

# ***Borough of Brielle***

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**MAY 14, 2019**

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July 12 2019

**May 14th, 2019**

BOROUGH OF BRIELLE  
PLANNING/ZONING BOARD MEETING  
TUESDAY, May 14th, 2019

The Regular meeting of the Brielle Planning/Zoning Board was held on Tuesday, May 14th, 2019 at 7:30 pm in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a salute to the flag, roll call was taken:

Present - Thomas Condon, James Stenson, James Langenberger, James Maclearie, Glenn Miller, Stacey Montalto, John Pierciey, Corinne Trainor,

Absent – Mayor Thomas B. Nicol, Councilman Frank A. Garruzzo, Eric Lapham

Also present were David Clark, Board Attorney, Alan Hilla, Jr., Board Engineer and Carol Baran, Secretary of the Board. There were 2 people in the audience.

A motion was made by James Stenson to approve the Minutes of the April 9th, 2019 meeting, this seconded by Stacey Montalto and unanimously approved, all aye.

## **OLD BUSINESS:**

The Board turned to consideration of a Resolution for approval for variance relief for Block 66.02, Lot 8, 706 Schoolhouse Road, owned by Gregory & Kathleen Mooney, to allow construction of a 20x20 foot deck at the rear of the existing home. Lot area — 11,250 square feet required; 10,000 square feet existing. Lot Depth — 125 feet required; 100 feet existing. Rear Yard Setback — 35 feet required; 15 feet proposed.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF GREGORY AND KATHLEEN MOONEY FOR PROPERTY LOCATED AT 706 SCHOOLHOUSE ROAD AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 66.02, LOT 8.

WHEREAS, Gregory and Kathleen Mooney, (the "Applicants") have applied to the Planning Board of the Borough of Brielle (the "Board") for a minor site plan approval with variance relief for the property located at 706 Schoolhouse Road and identified on the tax map of the Borough of Brielle as Block 66.02, Lot 8 (the "Property"); and

WHEREAS, the Property is located within the Borough's Residential Zone 3 (the "R-3 Zone" and currently contains a two (2) story frame residential dwelling; and

WHEREAS, the Applicant is seeking variance relief for the construction of a twenty (20') foot by twenty (20') foot deck at the rear of the existing single-family dwelling in accordance with the plans submitted in support of this application (the "Plans"); and

WHEREAS, this application specifically requires the following variances:

- a. Lot Area – Pursuant to §21-13.2 of the Ordinance, the Lot must be 11,250 square feet; the existing Lot has 10,000 square feet [pre-existing non-conformity that is not being changed through the development proposed within this application];
- b. Lot Depth – Pursuant to §21-13.2 of the Ordinance, the Lot must have a depth of 125 feet; the existing Lot has 100 feet existing [pre-existing non-conformity that is not being changed through the development proposed within this application];
- c. Rear Yard Setback – Pursuant to §21-13.2 of the Ordinance, the minimum rear yard setback required for this Property is thirty-five (35') feet; the Property has a proposed rear yard setback of fifteen (15') feet [new non-conformity resulting from the development proposed within this application].

WHEREAS, the Board held hearings on this application on March 12, 2019 and on April 9, 2019 and considered the following documents presented at the hearings in connection with this application:

a. Jurisdictional Packet;

b. Exhibit A-1: April 9, 2019 project description and photographs showing the height of the proposed deck, photographs of the trees along the rear border of the property, as well as photographs of the existing berm bordering the backyard.

c. Exhibit O-1: a photograph taken by Mr. Shawn Dettlinger on March 12, 2019 showing the Mooney back yard and the Dettlinger back yard next door,

d. Exhibit O-2: a photograph by Frank MacDonald showing water in his back yard that he alleges comes from the Mooney property,

WHEREAS, the Applicant, Gregory Mooney, was sworn in and presented this application; and  
WHEREAS, the Board considered the following testimony presented at the hearing in connection with this application:

On March 12, 2019, Mr. Mooney testified that he is seeking a variance for the installation of a wooden deck at the rear of his home. Mr. Mooney testified that his backyard is small and has a steep slope which means that it cannot be used without installation of a deck. Since the back yard is so small, the proposed deck would have a 15 foot rear yard setback. He testified that the deck will go from about three feet tall to approximately three and a half feet tall. When asked if the deck could be made smaller, Mr. Mooney explained the proposed deck was already smaller than what he had planned and that a 20 x 20 deck would be the best use.

Mr. Miller asked about the drainage concerns and what type of material would be underneath the deck. Mr. Mooney replied that the yard is currently grass and his intent is to maintain the grass. He noted that the property has drywells on the property owing to the slope of the property. Councilman Garruzzo questioned whether grass would grow under a deck and if more water would accumulate owing to the deck size.

