

BRIELLE PLANNING BOARD  
TUESDAY, October 8, 2019

The Regular Meeting of the Brielle Planning Board was held on Tuesday, October 8<sup>th</sup>, 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 – Thomas Condon, James Maclearie, James Stenson, Corinne Trainor, Francis Pierciey, Eric Lapham and Madeline Ferraro

Absent – Mayor Thomas Nicol, Councilman Frank Garruzzo, James Langenberger and Glenn Miller

David Clark, Board Attorney, Alan Hilla, Jr., Board Engineer and Carol Baran, Recording Secretary, were also present; there were approximately 39 people in the audience.

A motion was made to approve the Minutes of September 10<sup>th</sup>, 2019, this motion was made by James Stenson seconded by Corrine Trainor and approved by unanimous vote, all aye.

CORRESPONDENCE:

Copy of notice to DEP for Block 72, Lots 1, etc., 836 Riverview Drive, for Shoreline Stabilization  
Receipt of the July/August issue of the NJ Planner.

OLD BUSINESS:

The Board turned to the approval of a resolution for Site Plan approval for Block 66.01, Lot 5, 715 Union Avenue (site of Trailer Park) to allow free-standing sign.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF 715 UNION AVENUE LLC FOR THE CONSTRUCTION OF A FREE-STANDING IDENTIFICATION SIGN AND MASONRY PLANTER ON PROPERTY LOCATED AT 715 UNION AVENUE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 66.01, LOT 5**

**WHEREAS, 715 Union Avenue LLC** (the “**Applicant**”) has applied to the Planning Board of the Borough of Brielle (the “**Board**”) for approval to construct a free-standing identification sign and masonry planter on the property located at 715 Union Avenue and identified on the tax map of the Borough of Brielle as Block 66.01, Lot 5 (the “**Property**”); and

**WHEREAS**, the Property is located within the Borough's Gateway Zone ("C-1A") and currently contains a trailer park with some other recently renovated residential structures; and

**WHEREAS**, the Applicant wishes to construct a free-standing identification sign and masonry planter on the Property; and

**WHEREAS**, this application specifically requires the following variances (requested variance is shown in bold type):

(a) signs must be located at least 15 feet from any lot line; **the Applicant is proposing a setback of 1 foot from the lot line**; and

**WHEREAS**, the Board held a hearing on this application on September 10, 2019 and considered the following documents presented at the hearing in connection with this application:

- a. Sign location plan prepared by Frank R. DeSantis, P.L.S., dated revised January 1, 2019;
- b. Sign variance plan prepared by Patrick R Ward, P.E., P.P., dated February 20, 2019;
- c. Application package including zoning permit denial from Zoning Officer;
- d. Review letter from Alan Hilla, Jr., P.E., P.P., dated June 25, 2019;
- e. Exhibit A-1 Deed from State of New Jersey to Ryan Sansone;
- f. Exhibit A-2 aerial photo of site; and

**WHEREAS**, this application was presented by the Applicant's attorney, Keith Henderson, Esq.; and

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

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 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 and 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 traffic circulation. He added the sign was already installed at this location, 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 be okay and is adequate for kids. Mr. Condon felt the foundation should be smaller and Mr. Henderson indicated that his client would agree to 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.

**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 variance being sought relates to a specific piece of property;

- c. The Property has a unique shape and unique physical conditions and a residential development located on this Property was previously approved by the Board;
- d. Locating the sign in the location proposed by the Applicant will result in the sign being approximately 14 feet from the curb due to the width of the right of way in front of this Property;
- e. Requiring the proposed sign to be installed 15 feet from the lot line would negatively impact the traffic circulation in the previously approved residential development on the Property and would result in the removal of previously approved parking spaces;
- f. Any concerns regarding sight lines for traffic exiting the Property can be mitigated by regulating the height of the proposed sign and the width of the poles used for the sign and the size of the concrete planter;
- g. For the reasons set forth herein, the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirement regarding the minimum setback for a free-standing sign;
- h. The benefits of the deviation substantially outweigh any detriment; and
- i. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**WHEREAS**, Councilman Garruzzo moved to approve the application with the conditions as described herein; this motion was seconded by Mr. Stenson. At that time the application was 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)

**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:

- 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. The Applicant shall obtain either State Department of Transportation approval for this application or a letter of no interest from the State Department of Transportation;
- d. The planter shall be no more than 2.5 feet in height;
- e. The poles for the sign will be no more than 4 inches in diameter;
- f. The height of the sign will be adjusted to improve sight lines for traffic exiting the Property and shall be at a height acceptable to the Board Engineer and within the requirements of the Borough Code;
- g. Pavement transition improvements in a form acceptable to the Board Engineer will be completed within 30 days of the adoption of this Resolution;
- h. The Applicant shall file five (5) sets of revised plans with the Board Secretary showing the improvements described within conditions (d), (e), (f), and (g) within 30 days of the adoption of this Resolution
- i. 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.

