

Tuesday, September 10, 2019

BRIELLE PLANNING BOARD  
TUESDAY, SEPTEMBER 10, 2019

The Regular Meeting of the Brielle Planning Board was held on Tuesday, September 10, 2019 at 7:30 p.m. in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a Salute to the Flag roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham, Madeline Ferraro, James Maclearie, Glenn Miller, Francis Pierciey, James Stenson, Corinne Trainor

Absent - None

David Clark, Board Attorney, Alan Hilla, Jr., Board Engineer and Karen S. Brisben, Board Secretary, were also present; the meeting room was filled to capacity with some people standing. Mr. Condon announced that the agenda was being moved around and the continued application for 836 Riverview Drive would be heard last.

A motion was made to approve the Minutes of August 13, 2019, this done by Councilman Garruzzo, seconded by Corinne Trainor and approved by unanimous vote, all aye.

APPOINTMENT TO BOARD:

At this time the new Board Member, Madeline Ferraro, was sworn in by Mr. Clark as Alternate Member #2, this due to Stacey Montalto resigning. Alternate Member #1 Corinne Trainor now becomes a Regular Member, replacing Ms. Montalto, to 12/31/21 and Francis Pierciey becomes Alternate Member #1 to 12/31/19.

OLD BUSINESS:

The Board had three Resolutions to consider this evening, the first one for Block 64.06, Lot 41, 823 Riverview Drive, owned by The Church in Brielle, to allow fencing around the playground. As all Board members, as well as the Church, had received a draft copy and there were no changes the following was presented for approval:

**WHEREAS, the Church in Brielle** (the **“Applicant”**) has applied to the Planning Board of the Borough of Brielle (the **“Board”**) for approval to construct fencing and other improvements at the property located at 821-823 Riverview Drive and identified on the tax map of the Borough of Brielle as Block 64.06, Lots 39-41 (collectively, the **“Property”**); and

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**WHEREAS**, the Property is located within the Borough's Residential Zone 1 (the "R-1 Zone") and currently consists of three tax lots which collectively comprise the functional site of the Church in Brielle; and

**WHEREAS**, the Applicant has filed an abridged site plan application seeking approval to construct approximately 240 linear feet of fencing on the Property in order to create a new play area for the nursery school children adjacent to Riverview Drive (former site of a single-family residence), along with a new walkway from the interior church walkway to the enclosed area, as shown in more detail within the application filed by the Applicant; and

**WHEREAS**, the Applicant is seeking a waiver for the requirement to provide a survey of the entire Property; and

**WHEREAS**, the existing/proposed use on the Property is a legally existing conditional use and the existing site conditions are generally in conformance with the most recent site plan for the Property which was approved approximately 20 years ago; and

**WHEREAS**, prior to the commencement of the hearing on this application, Board members Francis Pierciey and James Langenberger recused themselves as they are members of the Church in Brielle; and

**WHEREAS**, the Board held a hearing on this application on August 13, 2019 and considered the following documents presented at the hearing in connection with this application:

- a. Exhibit A-1 photos showing the types of fencing that will constructed; and

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**WHEREAS**, this application was presented by the Applicant's attorney, Richard Butz, Esq; and

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

Mr. Butz called Susan Butz to be sworn in and to testify on behalf of the Church. Ms. Butz explained that she is a member of the Church and that she serves on the property ministry which oversees the grounds of the Church and that she is authorized to represent the Church in this application. In reference to Mr. Hilla's letter, Mrs. Butz addressed statement #2 type of fencing, as being fencing on 3 sides, Southern, Eastern and Northern made of vinyl and wood. Mr. Butz asked to have a photo of the type of fences marked as Exhibit A-1. Mrs. Butz testified that the southern and eastern side would be a 4ft high white vinyl fence along Riverview, while the Northern side between the Church and the vacant lot would be wooden with wire between it. Mr. Butz asked Mrs. Butz to explain the setbacks. Mrs. Butz stated that the southern side is 5ft. off the property line and the Riverview side is 15ft off of the property line.

Mr. Butz asked Mrs. Butz to describe the use of the space (item #3) and she indicated that it will be used as a children's play area and that the fencing is needed to keep the children safe. There is no equipment only grass. There will be no other construction in the fenced area.

Mr. Butz asked Mrs. Butz about the walkway which is depicted on the plans. Mrs. Butz explained that walkway is existing and consists of pavers which run along Riverview towards the red doors and the same pavers run towards the empty lot which leads to the fenced area.

Mr. Condon asked Mr. Hilla if he had any questions. Mr. Hilla asked about item #5--consolidation of the lots. Mr. Butz replied he is unable to speak on this issue at the current time, he is there on a simple application of a fence. The Church did not give him authorization to speak on this issue.

Mr. Condon asked the Board for questions. Mr. James Stenson asked Mrs. Butz to clarify the walkway. Mrs. Butz responded that is the existing walkway. No other Board member had any questions. Mr. Tom Condon asked about trees along the fence side of Riverview. Mrs. Butz explained trees are on the south side about a quarter of the way down the lot and there are sycamore trees and another row of trees are between the fence and street as well.

