots with a lot of them being only 50 feet wide. He then presented a copy of the tax map, which was marked as Exhibit A-3, which shows at least 10 lots on this side of the block with only 50 feet width and there are more across the street. He said that, given all the circumstances involved, this whole project will create a desirable visual environment and will fit in with other homes. There was then a discussion on the actual front yard setback, the front porch is at 17.5 feet but to the actual steps it is 16 feet. To the North, on the left side, there is a 6.9 foot setback in the rear and they are going to angle the house over slightly so it is 7 feet straight back, the home is now on a slight angle. The other side will be from 13 to 12 feet to the rear.

Mr. Ramirez said this property is on a slope and the town Ordinance does allow for the ridge of the home to be higher in this type of situation. He felt this application promotes air, light and open space and is in keeping with the neighborhood, the light can reach the neighbors' yards and this home will benefit all in this area.

Mr. Hilla asked about the plan he had received in his packet, it may be different than Exhibit A-2 as some of the numbers do not match. His plan was dated 11/1/2017 and Exhibit A-2 shows a plan that was revised on 1/12/2018. Councilman Garruzzo agreed that the Board members all have a plan dated 11/1/2017. Mr. Clark asked for an explanation and Mr. Ramirez said he did do changes, they revised the Bay window so it came out further, they also revised the porch and rear structure with minor architectural refinements. Mr. Hilla said the front setback is now 16.6 feet and they are saying it will be 17.6 feet so the rear setback footage should change. Mr. Jackson said the architect will testify to the changes made.

Mayor Nicol commented these changes were done in January and the Board never got any revisions; Mr. Ramirez said all they were doing is trying to make the architectural plans and the plot plans meet. Mr. Condon asked about this as in November they had one figure on height and now have another and Mr. Jackson once again said the architect will address this, changes were made after the review letter. Mr. Sarnasi asked for confirmation on the front yard setback and was told it is 17.58 feet now and the new home will be about 17.5 feet. He asked how much closer will the porch be than what is there now and was told about 1.5 feet. Mr. Hilla told Mr. Ramirez the Board does not have the benefit of the information he is testifying to and Mr. Ramirez gave him a copy of the revised plan.

Mr. Hilla asked about the driveway and Mr. Ramirez felt the new plan works here, he then said they will be putting in trenches for stormwater runoff and this will be reviewed before being done, this is in relation to relief on the side yard setback and should work, Mr. Hilla agreed. Mr. Maclearie asked what material will be used for the driveway and will it be macadam; Mr. Jackson said they have not discussed this but they will do what needs to be done.

As there were no other Board member questions the hearing was opened to the public for questions to Mr. Ramirez and, hearing none, that portion of the application was closed.

Mr. Ronald Rheane, Architect, then came forward and was sworn in. He has been licensed in New Jersey for 30 years and has done most of his work in Monmouth & Ocean Counties; he was accepted as an expert witness.

He said the home will have 2,400 square feet, a full basement and an unfinished attic. They needed to do a detached garage and the existing one was oversized so they are reducing it by half. They want to set the home in line with the neighbors and are keeping the line with what is there now, essentially it will be the same. Mr. Jackson noted the architect's drawing shown is the same that is in Exhibit A-1 so it does not have to be marked. Mr. Rheane went on to say that, on the height issue, Briele has an exception rule for height; usually it is measured from the centerline of the road but if the property is sloped greater than 6% one can take the measurement from the front of the property between the sidelines. Based on this he came

up with a 6.73% slope so they used the reference point of the front property line; he referred to his elevation sheet which shows the home itself is 34.6 feet high so they meet the height compliance even though their variance is for 38 feet high from the center of the road.