The above Resolution was approved on a motion by James Maclearie seconded by Eric Lapham and then by the following roll call vote:

Ayes: Thomas Condon, James Stenson, James Maclearie, Corinne Trainor, Francis Pierciey, Eric Lapham and Madeline Ferraro

Noes: None

Not Eligible to Vote: None

Absent: Mayor Thomas Nicol, Frank Garruzzo, James Langenberger, and Glenn Miller

The Board then turned to the continuation of the hearing for variance relief 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.

Mr. Henderson came forward and stated he had one witness to testify. Mr. Frank Accisano came forward and was sworn in by David Clark. Mr. Accisano stated he was an attorney in the State of New Jersey licensed in residential closings. His office located at 2517 Hwy 35 Manasquan, NJ and his residence was 34 A Maple Lane Brielle. Mr. Henderson asked Mr. Accisano if he represented Mr. Dana in the closing of the 836 Riverview property and if the seller had disclosed any off-site hazards or issues. Mr. Accisano responded he did represent Mr. Dana and there were no disclosures, it was a typical closing. Mr. Henderson asked if there was discussion of the golf ball condition and Mr. Accisano responded no.

Mr. Tom Condon opened the meeting to questions of Mr. Accisano, hearing none he closed that portion. Mr. Condon opened to Board members who had questions, hearing none he closed that portion of the meeting.

Mr. Henderson said that concluded the applicant's case. Mr. Hirsch representing the Manasquan River Golf Club (MRGC) came forward and explained that he had several witnesses. He began with Mike Zusack, COO of MRGC.

Mr. Zusack was sworn in by Mr. Clark. Mr. Zusack, 7 Silver White Road Little Silver, NJ stated he has been the Chief Operating Officer for the Club for 20 years this coming January. Mr. Hirsch asked him his duties. He responded day-to-day operations, overseeing the budget and information gathering for the Board. Mr. Hirsch asked Mr. Zusack if he had attended the other meetings for this application and he responded yes.

Mr. Zusack testified he attended the meeting on June 1, 2018 in which Mr. Dana indicated golf balls were coming on to his property and he wanted to reinstall a protective net. Mr. Hirsch asked if Mr. Dana had informed Mr. Zusack of the height of the net he wished to install. Mr. Zusack responded no. Mr. Zusack explained he relayed that meeting's information to his Board of Trustees.

Mr. Hirsch asked Mr. Zusack if he had heard Mr. Dana's previous testimony in reference to removal of trees and MRGC planting trees. Mr. Zusack said yes, he had heard Mr. Dana's testimony. Mr. Zusack continued that he had not been a part of any discussions about the removal of the trees and MRGC had no intention of planting trees.

Mr. Hirsch asked Mr. Zusack if he had received any complaints about golf balls on the Dana property. Mr. Zusack explained he had received two complaints, one from the previous owner of a broken window in which the owner did not want the golf club to do anything just a notification to them and one from Mrs. Dana who said a window had been broken. Mr. Zusack testified he and the superintendent took a golf cart over to the property and tried to reach Mrs. Dana but she was

not home.

Mr. Zusack asked if this was a good time for his photos. Mr. Hirsch responded yes. Mr. David Clark marked exhibits O-1, O-2 and O-3 which Mr. Zusack described as photo 1- the Dana property, photo 2 - Dana property and Golf Course and photo 3 – tree line of the Dana property and a boat on Golf Course property after Super Storm Sandy all of which were from the Club's archives.

Mr. Henderson asked Mr. Zusack if he knew the dates of the photos. Mr. Zusack was unable to supply the dates except for the photo after Super Storm Sandy.

Mr. Hirsch asked if Mr. Zusack had helped with the reinstallation of the net as had been indicated in previous testimony by Mr. Dana. Mr. Zusack explained that he had been gone for the weekend in which the installation took place.