Mr. Condon opened the meeting to questions from the public. Hearing none, he closed that portion. Mr. Condon asked Mr. Hilla if he would like to discuss #5. Mr. Hilla expressed that this should have been taken care of with the previous application 18 years ago. Mr. Hilla explained that since this lot is now becoming a part of Church operation

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proper, the consolidation should be addressed from a housekeeping prospective. Mr. Hilla expressed this did not affect the fence application. Ms. Corinne Trainor asked if the Church consolidated the three lots and then sold them in the future, could the new owner subdivide the lots again. Mr. Hilla said yes, the new owner could. Mr. Condon indicated that as the proposed fencing was not changing anything with regard to the lots he did not think that it was appropriate for the Board to require the consolidation of the lots as a condition of the approval of the fencing.

Mr. Condon asked for comments from the Public and Board. Since Mr. Condon heard none, he closed that portion.

**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 the newspaper, were properly notified;
- b. The application provides sufficient detail of the construction being proposed and thus, to the extent that the Borough Code requires the submission of a survey of the entire Property, that requirement is hereby waived;
- c. The construction proposed by the Applicant through this application advances the purposes of the Municipal Land Use Law, does not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

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

Ayes: Mayor Thomas Nicol, Frank Garruzzo, Thomas Condon, James Maclearie, James Stenson, Corinne Trainor

Noes: None

Did not participate: Francis Pierciey and James Langenberger

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

- a. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- b. The 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. All representations made under oath by the Applicant or its 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.

A motion to approve the above Resolution was made by Mr. Maclearie, seconded by Councilman Garruzzo and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Maclearie, James Stenson, Corinne Trainor

Noes: None

Not Eligible to Vote: Madeline Ferraro, Eric Lapham, Glenn Miller

The next Resolution for consideration was for Block 103, Lot 6, 1016 Riverview Drive, owned by Steve & Lisa Barthel, to allow construction of a new home.

As all Board members, as well as the applicants, had received a draft copy and there were no changes to be made the following was presented for approval:

**WHEREAS, Steve and Lisa Barthel** (the "**Applicants**") have applied to the Planning Board of the Borough of Brielle (the "**Board**") for variance relief for the property located at 1016 Riverview Drive and identified on the tax map of the Borough of Brielle as Block 103, Lot 6 (the "**Property**"); and

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**WHEREAS**, the Property is located within the Borough's Residential Zone 2 (the "R-2 Zone") and currently contains a single family one story dwelling and a frame shed; and

**WHEREAS**, the Applicants have indicated that they wish to demolish the existing structures on the Property and to construct a new 2.5 story single family dwelling as described more particularly within the application; and

**WHEREAS**, the Property has the following existing non-conformities which are not being changed through the development proposed through this application;

- a. Minimum Lot Width—125 feet required; 100 feet existing and proposed; and

**WHEREAS**, the Applicants are seeking Board approval for the following variances caused by the development proposed within this application (the variances being sought are in bold type):

- a. Minimum Front Yard Setback (principal to Forest Drive)—40 feet required; **30.20 feet proposed (to front porch) and 37 feet proposed (to the two story element of the proposed structure) and variance for a drywell system to be installed for this project in the form and location as shown on the Applicant's revised plans or as approved by the Board Engineer;**

- b. Minimum Rear Yard Setback (principal)--40 feet required; **18.25 feet proposed (to the garage), 20.33 feet proposed (to the covered patio roof), and 15.33 feet proposed (to the deck);** and

**WHEREAS**, the Board held a hearing on this application on August 13, 2019 and considered the following documents presented at the hearing in connection with this application:

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- b. A Building Permit Plan prepared by Leslie A. Walker, III, P.E. of Meridian Engineering Group dated May 14, 2019;
- c. Architectural plans (4 sheets) prepared by N2 Architecture dated April 15, 2019;
- d. Application package from Applicants;
- e. Review letter from Alan Hilla dated July 16, 2019;
- f. Exhibit S-1 Building Permit Plan prepared by Leslie A. Walker, III, P.E. of Meridian Engineering Group and submitted with application;
- g. Exhibit S-2 revised Building Permit Plan prepared by Leslie A. Walker, III, P.E. of Meridian Engineering Group dated August 2, 2019;
- h. Exhibit S-3 photos of other properties on Riverview Drive showing front doors;
- i. Exhibit A-5 Proposed Basement Floor Plan prepared by N2 Architecture dated August 9, 2019;
- j. Exhibit A-6 Proposed Half Story Floor Plan prepared by N2 Architecture dated August 9, 2019; and

**WHEREAS**, this application was presented by Steve Barthel; and

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

Mr. Steve and Mrs. Lisa Barthel came forward and were sworn in. Mr. Barthel stated he and his wife purchased the property one year ago for an investment and instead decided to rebuild and live in it. Mr. Barthel added Mr. Dave Dupre previously owned the property since the 1940's and that it is a challenging property and the existing house is non-conforming due to being located on the corner of Riverview and Forrest on an exceptionally narrow lot.

