

BRIELLE PLANNING BOARD  
TUESDAY, AUGUST 11, 2020

The Regular Meeting of the Brielle Planning Board was held on Tuesday, August 11<sup>th</sup>, 2020 at 6:00 p.m. virtually. After a moment of silent prayer and a Salute to the Flag roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, Mr. James Stenson, Mr. James Maclearie, Mr. Glenn Miller, Ms. Madeline Ferraro, Ms. Corrine Trainor, Mr. Christian Siano, and Ms. Karen Brisben

Absent – None

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Carol Baran, Recording Secretary.

A motion was made to approve the Minutes of July 14<sup>th</sup>, 2020, this done by Mr. Maclearie seconded by Mr. Stenson and approved by unanimous vote, all aye.

CORRESPONDENCES:

May/June 2020 issue of the NJ Planner.

Notice of application to CAFRA for 8 Crescent Drive, owned by Brian Kimmins, to allow modifications to main & secondary pier.

A motion was made by Chairwoman Trainor and seconded by Councilman Garruzzo to nominate Mr. James Maclearie as vice chairperson of the Board. With no other nominations, Mr. Maclearie was approved by unanimous vote, all aye. Mr. Maclearie thanked the Board for the nomination.

OLD BUSINESS:

Application for variance relief for Block 18.01, Lot 13,608 Harris Avenue, owned by John & Eleanor Fox, to allow construction of a new home. Minimum Front Yard Setback - 30 feet required, 27.25 feet proposed to the front porch, 24 feet proposed to steps. Maximum Lot Coverage - 20% allowed, 23.36% proposed.

Mr. Keith Henderson introduced himself as the attorney representing Mr. and Mrs. Fox. Ms. Trainor stated that when the Board had tabled this last month, the Board had already heard some testimony and asked Mr. Henderson how he was going to proceed. Mr. Henderson said he was planning on keeping it very short and had two witnesses. Mr. Henderson stated that as he understands it, there was some issue raised as to whether this house could possibly be used as a two-family house. Mr. Henderson testified that he was not at the previous meeting and he had met with the applicants after the meeting. Mr. and Mrs. Fox had the plans revised, which were

submitted, and he believed, reviewed by the engineer. Mr. Henderson stated that he has testimony from Mr. Ryan Myers, from Atlantic Modular Builders and Mr. Joseph Kociuba, the applicant's professional planner and engineer. Mr. Henderson inquired whether these witnesses would need to be sworn in again. Mr. Clark responded that Mr. Myers never testified and that only Mr. Kociuba had testified. Mr. Clark stated that he believed they had both been sworn in but just to make sure, he suggested they both raise their right hands again. Mr. Myers and Mr. Kociuba were sworn in by Mr. Clark.

Mr. Henderson began with Mr. Myers. Mr. Henderson asked Mr. Myers who is he employed by. Mr. Myers responded that he works for Atlantic Modular Builders in Manasquan, New Jersey. Mr. Henderson asked Mr. Myers if he was retained by the Fox's to design a house, on the subject property. Mr. Myers answered yes. Mr. Henderson asked Mr. Myers if based on the Planning Board's comments, were those plans revised. Mr. Myers responded that they were revised, based on comments and some questions from the board, it was decided to remove the exterior door that leads to the first-floor bedroom and the wet bar. To further demonstrate that it is a single-family home as opposed to a two family or possible rental. Mr. Henderson asked Mr. Myers if the kitchenette was also eliminated, Mr. Myers testified that it was. Mr. Henderson asked Mr. Myers if there were any other changes made to the plans. Mr. Myers testified that those were the only changes made to the plans. Mr. Henderson stated that he had no further questions for this witness.

Ms. Trainor asked if there were any questions from the public for Mr. Myers. Hearing none, Ms. Trainor asked Mr. Hilla if he had any questions. Mr. Hilla responded that he did.