Mr. Rheane then went over the layout of the home, there will be 4 bedrooms and another covered porch over the first floor, then there will be an unfinished attic which will comply with the town's requirements; there will also be access to a roof deck. The basement will be unfinished but it can be finished in the future. As far as the exterior of the proposed home it will have trimmed windows and they have not yet decided on the siding yet but it will all tie in. There will be gables and bay windows as well as an octagonal front porch; this will fit in with the homes in the area as far as architecture. The garage will comply with a height of 14.8 feet where 15 feet is allowed, it will be a one car garage and will look better than the masonry garage that is there now. Mr. Hilla said this is the first time the Height Ordinance exception has been used on this side of town, he believed the calculations are correct, but granting a front yard variance comes into play here and it makes it close. If the front setback of 30 feet is applied it may not comply as the property gets flatter as you go back. Mr. Hilla also commented on the other variances requested but Mr. Jackson said a lot of the homes in this area are similar to this; Mr. Rheane agreed and said "they are all over the place"; Mayor Nicol and felt if an average was taken it would fit in.

Mr. Samasi asked about the 5 risers in the front and 3 in the back, can they make it 3 in the front; Mr. Rheane said that would create a water issue and it can't be done. Mr. Samasi then asked how high the basement was and Mr. Rheane did not know, but the first floor is 9 feet high, the second floor is 8 feet and the attic goes from 8 to 0.

At this time the Board had no further questions so the meeting was opened to the public and Mr. John Lewis of 611 Agnes Avenue came forward and was sworn in. He wanted to clarify that they look forward to this home, they are great neighbors. As there were no other comments or questions, that portion of the hearing was closed and Mr. Christopher Dorko, the owner, came forward and was sworn in.

They have owned this property for 12 years and have children; his mother comes for 4 months of the year and stays here as well. He has come to Brielle since he was a child and now lives here but the home has become too small; he was at his neighbors behind him and saw what condition the rear of his garage looked like and he wanted to fix it. He acknowledged the current driveway is narrow but the home behind them also has a narrow one, now when he gets out of his car he is on grass, they need a wider driveway. Mayor Nicol then asked Mrs. Dorko if she was okay with all this and she said she was very happy with it. Mr. Dorko added that it has been a good experience so far working with everyone.

As no Board members had any questions, the hearing was opened to the public for general comments and, hearing none, closed that portion and the Board went into discussion. Mr. Langenberger noted that Agnes Avenue has changed and this new home will fit in, Mr. Samasi agreed and felt it was a nice plan. Ms. Montalto complimented the Dorkos for having such well behaved children (who were in the audience) and she, too, liked the home; Councilman Garruzzo felt it will fit in the community. Mayor Nicol said he will vote for approval if the kids promise to eat their vegetables. Mr. Condon said he did not like to see over 20% lot coverage but felt it was no problem here.

At this time Mr. Langenberger made a motion to approve this application, as presented with the revised plans, this seconded by Councilman Garruzzo. Mr. Hilla wanted the Resolution to have a condition the him reviewing the drainage and drywells plan and Mrs. Brisben wanted 4 sets of revised plans so the Zoning Officer and the Planning Board file have the right plans. Before the roll call vote was taken Mr. Langenberger asked if they may think about letting the Fire Company drill on the home before they demolish it; Mr. Dorko said he is a Professional Firefighter and there would be no problem in allowing this. At this time the following roll call vote was taken:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, James Maclearie, Stacey Montalto, Charles Samasi

Noes: None

Note: Eric Lapham had arrived partly through the application so was not eligible to vote.

OLD BUSINESS:

The Board then turned to the continuation of Site Plan hearing for Block 52.01, Lots 1-8.01, 622 Green Avenue, Waypoint 622. Mr. John Jackson, Esq. came forward and reminded the Board that, at the last hearing, Mr. Joe Kociuba had presented an exhibit and Mr. Maclearie had asked that the applicant do a comparison with Mr. Kociuba's exhibit with Waypoint's exhibit.

Before starting this, Mr. Condon wanted to mark the Police Report that was received in 2015 & again in August 2017 into the record, it had never gotten done. It was two pages, one from 12/27/15 and one from 8/30/17, it was marked as Exhibit A-40 and all attorneys were okay with this, it recommended no parking on Green Avenue from Union Lane to Homestead Road.