The Board confirmed, at Mr. Barthel's request that the public notices were served in compliance with the governing ordinances.

Mr. Les Walker, Meridian Engineering, came forward gave his credentials and was sworn in and accepted as an engineering witness. Mr. Walker explained that the house would need to be a 20 ft wide house in order to be conforming due to the narrow width of

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the lot on Riverview which is 100 ft wide, and the setback requirements of the Borough Code. Mr. Walker prepared a revised plan after receiving Mr. Hilla's letter and the Environmental Commission's comments to the original plans. That revised plan was marked as Exhibit S-2; Mr. Walker agreed to highlight the differences which were made due to Mr. Hilla's suggestions. Mr. Walker started by saying one of the main comments was the elimination of the front retaining wall and that in the revised plan there would be a 3 to 1 grade max from the driveway towards the curb which would eliminate the need for the retaining wall or a safety fence along the top. By relocating the driveway slightly down towards Riverview to maintain the existing curb opening for the existing driveway helped with the revisions to the grades. He also added that they looked to create a small flat area, so they added a 3 ft high wall back 15ft from the house which will come up to a flat area and in the back a wall with a height varying from 0 to 4 feet. To address concerns with storm water runoff, they have introduced a drywell at the bottom corner of the property which may change configuration a little bit with same volume as construction begins. In addition to the roof of the home, a portion of the driveway will feed into a drywell. Mr. Walker referenced the question about the sump pump discharge, they can accommodate the discharge into their leader drain which will take it to their drywell with an overflow pipe which daylight out to the grass. He continued by stating that they would use the existing lateral from Riverview.

Mr. Clark asked who would address the standards for variance relief and why they are needed. Mr. Walker replied the applicant would address these standards.

Mr. Walker talked about the letter from the Environmental Commission, they will balance the site and minimize soil removal. He added the impervious coverage currently 0.05 to proposed .11 approximately 2600 ft, the reason being the new house is larger than existing house.

Mr. Condon asked the Board for questions. Mr. Langenberger asked about the size of the existing water line. Mr. Barthel replied the he believed it was a 1-inch line coming off Forrest. Mr. Langenberger asked Mr. Hilla if that would be enough for the new home and Mr. Hilla responded yes. Mr. Stenson asked if the proposed retaining wall had been removed from the plans and Mr. Walker replied yes. Ms. Trainor asked if the applicant would be installing a pool. Mr. Barthel replied it would be a future application if they decide to add one. Mr. Maclearie asked where the family would be entering and exiting, and Mr. Walker replied the driveway would be on Forrest. Mr. Hilla added the drywell is considered an accessory structure even though it is below grade, so variances are required.

Mr. Condon asked what the height of the fence would be should they apply for a pool application in the future. Mr. Walker responded the pool would match the same elevation and it would not require variances. Mr. Hilla asked if the water would go towards Riverview. Mr. Walker responded it is the nature of the grade towards Riverview. Mr. Barthel added there is vegetation there currently. Mr. Hilla asked about the rear yard setback. Mr. Walker said they would update the plans to reflect the differences. The variances requested would meet the rear setback requirements. Mr. Barthel added they

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have introduced a front door off the Riverview side to hopefully conform to the definition of front yard. Mr. Barthel continued by saying several other homes on Riverview are similar. Mrs. Barthel introduced Exhibit S-3 pictures of similar houses in the neighborhood. Mr. Barthel spoke of the variances needed and already existing and why they were needed.

Mr. Condon asked the public for any questions. Hearing none he closed that portion.

Mr. Mark Nemergut from N2 architecture came forward and was sworn in. The Board accepted Mr. Nemergut as an architectural expert. Mr. Nemergut indicated that a lot of the questions have been answered already. Mr. Hilla's letter #6 basement and sump pump. Sump pump testimony had been given. He continued with two soil bores were done down to 16ft. He stated there will be a basement unfinished, in reference to the comment of half story (Exhibit A-6), the window allows light into the attic. They are compliant in both building code and zoning metric. The attic pull-down stairs will be located closer to master suite at the end of hallway.

Mr. Condon opened to Board questions; no questions were asked from the Board. Mr. Condon opened to the public for questions or comments. Hearing none, he closed that portion.

Mr. Condon asked for comments from the Board; Ms. Trainor referenced the applicant coming back in future for the pool. No other comments were made.

Mr. Clark stated the approval would be conditioned upon the applicant's receipt of County Planning Board approval or a letter of no interest from the County.