Mr. Henderson asked Mr. Zusack if Mrs. Dana had made only one complaint. Mr. Zusack replied one.

Mr. Condon opened the meeting to questions from the public. Mr. Bruce McMoran, 1601 Jordan way Manasquan, NJ came forward and was sworn in. Mr. McMoran asked if the MRGC removed the trees. Mr. Zusack replied No.

Mr. Aikins, attorney representing several neighbors, asked Mr. Zusack if complaints had been made to other personnel, would those complaints reach Mr. Zusack. Mr. Zusack replied one way or another they would make it to him.

Mr. Condon closed the public portion and opened to Board questions. Ms. Trainor asked if it was mentioned that the previous net belonged to MRGC. Mr. Zusack responded that it did not belong to the Club.

Mr. Stenson asked if the trees were on Mr. Dana's property and was there a pool beyond the trees. Mr. Zusack replied yes.

Mr. Condon asked if Mrs. Dana's call was before the tree removal. Mr. Zusack responded yes. Hearing no other questions from the Board, Mr. Condon closed that portion.

Mr. Hirsch called Mr. Evan Broadbelt to testify. Mr. Broadbelt, of 2072 Allenwood Road, Wall was sworn in by Mr. Clark. He stated he had been a member of MRGC, Professional Golf Rules Official and attorney. Mr. Broadbelt testified he was hired to record his observations of golf balls driven from the 17<sup>th</sup> hole reaching/or not reaching Mr. Dana's property. He continued it was the



weekend of the Riddle Tournament, Saturday and Sunday, his job was to record where the balls went. He tracked left or right rough fairway, bottom of fence, middle of fence, top of fence or over the fence for each of the players. Mr. Hirsch asked how many were driven from the 17<sup>th</sup> tee. Mr. Broadbelt responded 180 tee shots on Saturday and 120 on Sunday. Of those shots: three hit the bottom of net and one hit the top of net on Saturday and no balls hit the net on Sunday. Mr. Hirsch asked if the report indicated if any balls went over the net. Mr. Broadbelt responded no balls went over the net.

Mr. Henderson asked what the Riddle Tournament was. Mr. Broadbelt responded members only tournament. Mr. Henderson asked how many balls hit the net and if any balls hit the middle of the net. Mr. Broadbelt answered three hit the bottom, one hit the top and none hit the middle on Saturday, and none hit the net on Sunday.

Mr. Condon opened the meeting to questions from the public. Hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Ferraro asked what type of golfers were in the tournament. Mr. Broadbelt responded the golfers were representative of the members, meaning all levels, normal, highly competitive or better than average.

Mr. Pierciey asked how many feet to the net from the tee. Mr. Broadbelt responded about 135 feet to the net. Mr. Pierciey also asked where the balls hit the net, closer towards the river or towards the pool. Mr. Broadbelt responded he did not specify that information on the report.

Mr. Lapham asked if Mr. Broadbelt made the observations by himself. Mr. Broadbelt responded that he had done Sunday only, and Saturday was done by someone else. Mr. Lapham asked Mr. Broadbelt to share his range finder findings with the Board. Using a range finder Mr. Broadbelt determined from white tee to top of tree line was 160 yards, 160 yards, 175 yards and 182 yards and from the blue tee 190 yards, 190 yards, 200 yards, 213 yards.

Hearing nothing further from the Board, Mr. Condon closed that portion.

Mr. Hirsch asked the Board to allow Mr. Mark Aikins witnesses to testify first and then he would present the planner. The Board agreed.

Mr. Aikins came forward with Dr. Thomas Hackett, 406 Laurel Avenue Brielle. Mr. Hackett was sworn in by Mr. Clark. Mr. Aikins asked Dr. Hackett to indicate the location of his house to Mr. Dana's house. Mr. Hirsch asked Mr. Clark to allow Dr. Hackett to use his planner's aerial to show the Board the location of his property. O-4, an aerial submitted by Mr. Hirsch's Planner was admitted into evidence. Mr. Aikins asked Dr. Hackett how long they have owned their house. Dr. Hackett responded they purchased in 1997, tore down the existing home, built new and moved in 1999. Mr. Aikins asked what kind of impact the net was having on Dr. Hackett. He responded he

must look at it all the time. Dr. Hackett continued he purchased the property for the views. Mr. Aikins asked if any balls land on his property. Dr. Hackett answered 6-8 golf balls a week land on his property. Mr. Aikins asked if they had done anything to address the issue. Dr. Hackett responded he has added to existing plantings within the bounds of law. Mr. Aikins asked Dr. Hackett if he had alerted MRGC and Dr. Hackett responded he didn't feel he needed to. Mr. Aikins asked if Dr. Hackett was present for Mr. Dana's testimony and if the Dr. would construct a lanai or protective cover should his plantings not be sufficient, and the Dr. responded he would consider it. Dr. Hackett asked the Board to deny the application.