The Board went back to comparing the exhibits and Mr. Tim Lurie of DW Smith came forward and his exhibit overlay was marked as Exhibit A-41, dated 2/2/18. His exhibit outlined in red the 3,784 square feet of the deck and this includes the 198 square feet from the planter area that Union Landing had. He used the overlay from Charles O'Malley's survey for this. He then took the 2011 survey which was done when Mr. Grafas was buying the property and showed a deck coverage of 3,980 square feet which included a 146 square foot planter area. The only thing different between this survey and the O'Malley one is the area in the rear portion of the back of the outside area. Mr. Lurie then showed the 2015 overlay portion, the site plan, which has

4,076 square feet which includes the 176 square feet for the steps that is in a different area. Mr. Jackson noted if the steps are taken out of the equation the square footage comes to 3,910 square feet, Mr. Lurie said the difference is 65 square feet. This comparison was done as requested by the Board. The red lines show Union Landing and the blue lines show Waypoint. Mr. Lurie also went over the canopy figures and noted if they use the 2000 O'Malley survey they are 292 square feet larger but if they use the 2011 survey they are only 95 square feet larger.

Mr. Lapham questioned some of the red and blue lines on the exhibit and Mr. Lurie did admit this was in error, both lines should go along the edge of the concrete patio and must have gotten moved when he was adjusting the lines for another area. He apologized for this and said the numbers are the same with no changes there.

Mr. Jackson commented that Mr. Kociuba put two maps on top of each other and then expanded them to get his figures for his exhibit and Mr. Lurie said that method does not work, once you enlarge something on a copy machine it gets out of scale.

At this time Mr. Jackson asked for a copy of Exhibit 0-29, Mr. Kociuba's overlay exhibit and Mrs. Brisben gave him one; Mr. Lurie agreed this has been enlarged on a copier, the dimensions on the exhibit tonight, from DW Smith, are scanned and they use auto-cad to get the proper calculations. Mr. Hiila noted another discrepancy in Mr. Lurie's exhibit and showed the one area that looks like the red line is going into the building. Mr. Lurie agreed and said this should have been shifted over, the lines got moved when other things were put in but the figures are correct. There was then a brief discussion on lines between the 2011 plans and 2015 plans and Mr. Kociuba's plans and side setbacks. Mr. Lurie felt they were pretty close and Mr. Jackson referred to Exhibit A-41, showing the as built survey on the upper right side of this exhibit. Mr. Jackson noted these were the drawings submitted to the town and accepted. Mr. Lurie said that Exhibit A-9, on the existing condition site plan, shows a side setback of 4.7 feet and then Exhibit A-11, the preliminary and final site plan, says 4.94 feet or a .2 foot difference. Mr. Jackson then went back to Exhibit 0-29 and said Mr. Kociuba's overlay was not done with auto-cad and was done through his estimates, not an actual calculation and the plan is not signed and sealed. Mr. Lurie added that the O'Malley survey from 2000 was done the old way, today there are gps units and mapping is done differently today. Mr. Condon asked about the accuracy of gps and Mr. Lurie said it is pretty close and they tie into satellites as well, with gps it is to 1,000ths.

Mr. Collins asked about the red and blue lines and Mr. Lurie explained what they represented, the red lines are the survey and the blue lines are the as-built. Mr. Collins, too, asked about the red lines not being quite right and Mr. Lurie again explained he was cleaning up the verbiage while working on this and the lines got moved, they should be over more, but all the figures given are correct, just the panel got shifted, if the lines did get corrected it would still have the same figures shown. Mr. Collins then asked if it can be agreed on that the south side of the deck was expanded closer to the street and deck is closer to the water's edge and Mr. Lurie said it was a step closer to the water and the upper right of the corner canopy is closer to Union Lane. Mr. Collins asked for confirmation that the Tiki Bar was removed and the answer was yes. He then asked how there can be a comparison and Mr. Lurie said the Tiki Bar had a roof and canopy there, there are two different requirements, the deck does not have a roof. Mr. Collins then asked about the steps and could they have stayed within the footprint; Mr. Lurie said the Building Department approved the steps, they were moved due to a safer way to build.