Mr. Hilla stated he was familiar with the drywells and asked if Mr. Mooney had spoken with his neighbors regarding the drainage concerns. Mr. Mooney replied that he had met with all of his neighbors and that he believed that the drywell systems were working well. Mr. Hilla noted that this had been a rainy year which would have tested the systems and shown if there were any problems.

The hearing was then opened to the public for comment.

Keith McEligot of 615 Brielle Avenue asked if gas or electric would be installed on the deck. Mr. Mooney replied that neither would be installed.

Shawn Dettlinger of 707 Howell Drive asked about the slope of the yard versus the height of the deck. Mr. Mooney explained that owing to the downward slope of the deck, a 3' deck would still be approximately 3 steps below his back-sliding door. Mr. Dettlinger also questioned Mr. Mooney about the trees in the back yard and wondered what Mr. Mooney's plans were with regard to keeping these trees as without them, Mr. Mooney's deck would closely overlook Mr. Dettlinger's back yard. Mr. Dettlinger also stated that during heavy rain he gets flooding in the south side of his property. Mr. Dettlinger alleged that the flooding began shortly after Mr. Mooney's house was built and that he believes that the water is coming from Mr. Mooney's property. Lastly Mr. Dettlinger stated that he felt the berm in the back yard was not being properly maintained. Mr. Dettlinger offered Exhibit O-1 into evidence, which is a photograph of Mr. Mooney's side yard and Mr. Dettlinger's side yard, with a swing marking height as a reference point. Mr. Mooney replied that the trees in the back yard are like a fence and that they offer a great deal of privacy. He stated he had no intention of removing them. He again explained that the deck was below the height of the back-sliding door.

Mr. Hilla commented that the survey submitted with the application showing the exact number of steps appeared to show 8-10 steps, but it was unclear and there were no other plans. Councilman Garruzzo agreed that the plans were unclear as to the height of the deck and the slope. Mrs. Trainer noted the additional concerns about the drainage issues and site line issues and stated that she did not feel the board had enough information to understand what the grading for the proposed deck is going to be.

Mr. Condon recommended that Mr. Mooney be required to submit a site elevation plan to the Board and Mr. Hilla agreed. Mayor Nicol recommended that Mr. Hilla and Mr. Mooney speak after the meeting to ensure that Mr. Mooney understood what information Mr. Hilla and the board are looking to receive. Mayor Nicol also noted that if the berm had settled, that would need to be addressed as well.

Virginia Loftin, of 407 South Street, asked about the current lot coverage versus the proposed lot coverage. Mr. Hilla explained that as the deck is slatted, there is no proposed change to the lot coverage area. Frank McDonald, of 705 Howell Drive, also expressed concern regarding the drainage from the Mooney property and submitted a photo, Exhibit O-2, which showed water pooling on his property. He also felt the berm was not being maintained. He suggested that Mr. Mooney should have known his back yard was too sloped to be used when he purchased it and that soil had been added at the time of construction to try to flatten it.

The Board determined that this application should be carried over to the next month's meeting and requested that Mr. Mooney submit more detailed plans regarding the deck area and the elevations prior to the next meeting. Mr. Condon stated since the March 12 meeting had been duly notice there would be no need for

further notice for this application. The motion to carry the application to the April Board meeting was made by Mr. Stevenson and seconded by Councilman Garruzzo and was unanimously approved.

On April 9, 2019, this application was continued. Prior to the meeting, Mr. Mooney submitted revised plans showing the deck area and elevations. Mr. Mooney stated that he met with his neighbors prior to the April 9 meeting and determined that they had 3 main concerns: height, privacy, and drainage. He explained that in terms of height, the deck would be one (1') lower than the first floor of his home. It will be twenty-three (23") inches above the ground and referenced a photograph he submitted to the Board. With regard to the privacy issue, he stated that his backyard has a natural privacy barrier from the neighbor's house with eighteen (18) cypress trees that are approximately twenty (20') feet tall and forty-five (45') feet wide. He stated that he could not see into the neighbor's yard from any level on the inside of his house.

In terms of the drainage concerns, Mr. Mooney met with Mr. Hilla to understand the drainage that was installed when his home was constructed. He stated that two (2) additional drywells holding 318 gallons of water each were installed so that the property has three (3) drywells in total. Additionally, there was a berm built along the back wall of the property and running thirty (30') up the east side of the property. These additions were monitored for a year during construction and neither Mr. Hilla nor the contractor heard any concerns about this drainage system. Mr. Mooney added soil and perennial grasses to the berm to help maintain it. Mr. Hilla asked what Mr. Mooney planned to put under the deck. Mr. Mooney replied that he intended to put landscape fabric and pebbles underneath.

