

Borough of Brielle

MARCH 13, 2018

May 17 2018

March 13th, 2018

BRIELLE PLANNING BOARD

TUESDAY, MARCH 13, 2018

The Regular Meeting of the Brielle Planning Board was held on Tuesday, March 13, 2018 at 7:30 p.m. in the Brielle Borough Hall. After a moment of silent prayer and a Salute to the Flag roll call was taken:

Present — Mayor Thomas Nicol, Joseph Bonacci, Thomas Condon, Eric Lapham, James Langenberger, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson

Absent - Councilman Frank Garruzzo

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer and Board Secretary Karen Brisben who recorded the Minutes. There were about 25 people in the audience; Thomas Stuhmann and the Coast Star reporter recorded the meeting.

Before starting the evening, Mrs. Brisben made the announcement that the hearing scheduled for Block 60, Lot 4.01, 7 Crescent Drive, owned by Peter and Mary Petracco, has been postponed, by the applicant, to the Tuesday, April 10, 2018 meeting which will be held at 7:30 p.m. No further notice will be given.

The Minutes of the February 6, 2018 meeting were approved on a motion by Mr. Maclearie, seconded by Mr. Lapham and unanimously approved by voice vote, all aye.

CORRESPONDENCE:

The Board members all received a copy of an application for a CAFRA Permit for Block 101, Lot 3, 1006 Brainard Place, owned by Gutierrez Trust, to legalize the stone retaining wall at the base of the bluff and the stone steps/walkway down the bluff.

OLD BUSINESS:

The Board turned to the vote of approval for a variance application for Block 22.01, Lot 19, 609 Agnes Avenue, owned by Christopher Dorko, to allow construction of a new home and detached garage. The following Resolution was then presented:

WHEREAS, CHRISTOPHER DORKO (the "Applicant") has applied to the Planning and Zoning Board of the Borough of Brielle (the "Board") seeking a variance for the property located at 609 Agnes Avenue and identified on the tax map of the Borough of Brielle as Block 22.01, Lot 19 (the "Property") located within the Borough's Residential Zone 3 (the "R-3 Zone") in order to allow for the demolition of

the existing dwelling and garage and the construction of a new single-family dwelling and detached garage on the Property; and

WHEREAS, this application specifically requires the following variance relief:

- a. Lot Size Area — 11,250 square feet minimum required; 7,500 square feet existing.
- b. Lot Width — 75 feet required, 50 feet existing.
- c. Front Yard Setback — 30 feet minimum required; 25.5 feet existing; 16.6 feet proposed.
- d. Side Yard Setback (right) — 10 feet minimum required; 6.9 feet existing; 7 feet proposed.
- e. Lot Coverage — 20% maximum allowed; 17% existing; 22.5% proposed.
- f. Building Height — 35 feet maximum allowed; 38 feet proposed.

WHEREAS, the Board held a hearing on February 6, 2018, and considered the following documents presented at the hearing in connection with this application:

- a. Jurisdictional Packet;
- b. Exhibit A-1-- Power Point presentation;
- c. Exhibit A-2 -- Plot Plan; and
- d. Exhibit A-3 — Tax Map.

WHEREAS, the Board considered the following testimony presented at the hearing in connection with this application:

The Applicant's Attorney, John Jackson, Esq., ("Mr. Jackson") came forward to present the application. Mr. Jackson made a Power Point presentation which was

marked as Exhibit A-1. Mr. Jackson stated that the front yard setback is similar to others on the block which were shown on an overhead view on the Power Point presentation. He indicated that the existing home is being demolished with the new home having the same front yard setback. The elevations, the pool and the upgrade of the garage were also shown in the Power Point presentation.

Mr. Richard Ramirez ("Mr. Ramirez"), a licensed engineer, was sworn in and presented testimony regarding the application. The Board accepted Mr. Ramirez as an expert. Mr. Ramirez testified that the current front yard setback is 17.58 feet and that the Applicant is proposing a 17.5 foot setback, basically the same thing that the home has now. He presented a colored-in copy of the Plot Plan showing the variance requirements needed which was marked as Exhibit A-2. Mr. Condon questioned the lot coverage since the application says a lot coverage of 22.5% but the plan says 24%. Mr. Ramirez explained that they rounded the number up.

Councilman Garruzzo also questioned the lot coverage since the application stated a coverage of 23.7% and Mr. Hilla's report says 22.5%. Mr. Hilla stated that he did his calculations himself and not through a computer. Mr. Ramirez felt that Mr. Hilla's calculation of 23.7% was correct so he rounded the total to 24%. Mr. Ramirez added that his figures were done through a computer and that the architectural dimensions are correct and this is how the home will be built. He also testified that they are redoing the garage and it will end up being 183 square feet less than what now exists.