Tim Middleton then came forward and said he did not see the planters on the O'Malley plan. Mr. Lurie said it was not shown on the O'Malley plan and Mr. Middleton then stated it is not on Mr. Lurie's 2011 plan either. He then wanted to know where the edge of the canopy was and Mr. Lurie showed him. Mr. Middleton then said the outside area of the canopy is a useable area where people stand; Mr. Lurie said today it is wider and they have talked about the 11 foot wide walkway. Mr. Middleton said they have a picture of people standing here and Mr. Lurie said this will be a grassy area, an 11 foot walkway to an 8 foot area. Mr. Condon felt they were talking about two different areas and Mr. Middleton showed Mr. Condon the picture he was referring to; Mr. Condon said this is different then what Mr. Lurie is speaking about. Mr. Lurie said the Union Landing plan showed concrete, they are putting grass and a walkway. Mr. Middleton asked how long this walkway will be and was told 25 feet. Mr. Middleton then turned to calculations and said Mr. Lurie left stairs out of one of the calculations and Mr. Lurie said yes, it was his mistake but the areas shown above are correct.

At this time Mr. Middleton was done and, as the Board had no further questions, the hearing was opened to the public for questions to Mr. Lurie based on the testimony this evening. Charlotte Madison of 206 Homestead Road came forward, she was still sworn in. She asked about the area from the water to the stairs, it originally was a fire lane and can that exist now? Mr. Lurie said the setback is 12.6 feet to the stairs, they met with the Fire Department and they asked them to stripe the end of Union Lane, it was 16.1 feet so there is a 4 foot difference. Ms. Madison asked about a cash machine next to the deck; the deck is now about 4 feet longer behind that machine. Mr. Lurie said the cash machine was not shown on any surveys and he did not have information on it.

As there were no more questions that portion of the hearing was closed and Mr. Condon opened it again for general comments; as there were none that part of the hearing was closed.

Mr. Jackson came forward and said the objectors submitted Resolutions from every place except the River House, he got a copy of their Resolution and told the Board there are no restrictions on the deck use and he wanted to submit this as an Exhibit. Mr. Collins said he had no objection to this but wanted to make sure about the Liquor License rules. Mr. Condon said the Board is looking for final summations tonight and not

this. Mr. Clark felt this can be accepted as an Exhibit and it was marked as Exhibit A-42.

Mr. Jackson then presented the transcripts of Brielle residents that spoke before Council and gave testimony of support for Waypoint. There is a Rule of Evidence that the transcripts of sworn testimonies are admissible. He also had transcripts of all the hearings of this case and put them on the table in front of the Board. He realized it is very difficult for people to come out and he asked the Board to consider these sworn testimonies and he wanted to submit them as an Exhibit. Mr. Condon had received these, through email, had read them and felt they were similar to what was testified as the Planning Board hearings. Mr. Clark said this is a quasi-judicial proceeding and the Board does have the right to cross examine those who testify. He did not feel there is anything here that has a bearing on Land Use issues. Mr. Middleton spoke and said that testimony was at a liquor license renewal hearing and not related to zoning issues. However, both he and Mr. Collins felt the answer was up to the Board.

Mr. Clark said there is a lot of law out there, one can't submit a letter. The only difference is this was proceeding under oath for a liquor license, the public did not have an opportunity to do cross evidence. He felt this is hearsay evidence, he did not know if these witnesses were not available this evening but felt this is apples and oranges. Mr. Jackson agreed there is a lot of law on this, but he cannot compel a witness to come to this meeting. He had asked for a subpoena for the Police Chief to appear but that did not happen. There are no subpoena powers here and mentioned how both Mr. Middleton and Mr. Collins have worked together against him and his client. Mr. Condon asked if any of those who testified as the liquor license hearing also testified before this Board and Mr. Jackson said no, he did not submit those who did. Mr. Condon then asked Mr. Clark to address it, he was not comfortable with it.