The meeting was then opened to questions from the public to Mr. Mooney. Mr. Dettlinger of 707 Howell Drive asked about the decking material and was told it would be a composite material with gaps between the pieces. There were no other questions from the public to Mr. Mooney. The board also did not have any questions.

The meeting was then opened to the public for comments. Mr. Dettlinger expressed his continuing concerns about the drainage issues that exist on his property that he alleges are due to the building of Mr. Mooney's house. There were no other comments from the public and public comment was closed.

Mr. Condon then asked to the Board for comments about the application. Mr. Langenberger and Mr. Stenson commented that the grading came with the house and that the grading should not stop Mr. Mooney from building a deck as otherwise he will not be able to use his back yard. Mr. Miller and Councilman Garruzzo both agreed that there should be some requirements to maintain the barrier of trees. Ms. Trainor commented that she appreciated Mr. Mooney's efforts to answer the questions from the March meeting and to work with his neighbors to address their concerns. Mr. Condon stated that his concern is with the rear yard setback.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified;
- b. The variance sought relates to a specific piece of property;
- c. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the Property's has exceptional topographic conditions—specifically, The Property's back yard has a severe slope and is undersized and cannot be practicably and fully used without the proposed deck;
- d. The variance can be granted without substantial detriment to the public good;
- e. The benefits of the deviations substantially outweigh any detriment, and;
- f. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, Mr. Stenson moved to approve the applications with the conditions as described herein; this motion was seconded by Ms. Trainor. At that time the application was approved by the following roll call vote:

Ayes: Councilman Frank Garruzzo, James Langenberger, James Maclearie, Glenn Miller, James Stenson, Corinne Trainor

Noes: Thomas Condon

Absent: Mayor Nicol

Not Eligible to Vote: Eric Lapham, Stacey Montalto, John Pierciey

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applicant's

application for minor site plan approval with variance relief is hereby approved and granted subject to the following conditions:

- a. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- b. The Applicants 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 Applicants shall maintain the evergreen trees at the rear of the Property and if any of these trees die or are removed, the Applicants shall replace them in kind with substantially similar trees;
- d. The Applicants shall plant perennial grasses on the berm between the property and shall maintain the berm to prevent drainage into neighboring properties;
- e. The Applicants shall install landscape fabric and pebbles under the deck to assist in drainage;
- f. All representations made under oath by the Applicants or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicants contrary to the representations made before the board shall be deemed a violation of this approval.

Mr. Maclearie made a motion to approve the application seconded by Mr. Stenson and then approved by the following roll call vote:

Ayes: James Langenberger, James Maclearie, Glenn Miller, James Stenson and Corinne Trainor

Noes: None

Not Eligible to Vote: Thomas Condon, Eric Lapham, Stacey Montalto, John Piercey

Absent: Mayor Nicol, Councilman Frank Garruzzo, Eric Lapham

The Board turned to consideration of a Resolution for variance relief for Block 48.02, Lot 13.02, 308 Fisk Avenue, owned by Kristina Visceglia, to allow construction of a new home. Maximum Building Height — 35 feet allowed; 37.95 feet proposed.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF KRISTINA VISCEGLIA FOR THE PROPERTY LOCATED AT 308 FISK AVENUE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 48.01, LOT 13.02

WHEREAS, Kristina Visceglia, (the "Applicant") has applied to the Planning Board of the Borough of Brielle (the "Board") for variance approval for the development of the property located at 308 Fisk Avenue and identified on the tax map of the Borough of Brielle as Block 48.01, Lot 13.02 (the "Property"); and WHEREAS, the Property is located within the Borough's Residential Zone 3 (the "R-3 Zone") and currently is a vacant lot; and

WHEREAS, the Applicant is seeking variance relief for the construction of a 2-1/2 story single family dwelling and swimming pool adhering to the prevalent flood zone elevations in accordance with the plans submitted in support of this application (as revised, the "Plans"); and

WHEREAS, this application specifically requires the following variances:

- a. Pursuant to §21-13.2 of the Ordinance, the maximum building height is thirty-five (35) feet; the Property has a proposed maximum building height of 37.95 feet.