Mr. Ramirez testified that the Applicant is seeking relief based on hardship because 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. Mr. Ramirez went over the

variance relief being sought and stated that they are reducing the size of the garage. He also felt that Agnes Avenue is a hodge-podge of different sized lots with many of them only being 50 feet wide. Mr. Ramirez presented a tax map which was marked as Exhibit A-3 showing at least 10 lots on this side of the block with only 50 feet width and more across the street. He stated that given all the circumstances involved the whole project would create a desirable visual environment that will fit in with other homes. A discussion was then held regarding the 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 house is currently on a slight angle. The other side of the house will be from 13 to 12 feet to the rear. Mr. Ramirez stated that this Property is on a slope and the town Ordinance allows for the ridge of the home to be higher in this type of situation. He felt that this application promotes air, light and open space and that the light can reach the neighbors' yards and that this home will benefit all in this area.

Mr. Hills asked about the plan he had received in his packet which was different than Exhibit A-2. Some of the numbers didn't match. Mr. Hilla's plan was dated 10/09/2017 and the plan marked as Exhibit A-2 was revised on 1/12/2018. Councilman Garruzzo agreed that the Board members all have a plan dated 10/09/2017. Mr. Clark asked for an explanation and Mr. Ramirez stated that they did make changes which consisted of revising the bay window so it came out further, and they 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 be changed. Mr. Jackson said that the Architect will testify to the changes made. Mayor

Nicol commented that these changes were done in January and that the Board was never notified of any revisions. Mr. Ramirez stated that they were trying to make the architectural plans and plot plans meet. Mr. Condon asked why they had one figure on height in November and have another now; again Mr. Jackson said the Architect would address this. Mr. Sarnasi asked for confirmation on the front yard setback and was told it is 17.58 feet now and that the new home would be about 17.5 feet. Mr. Sarnasi also asked how much closer the porch would 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 so Mr. Ramirez gave him a copy of the revised plan.

Mr. Hilla asked about the driveway and Mr. Ramirez replied that he felt the new plan works here and that they would be putting in trenches for storm water runoff and that this would be reviewed before being constructed. Mr. Ramirez stated that 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 if it would be macadam. Mr. Jackson said they have not discussed this but they will do what needs to be done.

The public was then provided with the opportunity to ask Mr. Ramirez questions about his testimony. No questions were presented to Mr. Ramirez by any members of the public.

After Mr. Ramirez concluded his testimony, Mr. Ronald Rheane ("Mr. Rheane"), a licensed architect, was sworn in and presented testimony regarding the application. Mr. Rheane has been licensed in New Jersey for 30 years and has done most of his work in Monmouth and Ocean counties; the Board accepted him as an expert witness. Mr.

Rheane indicated that the home will have 2,400 square feet, a full basement and an unfinished attic with a detached garage. The existing garage is oversized so they are reducing the garage by half. They want to set the home in line with the neighbors and are keeping the line with what is currently there. Mr. Rheane went on to state on the height issue, Brielle 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% the measurement can be taken from the front of the property between the sidelines. Based on this exception, Mr. Rheane came up with a 6.73% slope so they used the reference point of the front property line. Mr. Rheane referred to his elevation sheet which shows the home itself at 34.6 feet high, which meets the height compliance even though their variance is for 38 feet high from the center of the road. Mr. Rheane went over the layout of the home. There will be 4 bedrooms, a covered porch over the first floor, an unfinished attic which will comply with the town's requirements and access to a roof deck. The basement will be unfinished with the option of finishing it in the future. As far as the exterior of the proposed home it will have trimmed windows with a combination of gables and bay windows, as well as an octagonal front porch that will fit in with the homes in the area as far as architecture. The garage will be a one car garage and will comply with a height of 14.8 feet.

Mr. Hilla said that this is the first time the Height Ordinance exception has been used on this side of town and that he believed that the calculations are correct, but granting a front yard variance will come into play. If the front setback of 30 feet is applied it may not comply as the Property gets flatter as you go back. Mr. Hine also commented on the other variances requested, but Mr. Jackson stated that a lot of the

homes in this area are similar to this. Mr. Rheane agreed with Mr. Jackson. Mr. Sarnasi asked about the 5 risers in the front and the 3 in the back; requesting if they can make it 3 risers in the front. Mr. Rheane responded that would create a water issue and could not be done. Mr. Sarnasi then asked how high the basement was and Mr. Rheane indicated that he did not know, but that the first floor is 9 feet high, the second floor is 8 feet high and the attic goes from 8 to 0.

At this time the Board had no further questions and the meeting was opened to the public for questions and/or comments. Mr. John Lewis of 611 Agnes Avenue came forward and was sworn in. Mr. Lewis wanted to clarify that he is looking forward to the renovation of this home. There were no other comments or questions and the public portion was closed.

Lastly, the Property's Owner, Christopher Dorko, ("Mr. Dorko") came forward and was sworn in. Mr. Dorko stated that he and Mrs. Dorko have owned this property for 12 years and have children; his mother comes for four months of the year and stays with them as well. He has come to Brielle since he was a child and now lives here, but their home has become too small. Mr. Dorko stated that while visiting his neighbors behind him he saw what condition the rear of his garage looked like and decided he wanted to fix it. He stated that the driveway is narrow and that when he gets out of his car he is on the grass. Mr. Dorko indicates that they need a wider driveway.