Mr. Clark said that, typically, live witnesses are needed and he felt this was subverting that process. He didn't think the Rules of Evidence apply. Mr. Jackson said he did email these to the Board Secretary and the attorneys involved and wanted this on the record. Mr. Middleton again said what Council did was not a Planning Board action and he did not want that considered in the summation. Mr. Collins said that all Resolutions are open records and the Board should have all records on the proceedings, he finished by saying they have seen all kinds of things here. Mr. Condon told all the Board will give it the weight that is due.

At this time the Board was ready to hear the final summations by the three attorneys involved and Mr. Middleton started first. He thanked the Board for listening to all the testimony, trying to tie the loose ends and apply the law. He went back to 1978 where the Planning Board approved the Union Landing for a restaurant with two conditions; seating at 72 seats and limited hours of operation. The Board had a concern about traffic and the public good to make a 72 seat limit. He then cited a court case which said the conditions run with the land and run with subsequent title holders. In 1979 Union Landing came again for approval for boat berths and a couple of parking spaces, that was all.

In reviewing all the information on this case, he saw the applicant's reluctance to address these conditions. Mr. Kenderian, their Planner, said this condition was not relevant. Mr. Middleton then said they would have to come before the Planning Board to modify these conditions, the applicant has put nothing on record of evidence to change these conditions. One could argue that there could be a slight change of circumstances when in 1983 the Boat Berth Ordinance went into effect, this would let Union Landing have 100-105 seats where Waypoint now has 208 seats. The Board asked if they can combine Hoffman's with Waypoint and they refused to do it, he felt the Board is in a difficult position as without this they do not meet the burden of proof at all.

Mr. Middleton went on to say they never could make clear the number of seats at Union Landing, they never called Larry Schmidt and he could have answered a lot of questions. Union Landing did expand and that was illegal, they never got site plan approval for any expansions. The Zoning law does not say an illegal use can be legal after a number of years and he quoted more case law on this. He then cited 40:55D-68 which allows any purchaser to file an application with the Board and the Board determines what uses are legal and valid, Waypoint did not do this.

Mr. Grafas came on the scene in 2014, represented by Anthony Peterpaul and DW Smith as well. On 1/19/15 they closed and no one knows if the conditions were known. In the fall of 2014 DW Smith was in contact with the DEP and he felt this was deceptive as they did get a waiver, this is in alias. They told the DEP they were going to tear down the restaurant and rebuild and the deck will be temporary. They produced a temporary deck plan that said it will only be in operation until October 2015, so the DEP said a permit is not required. On 1/12/15 the Zoning Officer issued a permit for the deck, she said to replace what is there and nothing more. This was the same plan that was given to the DEP but no wording on a deck being "temporary". The applicant did not ask for a bar, band area or to redo the koi pond area and they are now asking for approval for the deck, variance for Hoffman's parking, etc. There also is a variance for an 18% Floor Area Ratio, this is too much on this property, they are allowed 92 seats and are asking for 208 and no evidence from the Planner has been given for this. He said they comply with the boat docks from Hoffman's but they don't want to combine the lots. They tried to compare the seating to Union Landing but could not do this due to the 1978 condition. The Traffic expert spoke mainly about Hoffman's lot and said there was room there but Mr. Middleton felt people are parking on Homestead Road, Leslie Avenue, Green Avenue, etc. and people are not using this lot; he also reminded the Board this lot is not paved. The Board Engineer even said it should be brought up to par, like a real parking lot; Mr. Middleton felt Mr. Grafas did not want to do this because he would have to get approval from the DEP, this is a half-baked measure of a parking lot. He also mentioned they are using the riparian lot and the Brielle Ordinance talks about a lot being land.