Mr. Henderson asked Dr. Hackett if he was a member of the Golf club and he responded yes.

Mr. Condon opened the meeting to questions from the public. Hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Ferraro asked Dr. Hackett what the distance to the netting was from his house. Dr. Hackett answered he never measured it but considering the net is the size of a drive-in movie screen, it isn't that far. Ms. Ferraro asked for an estimate and the Dr. responded 250 yards. Ms. Ferraro then asked if they had any broken windows. Dr. Hackett said none in the twenty years of living there. Ms. Ferraro asked if the balls would be coming the same direction. Dr. Hackett explained he lived near the 12<sup>th</sup> hole which is the same distance from tee to property as Mr. Dana's is from tee to property.

Mr. Stenson asked if there was netting up on the (Dana) property when the Dr. purchased his property and the Dr. said no and then corrected himself by saying there was different netting in the trees. Ms. Trainor asked if the netting had gone away at any point. Dr. Hackett said it was dilapidated meaning fallen over. Mr. Stenson asked if there were trees. Dr. Hackett responded yes there were trees.

Mr. Maclearie asked what held up the net. Dr. Hackett answered metal tubing approximately inch or inch and a half in diameter.

Mr. Condon asked how visible the netting behind the trees was from the Dr.'s property. Dr. Hackett said he couldn't see from his property. Mr. Condon asked how he knew about the netting. Dr. Hackett said he could see the original netting when playing the course.

Hearing nothing further from the Board, Mr. Condon closed that portion.

Mr. Aikins called Patrick Housen forward. Mr. Housen of 412 Laurel Avenue Brielle was sworn in. Mr. Aikins asked Mr. Housen to indicate his residence. Mr. Housen pointed to his property on exhibit O-4 and stated he is two homes from Dr. Hackett in a northwest direction. Mr. Housen purchased his house in 2001. Mr. Housen said he was impacted by this net. Mr. Housen stated he purchased his home because of the views, the golf course and the river. Mr. Housen asked if he

could share a photo, he had taken with his wife. Mr. Housen's photo was labeled exhibit O-5, a photo of Mr. Dana's fence with Mrs. Housen standing near the fence on the Golf Course property. Mr. Housen stated he took the picture in September of 2018. Mr. Aikins asked Mr. Housen if golf balls typically land on his property. Mr. Housen responded yes about 2-4 per week and it varies per season. Mr. Aikins asked Mr. Housen if they took any measures to stop the golf balls. Mr. Housen responded he hired a landscape architect to look at the property specifically for privacy and protection. Mr. Housen said the landscaper suggested trees and plantings which would have a significant impact on protecting the property. Mr. Aikins asked if Mr. Housen was present for Mr. Dana's testimony and if he would construct a lanai or protective cover should his plantings not be sufficient, and Mr. Housen responded yes, some of his neighbors have pergolas. Mr. Housen continued by saying he had several 13-foot-wide umbrellas over the sitting area in case the balls made it through the trees. Mr. Housen stated his concern for his property value due to the very large net and asked the Board to deny the application.

Mr. Henderson asked Mr. Housen if he planted trees, if he felt the situations were a little bit different due to the different holes. Mr. Housen answered he planted trees, but he didn't feel the situations were different because both Mr. Dana's property and his own were on the right side of the fairway. Mr. Henderson asked if MRGC allowed trees to be planted in front of the net would that be acceptable to him. Mr. Housen responded no if the trees were planted properly on Mr. Dana's property there would be no need for a net, he is concerned with setting a precedent and the environmental impact.

Mr. Condon opened the meeting to questions from the public, hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Trainor asked Mr. Housen if any neighbors had hurricane shutters and Mr. Housen replied he did not know. Mr. Lapham asked if the picture was taken while standing on his property and Mr. Housen responded he is not on his property; it is from the Golf Course.

Hearing nothing further from the Board, Mr. Condon closed that portion.