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

- d. 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;
- e. The variances sought herein relate to a specific piece of property;
- f. The purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement because the Property is exceptionally narrow and the new construction proposed is not exacerbating the non-conforming setbacks which already exist at the Property and the drywell system, while a structure requiring a variance, is primarily underground;

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- g. The variances can be granted without substantial detriment to the public good;
- h. The benefits of the deviations substantially outweigh any detriment, and;
- i. The variances will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

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

Ayes: Mayor Thomas Nicol, Frank Garruzzo, Thomas Condon, James Langenberger, James Maclearie, James Stenson Corinne Trainor, Francis Pierciey

Noes: None

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

- d. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- e. 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;
- f. Since the Property is on a County road, the Applicants shall obtain either County Planning Board approval for this application or a letter of no interest from the County Planning Board. No building permits will be issued without proof of compliance with this condition;
- g. Since the Applicants made revisions to their plans which were discussed at the hearing on this application, the Applicants shall submit five (5) sets of their revised plans to the Board Secretary by no later than thirty (30) days of the date of the adoption of this resolution. No building permits will be issued without proof of compliance with this condition;

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- h. The Applicants shall install a drywell system as part of the construction project on the Property in a form and location as shown on its revised plans or as approved by the Board Engineer;
- i. All representations made under oath by the Applicants or their 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.

A motion for approval of the above Resolution was made by Councilman Garruzzo, seconded by Mr. Stenson and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, James Maclearie, Francis Pierciey, James Stenson, Corinne Trainor

Noes: None

Not Eligible to Vote: Madeline Ferraro, Eric Lapham, Glenn Miller

The last Resolution was for Block 90, Lot 1, 843 Riverview Drive, owned by the Manasquan River Golf Club, to allow construction of an addition to the Clubhouse kitchen.

As all Board members, as well as the applicant, had received a draft copy and there were no changes the following was presented for approval:

**WHEREAS, the Manasquan River Golf Club** (the “**Applicant**”) has applied to the Planning Board of the Borough of Brielle (the “**Board**”) for approval to construct certain improvements on the property located at 843 Riverview Drive and identified on the tax map of the Borough of Brielle as Block 90, Lot 1 (the “**Property**”); and

**WHEREAS**, the Property is located within the Borough’s Residential Zone 1 (the “R-1 Zone”) and currently contains a golf course, club house, and associated accessory facilities; and

**WHEREAS**, the Applicant wishes to construct an 850 square foot addition to the clubhouse kitchen area on the Property; and

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**WHEREAS**, the Applicant is seeking a waiver for the requirement to provide a survey of the entire 90 acre Property due to the limited nature of the construction proposed through the application; and

**WHEREAS**, the existing lot, existing and proposed use, and proposed addition are all conforming for the zone; and

**WHEREAS**, prior to the commencement of the hearing on this application, Board member Frank Garruzzo recused himself as he is a member of the Manasquan River Golf Club; and

**WHEREAS**, the Board held a hearing on this application on August 13, 2019 and considered the following documents presented at the hearing in connection with this application:

- k. A minor site plan (4 sheets) prepared by Joseph J. Kociuba, P.E., P.P. dated revised February 21, 2019;
- l. Architectural plans (2 sheets) prepared by Michael Melillo, AIA, dated October 17, 2018;
- m. Application package from Applicant which includes a zoning permit denial from the Borough Zoning Officer;
- n. Review letter from Alan Hilla dated June 24, 2019;
- o. Exhibit A-1 photos ;
- p. Exhibit A-2; and

**WHEREAS**, this application was presented by Robert E. Swain, Jr., Esq.; and

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

Mr. Robert Swain attorney for Manasquan River Golf Club came forward to present the application. Mr. Swain explained that the applicant would like to add 850 sq. ft. for solid waste storage area and freezer boxes to free up space in the kitchen. The addition

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is proposed to be made to the northwest corner of the clubhouse. Mr. Swain went on to add the proposed addition is for commercial development within the R-1 which approval of a site plan is a necessary requisite for authorization of the conforming structure. Mr. Swain stated 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. Swain asked the Board to accept jurisdiction and it did so. Mr. Swain introduced pictures of the existing stormwater mitigation system and area of development, marked as Exhibit A-1.

Mr. Swain asked Mr. Matthew Morrow, 1105 Sea Girt Ave Wall, NJ, golf course superintendent for 8 years to come forward and be sworn in. Mr. Morrow testified to overseeing grounds maintenance and is familiar with the issues raised in comment #3 of Mr. Hilla's letter. He went on to say they currently have a drywell on the course. It is a 900-gallon drywell in the first fairway. Mr. Morrow testified that roughly 400 sq. ft of the 850 sq. ft. proposed addition is currently impervious. Mr. Morrow testified that he believes that the current system which was already approved by this Planning Board is enough for the addition as well and that any overflow from the existing drywell would be contained to the club's property.

Mr. Condon asked for question of this witness from the Board and the public. Since Mr. Condon heard none, he closed that portion.

Mr. Swain asked Mr. Michael Zusack, 7 Silver White Road Little Silver, NJ, to come forward and be sworn in. Mr. Zusack testified that he is the Chief Operating Officer who has overseen the daily operations of the Golf Club for the past 19 years. Mr. Zusack testified that this addition would free up the kitchen area for prepping foods and make it safe for the workers. Mr. Zusack added it would not result in additional employees. Mr. Zusack went on to reply to Mr. Hilla's comment #1 that the project was affecting less than 1% of the property therefor, it seems to be an unnecessary expense to require the submission of a survey of the entire property. Mr. Swain added he had priced out the cost of a complete survey and that it would cost \$20,000. Mr. Zusack responded to # 2 in Mr. Hilla's letter by stating that the Club didn't feel the parking would be affected due to their offered valet parking and other areas they have available to accommodate the overflow. Mr. Zusack stated he felt the paperwork submitted with the application depicted the proposed project better than a survey of the 99.3 acres would.