Mr. Hilla asked about one of the items that has to do with the building and the half story. Mr. Hilla stated that he didn't know how they're planning to address that, if it's through the modular company. Mr. Myers responded that he could address this issue. Mr. Myers testified if you consider the half story calculations, they need at least 50% of the attic to be five feet or less. As per his calculations 56.62% of the area is five feet or less including the area above the second floor and the area above the half story in which a ceiling collar tie attaches to an extra structure, creating storage above that collar tie. Mr. Hilla stated that those calculations need to be replicated for the Board. Mr. Myers asked if he could share his screen. Ms. Trainor responded that he could. Mr. Myers responded that he understood and that the short answer is we will conform to the zoning standards. Mr. Myers then presented an exhibit, showing his calculations and how he came to those calculations.

Mr. Clark stated that previously, on the first night of the hearing, the applicant marked an exhibit as A-1 that Mr. Kociuba used. Mr. Clark stated that the exhibit presented by Mr. Myers would therefore be marked as Exhibit A-2. Mr. Clark asked Mr. Myers to explain what is shown on the exhibit. Mr. Myers testified that this is the attic, and the shaded area is less than five feet of headroom height. Mr. Myers stated when all these areas are added together, you get a calculation of 1077 square feet. When divided by the floor below, you get the percentage of 56.62% of area, that is less than five feet compared to the floor directly below which is conforming by Brielle standards. Mr. Hilla stated that the Board does not have this sheet. Mr. Myers responded that this was made in reference to the engineering letter and is new to the Board. Mr. Clark asked Mr. Hilla if this answered his question. Mr. Hilla stated to the extent that he believes the testimony, yes, until he sees it. Mr. Hilla stated that he needs to confirm the calculations and he would condition

anything that's approved, if approved tonight. Mr. Myers stated they will certainly reproduce these calculations and show their math. Mr. Henderson responded that they will accept that as a condition and we will stipulate that it will conform. Ms. Brisben stated to Mr. Henderson the secretary will need three sets of the revised plans. Mr. Henderson stated that he will do that. Mr. Hilla stated that he had no other questions for Mr. Myers.

Ms. Trainor asked if any Board members had questions for Mr. Myers. Mr. Maclearie asked if the lot coverage is still at 23.6%. Mr. Myers responded that the lot coverage is now 23.36 %. No other questions were asked.

Mr. Henderson called Joseph Kociuba. Mr. Clark stated that Mr. Kociuba was sworn in and was qualified at the last hearing, on this application as both an engineer and a planner and has already presented evidence on both of those issues.

Mr. Henderson asked Mr. Kociuba if he was representing the applicant in this matter as a professional engineer and professional planner. Mr. Kociuba responded, yes. Mr. Henderson asked Mr. Kociuba if he reviewed the zoning ordinance of Brielle in connection with the definition of family. Mr. Kociuba responded that he did. Mr. Henderson asked Mr. Kociuba if he could explain to the Board what that says. Mr. Kociuba responded the ordinance defines a family as one or more persons living together as a single non-profit housekeeping unit which exhibits the kind of stability, permanency and functional lifestyle and relationships, which is equivalent to that of the traditional family unit, as distinguished from individuals or groups occupying a hotel, club, group home, boarding house or similar arrangement. The foregoing shall not be construed to permit an owner of property in a single-family district to solicit the public at large to rent rooms. Mr. Henderson asked Mr. Kociuba if he also reviewed the definition of a one family dwelling. Mr. Kociuba answered, yes, that states that one family dwelling is a detached building designed for or occupied exclusively by one family. Mr. Henderson asked Mr. Kociuba if the changes in the plans in his mind eliminate the possibility of this proposed structure being used as a two-family house. Mr. Kociuba responded that they do. Mr. Henderson asked Mr. Kociuba what happens afterwards if they make changes. Mr. Kociuba testified that material changes cannot be made to a property without obtaining necessary permits, including zoning permits and the applicant could not rent property in the Borough without obtaining a certificate of occupancy for that rental unit. Mr. Henderson asked Mr. Kociuba, in his opinion, would that provide the Borough with adequate protection against that possibility. Mr. Kociuba responded that in his view, it does. Mr. Henderson stated that he had no further questions for this witness.

Ms. Trainor asked if there were any questions from the public for Mr. Kociuba. None being heard, Ms. Trainor asked Mr. Hilla if he has any questions. Mr. Hilla responded that he did.