Mr. Hirsch asked his planner to come forward to testify. Andrew Janiw, Beacon Planning and Consulting Services, 315 Highway 34 Colts Neck, NJ, came forward and was sworn in. Mr. Janiw listed his qualifications for the Board to accept. The Board accepted him. Mr. Janiw was hired to testified for the MRGC and in preparation, he reviewed the application, Borough ordinances, and the master plan as well as case law related to similar issues. Mr. Janiw presented his exhibits to be marked O-6 photos from google imagery; two aerials dated July 1<sup>st</sup>, 2018 and September 6<sup>th</sup>, 2013 and two depicting the side view of the net and looking across the water hazards towards the net, O-7 photo, aerial photos dated July 1<sup>st</sup>, 2018 from a distance of 635 ft and a distance of 969 ft. and O-8 photo, historical aerials from 1957, 1963, 1972, 1986 and 2015. Mr. Janiw explained the earliest historical photo depicted the Dana property before the pool, 1963 depicts the mature tree growth, 1972, 1986 and 2015 depict the pool and tree line, while the 17<sup>th</sup> hole has not changed since the 1957 photo. Mr. Janiw explained from a planning perspective the variance is a simple

issue, a bulk variance would be required for a fence significantly larger than allowed by the Borough ordinance. Mr. Janiw explained a C-1 variance a hardship is required and C-2 is the balance test, three points positive and two points negative. Mr. Janiw cited two cases Kaufman v. Warren Township and Wilson v. Brick Township. Mr. Janiw added it must be a benefit to the community and not just Mr. Dana and his family. Mr. Janiw reiterated the testimony of others who said there are other alternatives to the net. Mr. Janiw explained this is not unique to Mr. Dana's property that his neighbors have similar situations.

Mr. Henderson asked Mr. Janiw if his testimony is that there must be a public interest for the C-2 variance. Mr. Janiw responded the application does not qualify for relief under C-2 variance since it must be for public benefit and not solely for the benefit of the property owner. Mr. Henderson asked if Mr. Janiw was a golf course expert. Mr. Janiw responded no he was not, but he heard Mr. Henderson's experts testify there were other techniques for the protection from the golf balls. Mr. Janiw continued by saying when Mr. Dana purchased this property, he knew there were certain risks.

Mr. Aikins asked Mr. Janiw if the date was July 1<sup>st</sup>, 2018 for the exhibit O-7. Mr. Janiw answered the aerals were from July 1<sup>st</sup>, 2018 and the photos were from June 7<sup>th</sup>, 2019.

Mr. Condon opened the meeting to questions from the public, hearing none, he closed that portion. Mr. Condon then opened to Board members. Ms. Trainor asked Mr. Janiw where the historical photos were from. Mr. Janiw responded purchased from Historic aerals which is a national archive company. Ms. Trainor asked how much the photographs cost. Mr. Janiw responded between \$25 and \$100. He continued that anyone could access the photos if they pay the fee. Ms. Trainor asked if Mr. Janiw knew when the vegetation was removed. Mr. Janiw responded based on the aerals it occurred somewhere between 2015 and July 2018. Ms. Trainor asked Mr. Janiw if he knew if it was before the fence was constructed that the trees were removed. Mr. Janiw responded it was his understanding the net came afterwards.

Mr. Stenson asked if the trees came down after 2015. Mr. Janiw responded yes. Mr. Clark stated for the record that Mr. Stenson was looking at exhibit O-8 and O-6. Mr. Stenson asked if the net is up in the 2018 photo. Mr. Janiw responded it was difficult to tell because the photo is a direct overhead.

Mr. Maclearie asked if the vegetation was still there after Super Storm Sandy. Mr. Janiw responded yes you can see the vegetation is very vibrant in 2013. Mr. Condon asked if the site costs money to go on or if it only cost money for the pictures. Mr. Janiw responded browsing is free and pictures are free, they only charge you for pictures with better resolution.

With no more questions, Mr. Hirsch was finished with his witnesses.

Mr. Condon opened the meeting to the public for comments. Mr. Anthony Mascia of 610 Oceanview Road, Brielle came forward and was sworn in. Mr. Mascia stated he moved to his property on the 11<sup>th</sup> fairway in 1979. Mr. Mascia spoke of the golf balls coming on the property, the old net low in the trees was unobtrusive, asked the Board to not allow anybody anywhere in Brielle to install a net and to preserve the views.