Mr. Condon asked for questions of this witness from the Public and Board. Since Mr. Condon heard none, he closed that portion. Mr. Condon then asked for comments about the application from the Public and the board. Hearing none, he closed that portion of the meeting. Mr. Clark stated that the approval of this application would be conditioned upon the applicant's receipt of County Planning Board approval or a letter of no interest from the County.

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**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:

- j. The application provides sufficient detail of the construction being proposed and thus, to the extent that the Borough Code requires the submission of a survey of the entire Property, that requirement is hereby waived;
- k. The construction proposed by the Applicant through this application advances the purposes of the Municipal Land Use Law, does not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

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

Ayes: Mayor Thomas Nicol, Thomas Condon, James Langenberger, James Maclearie, James Stenson, Corinne Trainor, Francis Pierciey

Noes: None

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

- j. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- k. The 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;
- l. Since the Property is on a County road, the Applicant shall obtain either County Planning Board approval for this application or a letter of no interest from the County Planning Board. No building permits will be issued without proof of compliance with this condition;

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- m. All representations made under oath by the Applicant or its 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.

A motion to approve the above Resolution was made by Ms. Trainor, seconded by Mr. Maclearie and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Thomas Condon, James Langenberger, James Maclearie, Francis Pierciey, James Stenson, Corinne Trainor

Noes: None

Not Eligible to Vote: Madeline Ferraro, Eric Lapham, Glenn Miller

#### NEW BUSINESS:

The Board turned to an application for Site Plan approval for Block 66.01, Lot 5, 715 Union Avenue (Site of Trailer Park), owned by 715 Union Avenue, LLC, bulk variance approval. A Free-Standing sign is to be located 15 feet from any lot line, setback of approximately one foot proposed.

The correct fees were paid, taxes are paid to date and the property owners within 200 feet and the newspaper were notified. Mr. Clark noted one issue, one member of the public was not notified but signed an affidavit waiving the time period and this is consistent with the law. Mr. Condon wanted to know who it was and Mrs. Brisben said it was Nicholas Stetito of 1 Courtyard Lane.

At this time Mr. Keith Henderson, Esq. started testimony for this application and had two people sworn in, Ryan Sansone and Patrick Ward. Mr. Sansone started and said he has owned this property since 10/23/14 and had come before the Board for Site Plan approval with variances in 2015. They now wish to relocate the sign foundation that is built as it now encroaches into the State Highway 71 line and was not part of the 2015 variance application request. Mr. Sansone was able to purchase part of the highway property and has a copy of that deed for the Board's file. Mr. Henderson noted they are still in violation of the site line and commented that they have already put in a new fire hydrant and bollards for safety. Mr. Clark marked the deed from the State to Mr. Sansone as Exhibit A-1.

Mr. Henderson added there is a stipulation that the sign will not be used for advertising other than for the business and they do comply with this. Mr. Maclearie asked how high will the sign be and Mr. Henderson said that will be addressed. As there were no more questions from the Board the meeting was opened for the public for questions only to Mr. Sansone and Virginia Lofton of 407 South Street came forward and was sworn in. She asked for information on the sign and will it be electrified, Mr. Sansone said it is about 6 feet wide and 3 feet tall and is a wooden sign. As there were

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no other questions that portion of the hearing was closed and Patrick Ward came forward.

He is a Licensed Engineer and Planner with InSite Engineering and has previously testified before this Board, he will be testifying as both Planner & Engineer; the Board accepted him as an expert witness.

Mr. Ward presented sheet one of one dated 2/20/19 which shows the front of the property where the existing planter box is, almost over 4 feet into the highway setback Right-of-Way; this is going to be relocated to within one foot into the Right-of-Way. The sign face is over 6 feet wide and about 4 feet tall, a total of 22 square feet, the maximum height allowed is 20 feet and this will be at 12 feet including the foundation base, this final location will be about 14 feet back from the curb.

Mr. Ward had reviewed Mr. Hilla's report and they have applied to the State for a No Interest letter from the D.O.T. He added that setting this back to the allowed 15 feet would affect the circulation of the site. At this time an aerial photo of the site, dated 9/10/19, was marked as Exhibit A-2. Mr. Ward showed the area where the on-ramp to Route 35 is located which is in front of the new apartment building and the head-on parking is shown, setting the sign back too far would impact one parking space and the circulation. He added the sign location was not proposed in 2015 so relief is now needed, they had to analyze looking North on Route 71 (he said that looking South is okay). Looking North is looking at the Route 35 underpass and they studied this, the sight distance is proposed to be 3 feet above ground to a total of 12 feet, so if one looks North on Route 71 this will be acceptable. Mr. Henderson asked for a comment on Mr. Hilla's note of this being a "tripping hazard" and Mr. Ward said there is a lip by the concrete area and there will be another 2 inches of pavement put down after the sign issue is finalized.