Mr. Hilla stated that he had a concern about the drainage system, the fact that it relies on the overland flow. Mr. Kociuba testified that they had stipulated at the previous hearing that they would design a dry well system, they had to get the plans turned around rather quickly, so they didn't have an opportunity to make that design yet. Mr. Kociuba stated that they want to verify with the soil boring, but they do stipulate that they will provide a full dry well system that will store the water quality storm across the entire roof area. Mr. Hilla asked Mr. Kociuba if it will be piped to the system, at least to the nearest downspouts. Mr. Kociuba responded that the roof drains

downspouts will all be piped to that system. Mr. Hilla asked Mr. Kociuba if there was going to be a basement. Mr. Kociuba stated that he believed that Mr. Myers could answer that question. Mr. Myers responded yes, there will be a basement if the soil borings holds. Mr. Hilla responded that what he would suggest to the Board, if there is a basement to have that sump discharge, not to the street, but to the recharge system. Mr. Kociuba stated that they had no objection. Mr. Hilla then asked if the AC, on the west side of the building, is going to be on a platform. Mr. Kociuba testified that they identify it as a platform, stating that he does not know if it is required. Mr. Kociuba asked if it could be a pad on the ground. Mr. Hilla responded that it is only for the nuisance value, if it is elevated, it broadcasts further. Mr. Kociuba answered that they can stipulate that it will be a pad on the ground. Mr. Hilla asked Mr. Kociuba about the existing trees. Mr. Kociuba stated that they had testified last time about the trees, but specifically, the trees in the front, right, which he believes are going to come out in order to install the driveway, there's a large tree at the front left corner of the property that we intend to maintain. Mr. Kociuba testified that the intention is to try and maintain the trees as much as they can. Mr. Hilla asked about the road openings and an enhanced restoration or continued restoration for those. Mr. Kociuba responded that he understood and that they would have no objection.

Ms. Trainor asked if anybody on the Board had questions for Mr. Kociuba. None being heard, Ms. Trainor asked Mr. Henderson if he had any more testimony to present. Mr. Henderson responded that he did not, and that he tried to address the issues that were left on the table at the last hearing, which he believes that they have now done.

Ms. Trainor asked for any public comments about the application, but no members of the public provided any comments.

Ms. Trainor asked the Board if there were any comments with respect to this application. Councilman Garruzzo responded that he thinks it looks beautiful and has no issues or questions. Ms. Brisben stated she would like to thank the applicant for revising the plans, the plan looks very nice. Ms. Brisben asked Mr. Clark if he will have all those requirements in the resolution. Mr. Clark responded that he is going to summarize them before the vote. Ms. Trainor stated that she did not have any comments but would like to thank Mr. and Mrs. Fox for their time and for Mr. Henderson in helping to clean up the application.

Mr. Clark stated he would summarize what the stipulations would be. Mr. Clark stated that the applicant has indicated that they would agree to install a dry well system with recharge in a manner acceptable to the Board engineer with the roof drains going into the system and also with the basement sump system going into that system as opposed to out into the street. The applicant has also indicated that they will agree to make any necessary repairs or restoration of road openings or utility patches, as outlined in Mr. Hilla's letter. The applicant has indicated that they are going to try to preserve the trees to the extent possible. They have testified about some trees that are coming down, and some that are not on their property, but otherwise, they are going to try to keep trees to the extent possible. The utilities, which are shown on the plan right now, as being on a raised platform, the applicant has agreed that that would be a pad that is on the ground. Mr. Clark stated that Mr. Myers has provided a plan which was not previously submitted to the board that was now submitted as Exhibit A-2. The plans that are on file with the Board are going to be revised to

include that plan, which shows the details of the of these two and a half stories, the top story, and shows the details of that with the calculations.

Councilman Garruzzo made a motion for approval of this application with the stipulations of the attorney, seconded by Mr. Stenson and then by the following roll call vote.