The Board members and the public were provided with the opportunity to comment, and hearing none, the Board went into discussion. Mr. Hilla stated that he wanted the Resolution to have a condition requiring the Applicant to submit the drainage and drywell plans to him for review and approval prior to their construction. Mr.

Langenberger asked if the Applicant would consider letting the Fire Company drill on the home before the home is demolished. Mr. Dorko stated that he is a Professional Firefighter and that there would be no problem in allowing the Fire Company to use the home for this purpose.

WHEREAS, Mr. Langenberger made a motion to approve the application; this motion was seconded by Councilman Garruzzo. At that time the following roll call was taken:

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

Noes: None

WHEREAS, the Board, after carefully considering the evidence presented by the applicant at the hearing and of the adjoining property owners and general public, if any, makes the following factual findings and conclusions of law:

- a. The variances relate to a specific piece of property;
 - b. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the variances encourages municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare; and promotes a desirable visual environment through creative development techniques and good civic design and arrangement, which benefit the entire neighborhood by creating an enhanced aesthetic and concomitant sense of community;
 - c. The variances can be granted without substantial detriment to the public good;
 - d. The benefits of the deviation substantially outweigh any detriment;
- and
- e. The variances will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

NOW THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of

the following conditions:

- A. Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- B. Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application.
- C. The Applicant shall submit 4 sets of the revised plans to the Secretary of the Board.
- D. The Applicant shall submit his drainage and drywell plans to the Board Engineer for review and approval prior to construction of these items.

A motion to approve the above Resolution was made by Mayor Nicol, seconded by Mr. Langenberger and then by the following roll call vote:

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

Noes: None

Not Eligible to Vote: Joseph Bonacci, Eric Lapham, James Stenson

It was now time for consideration of a vote on a Site Plan application for Waypoint 622, Block 52.01, Lot 1-

8.01. Before starting this, Mayor Nicol and Mr. Langenberger both left the dais as they were not eligible to take part in this matter.

Mr. Condon started by thanking the Board members for their time and for listening to tapes if they needed to; he also thanked Mrs. Brisben for keeping all this on track. He then said they are going to vote separately for the variances requested as per the application of 10/28/15.

He started with the setback issue, Section 21-19.6 regarding front and side yard setbacks; 1) Front Yard Setback — 30 feet required, 22.1 feet to the front of the restaurant, this is pre-existing, 2) Front Yard Setback — 30 feet required, 9.6 feet to the covered patio column, 3) Side Yard Setback — 10 feet required, 9.4 feet to the covered patio column. As all Board members were in agreement for approval, Mr. Bonacci made a motion for approval of these variances, this seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

The next item for consideration was for Section 21-34.5, the Loading Zone space and none of the Board had a problem with this either, it is pre-existing. Mr. Condon did note he would like to see this screened in some way or at least have a buffer. Mr. Larry Grafas, the owner of Waypoint 622, spoke from the audience and said they will screen it or put up a wall and agreed it is an eyesore. Mr. Clark suggested just to vote for screening of this area. Mr. Lapham made a motion to approve the variance for the Loading Zone area with appropriate screening, this seconded by Ms. Montalto and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: none

The Board then turned to the approval of allowing the sign in the front of the Restaurant and in the rear of the restaurant, on the water side. After some discussion it was decided to hold two votes on this as some Board members were against the signage on the water side of the restaurant. Mr. Condon noted the Section 21-27, 50 foot frontage from zone required, 34 feet existing for front sign. A motion was made to approve this pre-existing sign by Ms. Montalto, seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

They then turned to the 60 foot sign in the rear of the restaurant, on the water side and Mr. Bonacci motion to approve allowing this sign to remain, this seconded by Mr. Sarnasi and this was denied with the following roll call vote:

Ayes: Joseph Bonacci, Charles Sarnasi

Noes: Eric Lapham, James Maclearie, Stacey Montalto, James Stenson, Thomas Condon

The next item was Section 21-31.11, Location of driveway curb cuts- 5 feet minimum requires, less than 5 feet existing. In addition to this the parking requirements apply as well, 148 spaces required, 42 on site with additional proposed parking on Hoffman's Marina West site. 90 degree angle required, 24 foot aisles required, 23 existing and proposed; a No Parking Zone along Green Avenue to Homestead Road as per the Police report submitted and agreed to by the applicant. Mr. Hilla spoke up and did not feel this No Parking Zone is needed as there is now a reverse traffic flow, coming in off Green Avenue and existing off Union Lane. However, there was a

discussion by the Board and some members felt this is a safety issue and should be considered. Mrs. Brisben said the Police were given the revised plan that showed the new traffic flow and that is what they submitted their second report on. Mr. Clark explained that this is not within the applicant's power and this will all be addressed by the Governing Body after all is said and done, this goes to the town as a recommendation. Mr. Condon felt the discussion should be on the use of Hoffman's lot and conditions, should there be a parking lot even though it does not meet the requirements. Ms. Montalto asked if this applies to occupancy of the restaurant and Mr. Condon said that will be addressed later. Mr. Hilla explained that the parking is based on square footage, not on seats, the operation of the site dictates the parking. Mr. Clark added that they are separate application, even though they are inter-related.