Mr. Housen of 652 Valley Road, Brielle came forward and was sworn in. Mr. Housen stated he was a member of MRGC since 1952, he feels the net is an eyesore and it feels like top golf.

Mr. Mark Neuwirth of 606 Oceanview Road, Brielle came forward and was sworn in. Mr. Neuwirth explained he has only lived in Brielle for three years, but it was all about the views. He stated that he sees the net everyday even though he is 600 plus yards away. Mr. Neuwirth stated if he was to construct a large net to stop the 6-8 balls that come on his property then his neighbors would have to look through a net of their view. Mr. Neuwirth said he wouldn't do it to his neighbors and asked the Board to not allow it.

Mr. Condon closed the public portion of the meeting and asked for summations. Mr. Henderson came forward. Mr. Henderson started by saying this is a C-2 variance and the Board must weigh the safety issue against the desirable visual environment and if it does safety should prevail. Mr. Henderson said there is plenty of testimony on the number of balls that come on the property, the net doesn't even protect the side of the property, which is still open to golf balls, only area protected is the pool. Mr. Henderson reiterated testimony that the Dana family can't do anything more unless trees are planted on the MRGC property or the 17<sup>th</sup> hole design is addressed. Mr. Henderson said the case is going to end up in court if they are forced to take it down. He continued that the trees came down when the net went up and the height of the net was determined due to a geographical study by experts. Mr. Henderson stated Mr. Dana has spent over \$200, 000 just to protect his family and friends in the pool area.

Mr. Hirsch thanked the Board for their time and patience. Mr. Hirsch stated that at the outset of the application hearing it was said buckets of golf balls were landing on the property therefore a variance should be granted for a 65ft net and as he stated in the beginning, he feels that is irrelevant to the zoning variance for the height of a fence. Mr. Hirsch continued by saying the applicant was trying to convince the Board he had a hardship, but his planner knew he could not file under C-1 variance(hardship). Mr. Hirsch then read the Land Use C-2 variance definition. Mr. Hirsch continued by saying Mr. Dana suggests he has done everything he can by taking down mature trees that have stood for decades and erecting a 65 ft net on his property line which prevents him from planting trees on his property. Mr. Hirsch stated Mr. Dana suggests a study was done by experts, but the report has never been presented to the Board secretary or at a meeting. Mr. Hirsch said the MRGC is concerned about safety, they have 20 homes along the course and have operated all this time without being sued. Mr. Hirsch continued by saying Mr. Dana bought the property for the beautiful views and there is an assumption of risk when buying on a golf course. Mr. Hirsch closed by saying the benefits don't outweigh the negative impact on the neighbors and MRGC has offered to work with Mr. Dana because they are neighbors. He finished by asking the Board to deny.

Mr. Aikins told the Board the neighbors are grateful they could be a part of the hearing. Mr. Aikins finished by saying they hope this doesn't go to court and they ask the Board to deny the application because the applicant has not proven that the positive impacts of the variance being sought outweigh the negative impacts.

Mr. Condon asked for comments from the Board. Ms. Trainor thanked everybody for the thoughtful argument and time. She indicated that she agreed with the MRGC argument. Ms.

Trainor said her job was to consider the elements of a C-2 variance and she did not believe 65 ft fence could be there without substantially harming the public good in the town and it is an eyesore.

Mr. Stenson stated he did not feel the applicant proved a C-2 variance and the benefits to the community. He finished by saying they bought a house on a golf course, knew the risk, installed a fence without a permit and there are other alternatives.

Mr. Condon said he was sympathetic to the wife's health issues but it has nothing to do with a C-2 variance. He felt they did not meet the requirements for a C-2 variance. He finished by saying other homes would be affected and it is not benefiting the public just the applicant.

Mr. Condon asked Mr. Hilla if he had any questions. Mr. Clark stated he was discussing with Mr. Hilla the matter of procedure. Mr. Clark felt it was acceptable for a member to make the motion even if they were not voting for it.

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

Ayes: None

Noes: Thomas Condon, James Maclearie, James Stenson, Corinne Trainor, Francis Pierciey, Eric Lapham and Madeline Ferraro

As there was no other business to come before the Board a motion was made by Mr. Pierciey to adjourn, this seconded by Mr. Lapham and unanimously approved, all aye. The meeting was adjourned at 9:22 p.m.

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Carol Baran, Recording Secretary

Approved: November 12<sup>th</sup>, 2019