WHEREAS, the former property owner previously received an approval from the Board to construct a dwelling on the Property with a maximum building height of 38 feet, but that structure was never built; and

WHEREAS, since the Applicant materially changed the plans regarding the structure to be built on the Property, she was required to file this application seeking variance relief from the Board; and

WHEREAS, Councilman Garruzzo recused himself from hearing this application; and

WHEREAS, the Board held a hearing on this application on Tuesday, April 9, 2019 and considered the following documents presented at the hearing in connection with this application:

- a. Jurisdictional Packet and application;
- b. Exhibit A-1, 2018 Planning Board Resolution approving project proposed by the previous owner;
- c. Exhibit A-2, an architectural rendering of the proposed development;
- d. Exhibit A-3, architectural plans of the proposed development;
- e. Exhibit A-4, an engineering rendering of the proposed development;
- f. Exhibit A-5, CAFRA letter.

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

On April 9, 2019, the Applicant Kristina Visceglia was sworn in and stated she has owned the Property since September 18, 2018. Her attorney, Mr. Michael Henderson, asked her about her plans for the Property. She stated that she intends to move back to Brielle where she grew up. She received a copy of the original resolution for a height variance from the prior owner, which she submitted to the Board and which was marked as Exhibit A-1. She stated that she intends to build a 2 1/2 story home with a pool on the Property. There were no questions from the public or the Board for this witness.

The next witness was Marc Nemergut, a licensed architect. Mr. Nemergut was accepted as an expert witness in architecture by the Board. Mr. Nemergut presented an architectural rendering which was marked as Exhibit A-2 and architectural plans which were marked as Exhibit A-3. He stated the reason for the new application was because of the difference in height. He explained that the elevation proposed by the previous owner was eleven feet and now Ms. Visceglia's proposed development is at fourteen feet above flood elevation to allow the duct work to be done. Mr. Nemergut stated the structure will be similar in height to other structures in the neighborhood. The plans called for eight (8') foot ceilings on all levels to help limit the total height of the structure. He explained that the base level was originally a little lower than he would have liked and stated that the structure would be an improvement to the neighborhood.

Mr. Condon opened the hearing to the public for questions for Mr. Nemergut. Ms. Virginia Loftin of 407 South Street asked if the house would be similar in height to those surrounding it. Mr. Nemergut explained that it would not be the exact height of all of the surrounding homes. Ms. Loftin expressed her concern with regard to allowing residents to build larger homes that require height variance relief.

The next witness was William Jensen, a licensed engineer. Mr. Jensen was accepted as an expert witness in engineering by the Board. Mr. Jensen submitted an engineering rendering which was marked as Exhibit A-4. Mr. Jensen stated that the variance relief being sought was because of the thirty-five foot maximum height requirement in this zone. He explained that the 2018 Resolution originally approved by the Board for the project proposed by the previous owner was for a thirty-eight foot maximum height and the current request is for a lesser height (i.e. 37.95 feet).

Mr. Henderson asked if Mr. Jensen had read Mr. Hilla's engineering review letter, and he responded in the affirmative. Mr. Henderson then noted he had received a letter from CAFRA on Monday. The CAFRA letter was submitted as Exhibit A-5. Mr. Jensen explained that the new CAFRA permit addresses the drainage concerns in Mr. Hilla's letter. The water will drain towards the river and towards the street on the front half of the Property. He explained that Mr. Hilla's concerns were typical requirements taken into consideration in order to obtain the CAFRA permit.

Mr. Henderson asked Mr. Jensen about the Applicant's plan for the curb and driveway. Mr. Jensen indicated that the Applicant plans to account for both and that she will replace the extra twenty feet. Mr. Jensen stated he was familiar with the standards for a C-1 variance and believed that the structure would be an improvement to the area while complying with FEMA elevation requirements. Mr. Jensen stated that he was also familiar with the standards for a C-2 variance and felt that there would be no detriment if the application is granted and that the development of the Property in the manner proposed by the Applicant would be consistent with other properties and with the Borough's master plan.

The hearing was then opened to questions for this witness. Ms. Loftin asked if the Applicant was seeking a variance for 37.95 feet instead of the originally approved variance of thirty-eight feet. Mr. Jensen stated that yes, this was the requested variance. Ms. Loftin then questioned the FEMA eleven-foot elevation requirement. Mr. Hilla explained that this was a common proposal and not unusual. There were no further questions for this witness.

Mr. Condon then opened the hearing to public comments. There were none. He then asked the Board for their comments. Mr. Maclearie asked if a pool and fence were going to be installed. Ms. Visceglia replied in the affirmative. The rest of the Board generally stated that this project would enhance the area.