He asked if Waypoint is a sit-down restaurant or a sit-down restaurant and night club. If it is they need a D1 variance. Would a sit-down restaurant have to have, as their first witness, a noise expert and speak of sound walls? He reminded the Board of the videos presented of the bands playing there and showed Exhibit 0-15 of people standing. Mr. Middleton referred to Mr. Kociuba's testimony about the sound walls, amplifiers, etc. and then said they call this a sit-down restaurant. This should not be allowed as it is an annoyance to the neighbors. There was a problem with music in 2015 and it was solved in 2016 when the bands would use the Waypoint speakers and governor system, there was testimony given on this that the bands would use the Waypoint speakers & systems, but some were using their own systems.

Mr. Middleton felt that Mr. Kenderian "blew" his testimony, Dr. Crossan admitted to sound at more than 65 decibels in some areas and Mr. Grafas has lied about the bands not being allowed to use their own amplified music. The Board has to tell him what has to be done here, as well as the use of the koi pond area. Why do they need 13 movable benches in this area? The Board should tell them what they can do, no drinking or food in this area and no parties.

At this time Mr. Middleton was finished with his summation and the Board took a 10 minute break, from 10:25 p.m. to 10:35 p.m. Mr. Dennis Collins, Esq. then came forward and thanked the Board for all their work. This started back in June of 2014 with issues and Joe MacDonald and Christy Cusuolo hired him to represent them. He was not sure if the applicant's burden of proof has been done but felt Mr. Kociuba brought it all back; Mr. Collins then reiterated what Mr. Middleton had said, why was the first witness a sound expert that had to be present for two meetings? They increased the bar area from 15 seats to 40 seats and put in a new canopy, they then had to put in sound walls the noise was so bad, all this for a sit-down restaurant. They exceed the number of seats permitted, exceed the Floor Area Ratio by almost 20%, they have 1/2 of the parking requirements needed so they added the parking area from next door (which already has variance conditions), are using the koi pond area, expanded the deck and they want the Board to approve all these. There were examples given showing this is not a sit-down restaurant, the Board has seen pictures of standing room only, Mr. Grafas was asked if he would agree to not moving tables and he said no and they advertise on their website what bands will be playing. He then referenced Exhibit A-33, the seating arrangement, but on a beautiful summer evening if it rains all the outside tables can't be used and the bar is left under the canopy. This area is not a place for night clubs, they have submitted other Resolutions on other restaurants that have conditions. There are limitations of uses in this zone and band areas, speakers, bars are not allowed, the Board has to say no to this. The applicant has failed to present his case, they extended the deck and there is no legal justification to do this; the Board is in a tough spot, this should be a quiet place to eat and the Board has to make this determination.

Mr. Collins went on to say the applicant's own exhibit tonight showed they did not comply and, if the Board okays this, they should condition the approval on the Use and Zoning to ensure that the town does not have to go through this with other establishments. The conditions should be: 1) no outside amplified music at any time, 2) speakers be removed, 3) have a modified plan that eliminates the band area and dance floor, 4) no removal of tables, 5) patio area returned to a place that does not allow people to stand around, no alcohol or food in that area, no food or drink beyond a point, 6) address the parking issue, they are using Hoffman's for parking; the Board should think hard on giving a variance here because that is what the applicant wants, this should be developed property.

As Mr. Collins was done Mr. John Jackson, Esq., attorney for the applicant, came forward stating they have been through 2 hours of summations and 15 hearings. Mr. Jackson had a Power Point presentation and also put it on paper for the Board to follow. He, too, thanked the Board for their patience as there was a lot of arguing that went on and now was going to focus on the legal requirements, a use that does not strictly meet the conditions but can occur in the neighborhood. This restaurant has a history since 1978 and it was expanded in 1992, there are decades of experience with this site being use the way it is; Union Landing was not really different than Waypoint, Waypoint just got updated and is better now.