Mr. Condon had concerns are this is not a delineated lot, it is an unstable gravel lot, it needs more lighting and the applicant does not want to pave this as it is used as a boat yard. If someone trips and falls it could be a problem for Waypoint as well as the town for allowing this. He would not have a problem here as long as there is a valet parking service only, he means a true valet service, not a golf cart driving people to their cars; this is his recommendation. Ms. Montalto agreed and felt it solves safety issues. Mr. Sarnasi felt the parking at Hoffman's was a good idea as it will keep cars off the street; he had no problem with it being gravel but he would like to see concrete bumpers and lighting. He added that whole area used to be gravel and he did not see any reason for it to be paved and this way any water will be able to perk into the gravel, the old fashioned way. Mr. Stenson agreed with the gravel lot and the valet service as well as the curb stops and lighting. Mr. Bonacci agreed that paving would be overkill, he also would like to see better lighting and valet attendants with flashlights. Mr. Maclearie did have a problem with parking on gravel, today everything is

blacktop and he also did not think the area was well lit, but he was okay with having valet parking. Mr. Lapham felt getting cars off the street was okay and he, too, was concerned about lighting and gravel. He thought using valet services makes a whole lot of sense. Mr. Condon asked if everyone was satisfied with the less than 5 feet of curb cuts and the answer was yes.

Mr. Condon then asked for a motion and Mr. Stenson made a motion for the use of Hoffman's lot for valet parking on a gravel lot with concrete bumpers and improved lighting, as approved by the Board Engineer, 90 degree angle parking, reversed traffic flow, a cross-access easement. Mr. Condon asked Mr. Jackson, the applicant's attorney, if it is confirmed there will be a cross-access easement and Mr. Jackson said yes, as long as Waypoint 622 is in place. If the restaurant, for example, turns into housing the cross-access easement will no longer be in place. After a brief discussion on the proper wording Mr. Sarnasi seconded Mr. Stenson's motion and it was approved by the following vote on roll call:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

Mr. Condon then referenced the Resolution from 1979 that limits seating to 72 people and Waypoint 622 is asking for 208 seats; they need 52 boat slips and have 23 at Waypoint and they are requesting to use the slips at Hoffman's, he reminded all that there are two properties and cannot be merged as they are owned by separate corporations. Can the Board use Hoffman's slips and give them the 92 seats or can there be a middle ground? Mr. Jackson spoke up and said the properties are owned by the same person but is set up with two different corporations and can't be merged due to financing. Mr. Bonacci said parking is an issue but Union Landing deviated from the Ordinance as well and he was okay with that, allowing 208 seats. Mr. Maclearie felt going from 72 to 208 is a big jump and there may be a number in-between, he did not know what that number was. Mr. Lapham also did not have a right number and there were all sort of numbers being talked about, he thought 208 was the final tally. He was okay with 208 seats but there may be a different number. Ms. Montalto asked if the 208 seating was inside and outside and was told it was; she felt 208 was too high and 72 was too low, maybe a number in the middle. The neighbors are also concerned with all the cars going there, she would like a compromise. Mr. Samasi felt 72 is way too low and agreed Union Landing did go way over this, he felt the 208 was closer to what could be allowed; he felt the boat slip ratio was dated and didn't work anymore and this ratio does not work with running a successful business. Mr. Stenson did some math and, using the boat slip ratio and the restaurant seating, he came up with 140 seats and felt this was more reasonable. Mr. Condon agreed with that figure, 40 seats at the bar, 92 slips, so 132-140 seats. However, there is the deck area so maybe this should be tabled and the Board will come back to it. Mr. Condon then turned to the water's edge setback variance and the steps off the deck, 25 feet is required and 17.22 feet was the old deck but the new steps make a setback of 12.6 feet now existing and proposed. The steps were never depicted in the drawings and he referred to Mr. Bonacci who brought this up. Mr. Bonacci went back to the original plan of 1/12/15 and Waypoint was told there would be no problem if they stayed within the footprint of the existing Union Landing deck and canopy. All the permits were approved with no need to appear before the Planning Board and then, on 8/7/2015, there was a letter of violation as the new deck surpassed the footprint. He felt this expansion was modest and can be remedied by the koi pond area not being used, this will make the deck area palatable. The Landscape area of the koi pond should be restored so it cannot be used and this will help with the deck size. He did not address the rear stairs. Mr. Maclearie agreed the deck was expanded and he would consider having part of the deck taken out to make it more conforming. It is a bigger deck because now it is all one level; he thought if the stairs were pushed back into the deck it will help the setback. He also agreed with Mr. Bonacci about landscaping the koi pond area, maybe putting in planters.