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 correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as newspaper, were properly notified;
- b. The variance sought relates to a specific property;
- c. The Property is located within a flood zone and any development therefore needs to be elevated to conform to the requirements of the flood zone;
- d. The former owner of the Property previously received an approval from this Board for a variance to construct a dwelling on the Property with a maximum height of 38 feet and this application is actually slightly reducing the maximum height for the structure on the Property;
- e. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the Property meets the exceptional circumstances requirements of N.J.S.A. 40:55D-70(c)(1) and (2) due to its location within a flood zone;
- f. The variance can be granted without substantial detriment to the public good;
- g. The benefits of the deviation substantially outweigh any detriment; and
- h. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, James Maclearie moved to approve the application with the conditions set forth herein; this motion was seconded by James Stenson. At that time the application was approved by the following roll call vote:

Ayes: Thomas Condon, James Stenson, James Langenberger, Eric Lapham, James Maclearie, Glenn Miller, Stacey Montalto, Corinne Trainor, Francis Pierciey

Noes: None

Absent: Mayor Nicol, Councilman Garruzzo

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applicant's application for variance approval is hereby approved and granted subject to the following conditions:

- a. The Applicant will comply with all CAFRA requirements for the development of the Property;
- b. The Applicant will replace the curb and sidewalk fronting this Property;
- c. All representations made under oath by the Applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the board shall be deemed a violation of this approval.

Mr. Stenson made a motion to approve the application seconded by Mrs. Montalto and then approved by the following roll call vote:

Ayes: Thomas Condon, James Stenson, James Langenberger, James Maclearie, Glenn Miller, Stacey Montalto, Corinne Trainor, Francis Pierciey

Noes: None

Absent: Mayor Nicol, Councilman Frank Garruzzo, Eric Lapham

NEW BUSINESS:

The Board then heard the application for variance relief for Block 66.02, Lot 5, 716 Howell Drive, owned by Paul Felt, to allow additions & renovations to the existing dwelling. Front Yard Setback — 30 feet allowed; 23 feet proposed.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet as well as the newspaper were properly notified. Mr. Paul Felt came forward and was sworn in, giving his address as 716 Howell Drive.

Mr. Felt started by explaining he would be doing a comprehensive renovation to the family home. The covered porch they hope to build requires a variance. The home would be expanding on the bedroom side, Mr. felt believes the larger scale would look better with a covered porch instead of the slant roof over the front door. His family hoped to improve the curb appeal and give the home a better presentation. He stated most of the renovation work is being done in the rear of the home where there was a lot of disrepair. Mr. Felt hopes to build the covered porch to add to the beauty of the front of the house.

Mr. Condon asked if the only relief was for the front porch. Mr. Felt responded that is correct. Mr. Condon asked if Mr. Felt had any intentions of enclosing the porch and if he had a problem if the board put that condition in the resolution. Mr. Felt responded he had no problems with that condition. That finished Mr. Felt's testimony.

Mr. Condon opened up to the Board members. Mr. Langenberger asked if the house was coming down. Mr. Felt responded no. Mr. Stenson asked if the footprint would remain the same. Mr. Felt stated that the footprint would change but no change in the variance. Mrs. Montalto asked about Mr. Hilla's letter. Mr. Felt responded that the construction plans were not complete yet. They were waiting until the porch issue was resolved. Mr. Felt said he did not feel the drainage was an issue since the porch was about 500 feet and there was not much concrete in the area. Mr. Maclearie asked Mr. Felt to qualify they had no set plans to go forward yet. Mr. Felt said they do have plans, no construction documents. The architect has gone as far as he can go without the construction documents, waiting on the outcome of this application. Mr. Langenberger stated Mr. Felt would need to go to zoning with the final plans. The other members of the Board had no questions. Mr. Hilla had no questions of the applicant.

The meeting was opened to the public for questions. Mr. Condon closed that portion of the meeting since no questions had been asked.

Mr. Condon reminded the applicant; he would need to submit the plans to the engineer and zoning department before proceeding. Mr. Clark reiterated the Board's conditions of never enclosing the porch and returning to the Zoning department with the final plans. Mr. Condon asked the Board for comments, hearing none he opened to audience comments.

Hearing no comments, Mr. Maclearie made a motion to approve the application with the conditions stated by Mr. Clark, Mr. Stenson seconded. It was approved by the following roll call:

Ayes: Thomas Condon, James Stenson, James Langenberger, James Maclearie, Glenn Miller, Stacey Montalto, Corinne Trainor, Francis Pierciey

Noes: None

Absent: Mayor Nicol, Councilman Frank Garruzzo, Eric Lapham

As there was no other business to come before the Board a motion to adjourn was made by Mr. Pierciey seconded by Ms. Montalto and unanimously approved by the Board, all aye. The meeting was adjourned at

7:50 p.m.

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Carol Baran, Secretary of the Board

Approved: June 11th, 2019