Mr. Jackson's first slide was a photo of the bar/restaurant that existed for many years and the 1986 liquor license had no restrictions; this is not a hidden operation and the liquor license has been granted for every year since, there is no Master Plan or update that says uses not compatible with the waterfront. Mr. Jackson then presented a slide showing the liquor license transfer and then one showing a letter from Mr. Peterpaul to Mr. Langenberger asking if violations exist at Union Landing, the next slide is a copy of Mr. Langenberger's letter saying all was in order with no violations. This shows Mr. Grafas did his due diligence and inquiries, Union Landing has people outside and had a bar. The next slides refer to an Administrative officer needed to do a Certification, again showing Mr. Grafas did what he was supposed to do. The next slide shows they had gotten a zoning permit and Mr. Jackson then spoke of the DEP and the emails that went back and forth, he said he will address this in his written summation he is to submit. He didn't know what Mr. Stuhmann did not get from the DEP emails, they followed the DEP rules and are not liars.

The next slides showed the existing deck and canopy and the proposed deck and canopy, a letter from Zoning Officer Elissa Connmins regarding the canopy as well as another letter from her on deck replacement. All this shows the efforts done to do things by the rules, including a copy of a letter from the Fire Company regarding the plans.

He then spoke of Marine Commercial Use and how Waypoint should have a conditional use, he looked at the purpose of the Marine Commercial Zone and spoke on the definitions. He did say this is a challenge for this Board, some oppose this application but the Municipal Land Use Law and history speaks of all residents, the

responsibility actually goes to all citizens of New Jersey; this facility does serve the Marine Commercial Zone and all who come there. You can hear trains, boats, bridges in this area and the Board has to consider the comments made as a whole, this industry has to be recognized and this is what the Master Plan says.

Back in 1992 Union Landing built a deck and this is shown on the tax assessment card for 1993, a permit was issued for it, this was all done in the open and changed the seating, in 1993 bands started playing there. On 8/7/2015 there was a letter from the Zoning Officer on what the zoning issues were and this defines the benchmark: 1) 1500 square foot side yard (koi pond area), this is now uses as a passive seating area (Mr. Jackson said if there were crowds and parties here pictures would have been submitted). The Board can grant some relief, all relief or no relief but they are asking that this koi pond area stay as it is now, 2) rear stairs extended. This is what they are here for now, the plans showed the stairs but it was not laid out correctly for the Zoning Officer. Those steps on the back area are not why they are here, the Board can deal with this — did they expand, yes, this is a nominal change in square footage and does not change the use. He referenced Mr. Kociuba stating there is more of a change in the deck of over 900 square feet and, as Mr. Lurie testified tonight, that is not correct as per his overlay.

Mr. Jackson went on to say the point is the Zoning Officer did not speak of bands, speakers, bar, etc. The objectors have an all out assault on this and they say Board approval is needed for bands and outdoor bar, but the River House and Union Landing have had outdoor entertainment for years and it never was questioned. Waypoint allows bands to play until 10:00 p.m., Union Landing had bands that played later. It got crowded with people dancing and parties and it existed successfully for years. Waypoint had minimal complaints in 2016, now these complaints are handled by the Police Department, Code Enforcement and Council through the liquor license renewal. Union Landing was tired and needed a renovation, Mr. Jackson showed a slide of mud around the marina and it needed to be dredged as well as needing new piers and he also had a slide on that. He then showed what it is now, a source of pride.

He agreed that in 2015 it was out of control but the County Health Dept. came out and they were okay with the noise. There was one person from Brielle Landing who complained here before the Board but never approached Waypoint. Mr. Jackson then showed more slides of Waypoint and how the area has been cleaned up. He said he was "astounded" that Mr. Kociuba said if this can't meet the D3 variance then it needs a D1 variance. He is wrong on this one and nowhere in the Coventry Square case does it say the opposite. The Board has to see if a Conditional Use affects the suitability of use. This site is suitable event through it doesn't meet all conditions, to shut it down would be unfair to all who enjoy coming to Waypoint. The law says it has to be a "substantial detriment".