Mr. Lapham also agreed with the deck expansion, that needs to come back more to conformity. He has walked through there and there is a big difference with the new stairs in the back, 12.6 feet is a big change from 17.2 feet. Ms. Montalto did not have any more to add to what was said and agreed with it. Mr. Sarnasi noted the applicant did agreed to restore the koi pond area back to being landscaped, perhaps with shrubs and maybe a water feature, with a few benches for people to sit to wait for tables. This was already testified to. As far as the main deck, there were so many plans on this it is sketchy but it is larger than the previous one and is now one solid deck. He was okay with it and felt the biggest difference was where the stairs in the back are, the stairs should be built back into the deck so people can walk on the setback area by the water, still have the stairs but reduce the deck by putting the stairs there. Mr. Stenson agreed with Mr. Sarnasi on his comments and thought the stairs being put back into the deck was a good solution.

Mr. Condon agreed with all that was said and asked Mr. Hilla about landscaping the koi pond area — if they do this does that bring them up to the 20% landscaping requirement, they now have 14.3%. Mr. Hills said it will add maybe 3 to 4% as that area is about 1500 square feet so this would bring the landscaping area percentage up to 18- 19%. Mr. Hilla added the applicant said this area would have a lawn which means it can become a congregation area and the landscaping here will help keep this from happening. After a brief discussion on buffers on Green Avenue or Union Lane Mr. Hilla said they do have information on what was existing in this area and they can replicate this, it does not have to be a koi pond or paths. Mr. Clark said that, as far as the amount of benches, it would be what was there previously.

A motion for approval was then made to landscape the koi pond area, benches to what previously existed,

moving the rear stairs back into the deck area to get back close to the 17.2 feet setback, this was done by Mr. Sarnasi, seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

Mr. Condon asked Mr. Clark if there is a time frame to be put on this and Mr. Clark agreed there should be one or it could be difficult to be enforced. Mr. Condon said there will be plans that will have to be made and permits to be gotten and he asked Mr. Hilla for direction. Mr. Hilla said they have 45 days from the date the Resolution is published and Mrs. Brisben said that takes them to June to be the earliest to do this.

Mr. Condon did not feel this was reasonable as this would be the height of the season; he suggested having this done by May 1, 2019 to give them time to get this stair work done, it would not be fair to have this done in the summer, considerations have to be made. After discussion, it was decided to have the koi pond area landscaped by June 15, 2018 and the step area being done by May 1, 2019. Mrs. Brisben asked if this needed a roll call vote and Mr. Clark said this may just be an amendment to the above vote for the koi pond area and deck stairs. This was approved by voice vote, all aye.

The Board then turned to the question about this operating as a restaurant or something else and does it meet the needs of a restaurant in the C2 zone. Based on the pictures and videos and testimony that has been provided, how is this used? Mr. Bonacci said when one goes inside it is a restaurant and outside it is a club, it is unique; he felt many nights this is used as a club. He had no problem with the restaurant but when the bands start playing it is a club and is prohibited. What is disconcerting is the testimony given as to the noise being controlled is not true. It is loud, there are speakers that the Board saw the specifications for. All the other issues he is fine with. Mr. Maclearie said it started as a restaurant, it is a waterfront facility so it should be given some leniency as to the outdoor area, he has a boat and can understand this. Union Landing started outdoor dining and it was growing and growing by pieces, was there ever Board approval on this? Should it be taken back - he did not feel it should, he was not sure about it being a restaurant or club. He remembered going to Union Landing and walking through to the outside and it has been expanded. He would like to see it as a restaurant first and felt that is where it should be. Mr. Lapham did not want to deny anyone the opportunity to sit outside, this represents this community very well. The part that bothers him is what Mr. Bonacci referenced to, the bands using their own speakers, there were two different stories about this given and he has seen what goes on at times here. You can go to different places and listen to music, there is no disagreement with that, he had a problem with the size of the bands and the noise they created. Ms. Montalto said the message she heard was that the opposers do not want to shut Waypoint down but they don't want it to become something more than what it is, become bigger and louder. The changes they made to reduce the sound are appreciated but she felt the Board needs to be aware of restrictions that may need to be done, whatever they may be.