Mr. Ward added this sign is used for traffic and not advertising and he felt this will also promote visual aesthetics. Mr. Henderson asked about any negative criteria and Mr. Ward said there were none, the only consideration was the sign height and that will be taken care of. Mr. Hilla asked about the dimension of the posts and was told they are 4x4 inches, the maximum would be a 6 inch post. Mr. Hilla felt smaller was better but it has to be able to hold up. Mr. Langenberger asked if the existing foundation box is staying and Mr. Ward said it will be trimmed and pulled back and will not affect bikes on the sidewalk. Mr. Lapham asked for confirmation that the planter will be staying the same style and the answer was yes, it will go back about 4 feet. Mr. Lapham noted it will be close to the cars parked; Mr. Ward said the sign will be slightly narrower and will not be as wide, they are not resetting the safety bollards there now. Mr. Lapham commented there is a dip in the road and smaller cars may have a problem, Mr. Ward agreed but said the neighbor's property is more obtrusive.

Mr. Condon noted that police have a concern on the existing area, his concern were children coming from school, they might not be seen. Mr. Ward answered that the planter is only 3 feet tall and felt that the distance from the sign to the curb cut will

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be okay and is adequate for kids. Mr. Condon felt the foundation should be smaller and Mr. Henderson indicated his client would agree a 2.5 foot high foundation for the planter.

Mr. Hilla asked about the time for getting the repaving done, this is a dramatic change and if it goes into next Spring it may be a problem. Mr. Sansone answered and said it can be paved within 30 days from tomorrow. Mrs. Brisben asked about getting the State D.O.T. approval before having the sign actually going in, can this be in the Resolution and Mr. Clark said it can be put in there.

As the Board had no further questions the hearing was opened to the public for questions to Mr. Ward and, hearing none, that portion was closed and the Board went into discussion. Mr. Langenberger said that for 25 years he received Enforcement complaints on the trailer park when the previous owners had it, now Mr. Sansone has done everything right with it, nothing on the negative side has been done and he had no problem with this application, Mr. Stenson was for approval as well. Ms. Trainor noted there is a lot of foot traffic there and felt this was a good project. Mr. Miller felt it was a great improvement and had no problem, Councilman Garruzzo and Mayor Nicol agreed with him as well as Mr. Lapham and Mr. Condon.

Mr. Clark noted the changes and conditions of approval: the planter will be put in at 2.5 feet high, the pavement transition improvement will be done within 30 days of the Resolution approval, the poles will be 4 inches in diameter, State approval is needed for the sign and the applicant will have to submit 5 sets of revised plans.

At this time Councilman Garruzzo made a motion to approve the application, with the changes & conditions as noted by Mr. Clark, this seconded by Mr. Stenson and then approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Thomas Condon, James Langenberger, Eric Lapham, James Maclearie, Glenn Miller, James Stenson, Corinne Trainor

Noes: None

Not Eligible to Vote: Madeline Ferraro, Francis Pierciey (Alternate members)

#### OLD BUSINESS:

The Board went back to Old Business for the continued hearing for Block 72, Lot 1, etc., 836 Riverview Drive, owned by 836 Riverview Drive, LLC, to allow barrier-netting fencing to remain on the property. Before starting this, Mayor Nicol, Councilman Garruzzo, Mr. Langenberger and Mr. Miller all recused themselves and left the dais. Mr. Clark announced that both Ms. Ferraro and Ms. Trainor had listened to the tape of the June meeting on this matter and were eligible to vote.

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Mr. Condon said there was a lot of testimony not pertaining to Land Use issues given at the last hearing in June and he wanted to limit any further testimony to Land Use issues; he then asked if the attorneys did speak to each other from June until now. Mr. Henderson said they did but did not reach a settlement. Mr. Henderson said he had 5 witnesses here tonight and Mark Aikins, attorney for several neighbors, also had witnesses as well as Tom Hirsch, attorney for the Golf Club.

Mr. Henderson called Mr. James Lukowitz of 3164 Cherry Court, Manchester, to come forward and be sworn in. He is the builder that worked on the restoration of the home at 836 Riverview Drive, he started in July of 2015 and he is just about done. He saw golf balls coming on the property and sometimes collected 20 a day, the majority were in the pool area and walkway to the pool area; they started seeing this on the first day they were there. A painter was working on a window when a golf ball came in and broke the glass, one other window was broken as well as a stained-glass door. This problem has lessened around the pool area since the barrier net was installed but is still a problem around the garage where there is no netting. He was also there with the meeting with the Club Manager and Landscape person and Mr. Hirsch objected to this testimony as Mr. Lukowitz was not part of this conversation. Mr. Henderson asked Mr. Lukowitz for confirmation he was there Mr. Lukowitz confirmed that he was there and heard the conversation. Mr. Hirsch wanted to know the names of the Golf Club employees to which Mr. Lukowitz answered a man named Matt and the grounds man, he did not know his name. Mr. Hirsch then stated this is irrelevant as to whether this applies to the Municipal Land Use Law and we are going down this same road again; this does not have anything to do with variances. Mr. Henderson said there will be Planning testimony on the C-2 variance regarding a danger to occupants on the property.