He went on and again stated in this Marine Commercial Zone; there is a train that goes through and it is loud, the bridge is loud, boats are loud, this is an active place that people use and enjoy and the Board should ask if this should be shut down for the few that are complaining as there is no substantial effect to the neighborhood.

A Conditional Use can be met even if they do not meet one or more conditions and he said a Use Variance is for a use that is not allowed in a zone but a restaurant is allowed here. He asked if a wedding comes into the restaurant does that change the use? One of the real issues is parking and Union Landing had a parking problem, now they have the marina along with the restaurant and are using Hoffman's lot; the whole lot is gravel and they have tried to address the concerns, even if just the employees park there it helps.

Bands have played here for years with no noise summons ever issued by the Police, they meet the boat slip ratio with using Hoffman's and the Floor Area Ratio that the objectors say is 18% mystifies him, Mr. Hilla's report says 2.259%, not 18%, the riparian lot is considered as land and he felt the Floor Area Ratio was de minimus. As far as the complaints made on noise, the Police Chief had asked that professionals come in to mitigate this and this was done. On 5/11/16 they send a sound testing letter that they were going to conduct a sound test on 5/22 and asked for the Board's attendance, this was copied to the Police Chief and the objecting attorneys; people have said they were not invited and this was not true. They have been portrayed as liars and a lot of points are unfounded. (Additional note to the Minutes: On 2/12/18 Mr. Jackson send an email to the Board Secretary stating the dates were wrong in the above comments, the sound testing was done on Labor Day weekend and he apologized for the mistake in dates).

The Governing Body has a yearly review of the liquor license and can control noise, etc. Mr. Jackson did tell the Board that they appealed Mr. Stuhmann's complaint that they had more than a 3 piece band and they won that appeal. He then showed a slide of bicycles at Waypoint to show how successful it is, people ride their bikes, walk, take a taxi or Uber and all this helps with parking. Waypoint is an important member of the community and is an anchor that hold many charitable events, this is asked for in the Master Plan. Where else can you walk along a river to a bridge; someone else could own this and make it private, the Board should look at this point. He then quoted Jane Sigler's testimony regarding change and felt this was a balanced statement from someone who lived here for 42 years. And he reminded all that there are no recordings of noise the people complain about, he felt it was because they could not get one.

Mr. Jackson then read from a past Board meeting where people spoke in support of Waypoint and had quotes from that meeting. In regards to parking he said it was okay when Hoffman's put in a pool to have a gravel lot, there is needed an area for boats to be dry-docked and there is no runoff issue; Mr. Middleton had said no one wants to park in this lot but it is being used.

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Mr. Jackson noted it was now after midnight and thanked the Board, he felt they have put the best case forward and the complaints have really been about the bands. He submitted that if the Board allows them to continue they will shut down the bands, as they do now, at 10:00 p.m. and use the house speaker system; Council now has adopted a new noise Ordinance and this gives the Police a lot of latitude on this. He had asked the Police Chief to come in and speak but he did not want to and Mr. Jackson didn't blame him as both Mr. Middleton and Mr. Collins have said the Police and Council are inept and can't handle complaints. He again said the Board has to ask if there is a substantial detriment.

At this time Mr. Jackson was finished, Mr. Clark reminded all the attorneys that he had sent a letter on 1/30/18 requesting a written summation brief be submitted by February 13th and again have rebuttals submitted by Feb. 20th.

As there was no other business to come before the Board, Mr. Condon told all this hearing will be carried to the March 13th meeting of the Board; a motion to adjourn was made by Mr. Maclearie, seconded by Mr. Lapham and then by unanimous voice vote, all aye. The meeting was adjourned at 12:14 a.m.

Karen S. Brisben, Secretary

Approved: March 13, 2018