Mr. Sarnasi agreed with what was said and felt that Waypoint has gone a little farther than Union Landing as far as live music. He likes to listen to music and this is waterfront, there are bands all down the coast in waterfront towns, he just felt the volume got out of control and it radiates out of that building. If they continue to have live music, he had two ideas on this, not to have bands that radiate that much sound through their speakers, a Jimmy Buffett type of thing, and also to perhaps have acoustical panels maybe in the ceiling or columns, they may absorb some of that noise. The second idea is to have the Manager and Brielle Police have a sound meter and, if the noise goes over 65 meters or whatever it is, they are warned; if this happens more than once, then it is unplugged. Mr. Stenson agreed this is a restaurant, there were complaints and then Mr. Grafas put in a sound wall in 2016 and it got better. Then in 2017 there were complaints again and we saw the videos on this; there should be limitations and there should not be allowed amplified music. Mr. Condon felt that when people see Waypoint in regards to what Union Landing was, they see two decks and now one deck. The Union Landing also had an 18 seat bar and he thought the two decks at two levels reduced the noise volume. He can see that people enjoy the outside area, we all live at the shore; but after seeing the pictures & videos, can one go to Waypoint and enjoy dinner at 8:00 p.m. outside on the deck? He didn't think so, the testimony has been conflicting, one saying it is controlled and yet there is music coming out of band speakers. In 1979 the restrictions made were made to not have that type of condition here, that is what he believed. He felt there should be restrictions, no amplified music, just acoustic music allowed.

Mr. Clark felt the issue now is if the consensus of what the uses are is outside the bounds, the Board should address this as above the definition of what a restaurant is. The Board needs to decide on what restrictions are to be imposed and vote on that.

Ms. Montalto felt there should not be any amplified music and Mr. Bonacci noted that today's acoustic bands do use speakers. Mr. Clark suggested either amplified or not-amplified. Mr. Bonacci had no problem with small speakers, he felt no amplified music is overkill. Mr. Lapham suggested reducing amplifying music but the question is how to implement this and come up with a plan to ensure that happens. Mr. Clark felt the issue is, as a Land Use Board, conditions need to be put in that can be enforced; the town already has a Noise Ordinance. The conditions need to address the concerns the Board has as well as making them enforceable, not be vague. Mr. Stenson asked if the size of the speakers can be toned down, he does not know about speakers, maybe not to exceed a certain wattage. Mr. Bonacci suggested limiting the number of musicians

and no drums, that may be possible. Ms. Montalto was concerned about what may happen to other places if this is done, do we want to change the shore? Mr. Condon felt that acoustic is not amplified. Ms. Montalto suggested not using the word acoustic, just saying not amplified. She did not want to see others ask for this. Mr. Clark said they vote on amplified as opposed to non-amplified, and non-amplified will be live and not piped-in music, background music. Mr. Condon felt the background music should be allowed and there should be conditions on the live music. He then asked if there can be a limit on the number of band members and Mr. Clark felt this may be a little dicey and the Board should just vote on the amplified music and background music.

Mr. Stenson then made a motion not to allow amplified music, background canned music is to be allowed, this was seconded by Mr. Maclearie and then approved by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, James Stenson, Thomas Condon

Noes: Charles Sarnasi

Mr. Stenson then asked that the space designated as a dance area be made into a seating and Mr. Condon felt that can be addressed with the seating issue that they tabled from earlier in the evening. They then addressed this and Mr. Condon asked if they should remove the condition of 72 seats from the 1979 Resolution and should a D variance be approved as they want to use the property next door to increase the seating. Mr. Clark said the Board has to decide if the positive criteria has been made and not the negative criteria. Mr. Condon said that by alleviating the dance area creates a condition to allow more seating in the bar area. Mr. Condon did not have a problem with the 208 seats with the conditions that have been approved, he felt this will now be

a softer use of the area and this will all work with the use of Hoffman's lot. The rest of the Board agreed. Mrs. Brisben asked Mr. Clark to go over the D variance to be clear and Mr. Clark said there are two concepts: there is a condition from 1979 that says 72 seats are allowed, if the Board felt there are good reasons to have this lifted it can be done. The other use is a Conditional Use, a D Variance, the positive criteria is that the site will accommodate the use even though it does not comply with the conditions, the negative criteria would be if there is substantial detriment to the public good and will this impair the intent and plan of the Zoning Ordinance. The applicant had asked for relief to the seating requirement to allow 208 seats and they are asking for relief from the 4 seats per berth docking requirement.

Mr. Condon felt that applicant should be allowed to use the slips at Hoffman's, the use is entangled but it does make sense and helps both businesses. Mr. Clark suggested a motion to approve the D variance that relieves the 4 seats per docking berth requirement, a D2 and D3 variance; this will be to allow 208 seats and remove the 1979 condition of 72 seats due to a change in the facility. Mr. Stenson asked if the dance floor area can also be included in this, there be a condition that the dance floor area become a seating area and those seats not be taken out.