Mr. Condon said the Golf Club can't make it okay for them to put up netting, only the Planning Board can do that; Mr. Aikins added that if they are applying for hardship, this has been created by the applicant and is not allowed under law. Mr. Clark indicated that any testimony should apply to Land Use issues, if there is a danger it may be relevant. Mr. Henderson said the applicant intends to prove that there was a safety net there that pre-existed the Zoning Ordinance, but Mr. Hirsch said this is irrelevant, this is not a pre-existing right. The previous net was taken down due to storm damage so this right is lost by this being removed and there is no basis now for variance relief. He checked with the Borough if the previous netting was allowed to be put up and there were no records on it. Mr. Aikins agreed, the day it came down it became irrelevant. Mr. Clark said the Board can grant a variance on the new netting but it has to be proven that a variance is warranted. There is a code violation on this and the testimony should be given that a variance is warranted, the Board needs to see if a danger exists and tie this to a need for variance relief.

Mr. Henderson objected and stated that his client should be allowed to present testimony regarding his communications with employees of the Golf Club and regarding the pre-existing netting, which was marked as an exhibit in June. Mr. Condon ruled that

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such evidence would not be permitted but noted Mr. Henderson's objection to this ruling and agreed that it would be included in the Minutes and so noted by the Board.

Mr. Hirsch asked Mr. Lukowitz if he was a General Builder and the answer was a Custom Home Builder who has subcontractors, he had 3-4 workers on this project which consisted of stripping down the interior wood and bringing it back to when the home was built, the home has 5,700 square feet. He also put in an elevator and did some caulking work outside. He pretty much finished this by February of this year and did the work on a time and material basis. He supervised and planned the next steps on this project, worked 7-8 hours a day and has time records on file. Mr. Hirsch asked him about picking up golf balls and Mr. Lukowitz said he did pick them up, he did not make a point to do this.

As there were no other questions for Mr. Lukowitz from the Board or attorneys, the hearing was opened to the public for questions and, as there were none, that portion was closed. At this time Mr. Henderson asked for a brief recess to discuss the Board's ruling with his clients and it was granted, the Board took a 5 minute recess at 8:30 and reconvened at 8:35 p.m.

At this time Mr. Clark asked Mr. Aikins to give the names of those he was representing this evening: they are - Thomas Hackett, Patrick Housen, Loretta Lamb and Andrew Kelly. Mr. Clark said any questions they may have should be directed through Mr. Aikins and Mr. Aikins agreed.

Mr. Henderson then called Paul Harnett of 2153 Evergreen Avenue, Sea Girt to come forward and be sworn in, he works for Borab Landscaping and has been working on the Dana site at 836 Riverview Drive for 7.5 years, he was there before the Danas purchased it. He goes there once a week, 10 months a year, on Friday. He said the golf balls are constantly seen, there is a problem at the tee box on Hole 17 and the balls come onto the property, he was almost hit by one; he said the net has made a considerable difference and has reduced the balls coming in. Mr. Hirsch asked if he ever had a complaint about the golf balls from the previous owner and Mr. Harnett said yes, there were golf balls during the golf season, he saw them, heard them, picked them up and threw them away or put them in the grass area, this is in reference to the whole west side of the property. Mr. Aikins asked him about the duration of his visits and was told 2 to 4 hours, he maintains all the plant material on the property; Borab does not cut the grass, he reluctantly said that is done by Reiniger/Dickson Landscaping.

As the Board had no questions the hearing was opened to the public for questions and Peter McGuigan of 2327 Orchard Crest Boulevard, Manasquan came forward and asked if this safety issue caused him to change the way he works and the answer was yes, some workers had to be aware of golf balls and face that way. As there were no other questions that portion of the hearing was closed. Ms. Trainor was curious as to why Mr. Harnett was hesitant when saying who cuts the grass and he said he was here tonight on his own behalf and not anyone else. She then asked him if he has a financial interest in Borab Landscaping and the answer was no.

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The next person to come forward and be sworn in was Alison Coffin from James W. Higgins Associates in Ocean Township, she is a Professional Planner and has appeared before the Brielle Planning Board; she has a Bachelor's degree from Boston University, is certified in NJ and has been before more than 90 communities in New Jersey. The Board accepted her as an expert witness.

Ms. Coffin was retained to look at this issue, the site is a very large lot, 271,648.64 square feet, it is a deep flagged lot from Riverview Drive to the Manasquan River and it is by the 17<sup>th</sup> tee. She commented that over 100 golf balls have been recovered and Mr. Hirsch objected to this, he said she cannot say 100 golf balls, Ms. Coffin said it has already been testified that over 100 golf balls have been picked up. She said they are asking for variance relief for 130 feet of netting and the property itself is over 700 feet long. The purpose of the Fence Ordinance is for safety and does have a 12-foot allowance for tennis courts. She felt the netting is considered a fence and does need a C variance, a C-1 applies to the odd shape of the lot and is a hardship, the C-2 variance is where the benefits outweigh the detriments. She felt the C-2 variance applies here and promotes public health, safety and welfare, this site is next to the 17<sup>th</sup> tee and she has hardship testimony on this as this creates a situation that the property is now in jeopardy and the owners cannot use their property, the net has helped them. There is no light, air and open space being affected by this, no noise, odors, traffic or pollution.