A motion was then made by Mr. Bonacci to approve the D2 and D3 variances that relieves the 4 seats per docking berth, allow a seating number of 208 and remove the condition of 72 seats from the 1979 Resolution, to remove the dance floor area and put in seating in that area, seats not to be taken out. This was seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

Mr. Clark said there were other D variances to be considered. The minimum lot size allowed is 2 acres and this site has 1.9 acres existing. There also is the FAR (floor area ratio), non-residential floor area to be addressed, they need .295 and they have 2.5, this is minimum but needs approval. Mr. Condon had no problem with either of them, they are existing and the rest of the Board agreed, Mr. Maclearie noted the koi pond area being addressed and the steps coming into the deck will help the FAR. Mr. Clark then suggested a motion to approve a D2, D3 and D4 variances for these items. Ms. Montalto made a motion to approve these, this seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson, Thomas Condon

Noes: None

Mr. Clark then addressed the need for the general site plan approval with variance relief, some variances were addressed but a need for the general approval is needed. Also the Board needs to vote on the hours of operation and whether or not that is to be amended. Mr. Condon felt that may be just a housekeeping oversight but Mr. Hilla said this was a condition back in 1978 and may still be enforceable, this should be

addressed by the Board now. Mr. Condon felt the hours of operation should follow the rules for the liquor license, however, this is a seasonal liquor license so the question is should they be able to have these hours all year around, or just from May to November. He didn't see a need for any change in this as there are no complaints in the winter, he made a motion to remove this condition and follow the rules for the ABC licensing and this should follow for the entire year. Mr. Clark confirmed this is for operation of the establishment only. So the final vote will be a vote to approve the site plan with the variances granted as voted on, the 1978 hours of operation relinquished and the hours will be consistent with the liquor license. Mr. Stenson made this motion and there was a second made by Mr. Lapham and then by the following roll call vote:

Ayes: Joseph Bonacci, Eric Lapham, James Maclearie, Stacey Montalto, Charles Sarnasi, James Stenson,

Thomas Condon

Noes: None

Mrs. Brisben asked about any vote on the hours of music being played and Mr. Jackson spoke up and said there already is an Ordinance on this so it does not have to be addressed.

Mr. Jackson then told the Board he was not sure if his client was happy with all the results, but he thanked the Board for all their time and work on this application, it was appreciated.

At this time Mr. Condon declared there will be a 5 minute recess so the room can be cleared, then the next application will be heard. Let it be noted in the Minutes that Ms. Montalto left the building at this time.

NEW BUSINESS:

The Board reconvened and turned to an application for variance relief for Block 48.01, Lots 9, 9.01 & 10, 10.01, 314 1/2 & 316 1/2 Fisk Avenue, owned by Michael Vesuvio. Maximum Building Height — 35 feet allowed, 38.42 feet proposed. All lots must front on a Right-of-Way, property is accessed through an access easement.

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. Louis Felicetta, Esq. came forward to present this application for Mr. Vesuvio. Mr. Felicetta started by stating they received a copy of Mr. Hilla's engineering review letter which commented on a possible Widow's Walk being put on the roof which will make the height over 40 feet. They are removing that variance request so a Use Variance is not needed.

They want to demolish the dwelling that is on this lot and build a new dwelling. At this time Mr. Patrick Ward from InSite Engineering came forward and was sworn in, he gave his background and has a BS from Drexel, he has a NJ license for Engineering and Planning; he has not been before Brielle Planning Board before but has appeared

before other Boards in Monmouth and Ocean County and is here this evening as a Planner/Engineer. The Board accepted him as an expert witness. They are going to demolish all structures on this property and there will be pavement restoration. There is a 12 foot driveway here and this property will have a patio and pool, all this has been approved by the DEP as it is on the water.

The ground floor will be for parking and storage, the elevation for the dwelling starts at 13 feet and, for confirmation, there will be no Widow's walk, the building height will be 38.42 feet; he said the architect can address the 1/2 story requirements. He spoke to Mr. Hilla about runoff and proposed yard inlets around the area, some landscape inlets to the river; this area is flat and he will work with Mr. Hilla on this issue. As far as the access easement, they have an 18 foot wide access easement along with a proposed 12 foot wide driveway, they have a 3 foot side setback and the Ordinance requires 5; the gravel will be removed and the area will be paved which will improve the existing conditions. He noted the mechanical and pool equipment must be above flood elevation 9 and this will be screened with vegetation along the west side of the property line. There is a property utility easement with Jersey Central Power & Light Company and they have indicated they will want a final site plan and will modify the easement, they are willing to work with the applicant on this. As far as any fence enclosures needed, they will comply with all codes.

Mr. Ward went on to say he measured 7 buildings on Fisk Avenue and Crescent Drive and he submitted copies of the heights, this was marked as Exhibit A-1 by Mr. Clark; Mr. Ward said this shows this height is not unusual for this area. He also commented that the easement and driveway are good for emergency vehicles, there have been no issues here to date and they are not intensifying the use here. Mr. Felicetta said the access easement has been moved and is 18 feet wide. Mr. Felicetta said there is no negative impact here, this property is not right on Fisk Avenue, it is 180 feet back so there is not as much impact and they have worked their way from the ground up. The property is at elevation 4 and the garage will be at elevation 4.5, then the first floor, second floor and 1/2 story — no excessive ceilings. The first floor elevation is required to be at least at 9 feet and they are starting at 13 feet, this also affects insurance premiums, they have provided more freeboard. There is no impact to the Zoning Plan or to the Zoning Ordinance and the 1/2 story will remain unfinished.