This is a unique situation, activity on one lot affects the other lot and a 12-foot high fence is not going to address golf balls as it will for tennis balls and the netting needs to be 65 feet high. Mr. Henderson commented that some say this is not a visual environment and Ms. Coffin felt that was open to interpretation and can be softened by putting trees in. Mr. Hirsch said the purpose of the Municipal Land Use is health, safety and welfare, it was not created to provide remedies to adjacent properties. Ms. Coffin said if relief is necessary to provide safety, the Board can grant a variance. This obviously is a safety problem and the Municipal Land Use Law gives people the right to be given safety. Mr. Hirsch then said Ms. Coffin stated a C-2 variance applies and, in fact, this variance says a Board can find if the benefits outweigh the detriments and that needs to be done. Ms. Coffin said a variance can be granted for safety. Mr. Hirsch asked if a C-2 variance is an opportunity to grant relief for a community and Ms. Coffin said yes. Mr. Hirsch then asked if the height has to be 65 feet? Ms. Coffin said this is the testimony she gave, Mr. Dana got the height from the fence company. Mr. Hirsch countered with the fact that that expert was not here and evidence of this was not produced to the Board and not filed with them. He then asked about the other properties along the golf course and Ms. Coffin said she drove around the perimeter of the golf course.

Mr. Hirsch then asked if a golf ball hits someone, does that mean a variance should be granted for a 65 foot high net? Ms. Coffin said the grounds of having golf balls landing on Mr. Dana's property justifies variance relief; if coming in at a high speed, etc., they may be dangerous, there is not a definite bright line standard. Mr.

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Aikins spoke of the comment of a visual environment and asked if there are less intrusive ways to lessen the impact here, maybe constructing a lanai or putting in trees, these may make a better environment. Ms. Coffin said she did say trees would help but they were not put in first. Mr. Aikins asked about poles that are 65 feet high and a 130-foot long netting, was this safe construction as no permits were applied for at all. Ms. Coffin said she was a Planner and not an Engineer. Mr. Aikins asked her if she inquired about the cost of this structure and the answer was no. He then asked if the pool can be relocated to another location and the answer was again no.

Mr. Hirsch asked her to agree there is an adverse impact and Ms. Coffin said no but there is a subjective opinion, it is a see-through barrier and not a fence. Mr. Hirsch said there is no room on the Dana property for trees and Ms. Coffin agreed but said it is a customary thing to have by a golf course and she worked with this at Deal Country Club. Mr. Hirsch asked if that was to stop intrusion and Ms. Coffin said not in that instance, all the things that could be done here the applicant can't do but he can put up a net; a lanai is not appropriate here as balls are landing all over and lanais are connected to the house but this pool is 75 feet from the house. Mr. Hirsch asked if it can be built, though, and Ms. Coffin said it would not protect people going to the pool; Mr. Hirsch then offered it would be grossly oversized to accommodate this and the answer was yes. Mr. Hirsch then said that the fence was over 65 feet high and she did not feel this was grossly oversized? Ms. Coffin said the Fence Ordinance does not address this. Mr. Aikins asked if there is fencing at the Deal Country Club and Ms. Coffin said yes. Mr. Condon said he counted 28-30 homes on the fairway, so would 28-30 nets be aesthetically pleasing? Ms. Coffin said each one would have to be addressed individually. As there was no other testimony that portion was closed.

Mr. Henderson said he did not bring other witnesses as he did not think there would be time and Mr. Hirsch asked who the other witnesses are but Mr. Henderson would not tell their names. Mr. Hirsch said he told the Board who his witnesses were and Mr. Condon was not pleased this cannot continue this evening. Mr. Henderson said he had three more witnesses and stated the Board changed his approach due to the ruling on the previous netting.

Mr. Clark felt the Board is entitled to ask what they are going to present, this has been changing, Mr. Henderson said he does not have more than 3 more witnesses but he couldn't speak for Mr. Hirsch or Mr. Aikins. Mr. Hirsch said he had 3 more witnesses and a Planner and Mr. Aikins said he represents 4 property owners and they would like to speak.

At this time Mrs. Brisben said this can be continued at the Tuesday, October 8<sup>th</sup> meeting, the whole evening can be spent on this application. Mr. Clark then told all the attorneys to bring all their witnesses on October 8<sup>th</sup> at 7:30 as the Board hopes to conclude this application.

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As there was no other business to come before the Board a motion to adjourn was made by Mr. Lapham, seconded by Mr. Stenson and unanimously approved, all aye. The meeting was adjourned at 9:25 p.m.

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Karen S. Brisben, Secretary to the Board

Approved: October 8, 2019