Mr. Bonacci asked for more information on the drainage and Mr. Ward said the property is flat and the only way for drainage to work is low spots with inlets, there will be small inlets around the yard so rain would be collected by these inlets and would overflow into the river. Mr. Maclearie asked if this will affect neighbors on the west side and Mr. Ward said no, the inlets will go into other inlets in the rear and go to the river. He noted that the docks here have also been approved by the DEP.

Mr. Felicetta commented that at one time this was two lots and Mrs. Brisben told him it is still two lots on the tax records here, they have to be merged and Mr. Felicetta said this was no problem and will be done.

Mr. Hilla went back to the drainage and told the Board if this drainage plan does not work the town will have to revisit it, the river is where the drainage wants to go. Mr. Hilla asked about a bubbler system so water will sit there but may be moved by high tides. Mr. Ward said a little drainage system would not work with a Nor-eastern but this will work under regular conditions. Mr. Hilla then addressed the FAR and was not sure it could be 2.8 in reference to the 1/2 floor storage area. If there is a building coverage of 18.65% this would be at 3.7 and not at 2.8, they might have to strike some balance with this, he did not want it to become a relief condition and Mr. Ward agreed. They will go over their calculations again and will work with Mr. Hilla. He then asked Mr. Huila if decks and balconies count in FAR and Mr. Hilla said here they do because they serve as

roofs to the area below; Mr. Ward said they did count every deck, balcony and porch.

Mr. Lapham asked about the JCP&L easement and wanted to know if they had something in writing and Mr. Felicetta said he has been in contact with Mike Espinoza from JCP&L and he has been working with them and will address all this after receiving approval from the Board. Mr. Hilla asked if this easement is just on the applicant's property or does it affect others and Mr. Felicetta thought it was only on Mr. Vesuvio's property. Mr. Hilla thought this was odd but Mr. Felicetta said JCP&L does not think this is difficult and they will start to address this will demolition is done, he explained the process.

Mr. Langenberger said he did not see a generator on the plans and wanted to know if there is one; Mr. Ward said the applicant has not proposed one. Mr. Langenberger had a concern with the mechanical units as they will be off the ground and if they come forward they will be by the second floor bedrooms of the neighbors, he wonder about making an enclosure to shield the sound somehow. Mr. Ward said he understood and they can screen it but noted they need interior air space. Mr. Langenberger said he would like to see the noise head toward the river and doing that will buffer the sound. Mr. Hilla said they would not be able to put the generator there, it is not a big enough area; the generator would have to be in the rear or on the other side, it has to follow the fire and building codes. Mr. Langenberger commented it may have to go on the roof.

Mr. Sarnasi wanted to know what separates the pool area from the river as it is so close. Mr. Ward explained the pool coping will be at 4.5, the pool surface water will be higher than what is on the beach; there is no retaining wall and the pool coping will go from about a foot to 4.5 feet. Mr. Lapham noted the bathroom on the mezzanine floor along with closets, this seemed odd.

The hearing was opened for the public for questions and, hearing none, that portion was closed and Mr. Dean Andricsak of D2A Architecture and Design came forward and was sworn in. Mr. Andricsak did the renderings for this site and commented on the "1/2 story issue. The 1/2 story is in attic space and goes from 7.6 feet to 5.3 feet, it does not extend beyond what is shown on the plan and will be used for storage and remain unfinished. As far as addressing Mr. Lapham's comment, this is what the client asked for, several closets and a full bath, he did not know why. Mr. Lapham said he could see a toilet, but a bathtub in the attic?

As there were no other Board questions the hearing was opened to the public for questions and, hearing none, that portion was closed and the Board went into discussion. Mr. Langenberger felt the new dwelling will fit right in the neighborhood, Mr. Sarnasi felt it was a very nice plan. Mr. Stenson wanted to know how some of the elevations happened and Mr. Huila said some of this happened after Hurricane Sandy. The rest of the Board was okay with the application, as presented, so Mr. Stenson made a motion to approve the application, this seconded by Mr. Lapham and then by the following roll call vote:

Ayes: Joseph Bonacci, Thomas Condon, Eric Lapham, James Langenberger, James Maclearie, Charles Sarnasi, James Stenson

Noes: None

Mr. Clark noted the Resolution will reference the drainage plan to be reviewed by the Engineer and to screen the mechanical equipment. Mr. Hills said the 1/2 story here is unusual and he thought the FAR calculations should be modified; Mrs. Brisben told Mr. Felicetta that 5 sets of revised plans will have to be submitted and Mr. Felicetta said okay to this.

As there was no other business to come before the Board a motion to adjourn was made by Mr. Condon, seconded by Mr. Lapham and unanimously approved by the Board, all aye. The meeting was adjourned at 10:15 p.m.

Karen S. Brisben, Board Secretary

Approved: April 10, 2018