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Ms. Corinne Trainor, Mr. James Maclearie, Mr. James Stenson, Mr. Christian Siano, Ms. Karen Brisben. Noes: None  
Not eligible to vote: Mr. Glenn Miller and Ms. Madeline Ferraro

#### OLD BUSINESS:

Application for Site Plan/Use Variance approval for Block 54, Lots 1-2 & Block 58.01, Lot 2, 101-103 Ocean & 1 Ocean Avenue, owned by 1 Ocean Road, LLC (Applicant - Paradise Hospitality, LLC) to allow expansion of The River House Restaurant (Note: Third floor Bridal Suite & elevator tower constructed are not in conformance with Zone Plan). Docking berth - 1 docking berth per 4 restaurant seats, exterior seating on deck alone is at least 106 seats. Bridal Suite, pergola over second floor space, island Bar & pergola over Bar & adjacent areas are expansion of a Non-Conforming use. Structure & rooflines differ from previous structure, expansion of Non-Conforming use. Lot Width - 75 feet required; 74.6 feet existing & proposed. Front Yard Setback (Ocean Avenue) - 30 feet required, 15.5 feet existing, 10.8 feet proposed to shed roof overhang, 14.8 feet proposed to the building wall, 11.5 feet to the island Bar and 6.5 feet proposed to the island Bar pergola. Rear Yard Setback -30 feet required; 10.8 feet existing. Water's Edge Setback - 25 feet required; 12.2 feet existing. Side Yard Setback - 10 feet required, 2.8 feet existing, 4 feet proposed to new stairs. Side Setback (accessory) - 10 feet required; 1.3 feet existing. Lot Coverage - 25% maximum allowed; 47% existing & 44% proposed. Building height - 35 feet maximum allowed, 35 feet existing & 38.81 feet proposed (to elevator tower). Unoccupied Open Space - 25% minimum required, about 8% existing. Non-Residential FAR (Floor Area Ratio) - .25 maximum allowed, .68 existing, .71 proposed. 183 off-street parking spaces required (due to the addition of the Bridal Suite), variance required for 3 off-street spaces for Bridal Suite). Ocean Avenue stairs encroach onto Ocean Avenue Right-of-Way. Handicap Parking spaces required, none shown.

Ms. Trainor announced that the Board is going to be hearing the continuation of the application filed by One Ocean Road, LLC. (applicant- Paradise Hospitality)

Councilman Garruzzo and Mayor Nicol recused themselves from the hearing on this application and the next application.

Mr. John Guinco, attorney for Paradise Hospitality, LLC, stated this is a continuation from the hearing on March 10 in which testimony from their architect, Mr. Dan Condatore was presented. Mr. Guinco added that both Mr. Condatore and Ms. Barbara Ehlen, planner, had been sworn in and accepted as experts.

Mr. Clark confirmed that both witnesses were under oath and had already been accepted as experts.

Ms. Brisben announced that both she and Ms. Ferraro listened to the March 10<sup>th</sup> meeting and that they are therefore both eligible to vote.

Mr. Guinco began his questioning of Mr. Condatore by asking him if he had considered the questions that were raised by adjoining property owners and what were the two biggest issues. Mr. Condatore stated the operations alongside the yard between the building and the adjacent property, where the residents live, as far as removing trash which has resulted in some modifications to the plans. The second issue is the ceremony space on the second floor. Mr. Condatore testified that they were asked to provide some sort of screening for visual and sound. Mr. Condatore stated that he has prepared some new exhibits showing the changes made by the applicant to the plans.

Mr. Guinco asked Mr. Condatore if each of these exhibits were prepared under his direction and submitted to the Board. Mr. Condatore responded yes.

Mr. Condatore displayed Exhibit A-11 (revised document Z2). Mr. Condatore testified that what he is presenting is a site plan. Mr. Condatore stated that along the west property line, they are proposing a 10 x 10 dumpster area with a gate and a roof that faces away from the residents which can be seen in the top left of exhibit.

Mr. Condatore displayed Exhibit A-12 (revised document Z3) which represented the pergola and reception area. Mr. Condatore stated that they are proposing a 9-foot screen wall to shield the view for the ceremony and to mitigate the sound. Mr. Condatore stated that on this plan there is an existing mechanical area and they are proposing a four-foot screen wall to shield the existing mechanical equipment. Mr. Condatore testified that along the back of the wall is a series of 6 x 6 posts that they will be screening with an Azek TimberTech 1X6 or Adobe Clad with tight joints on both sides. Mr. Condatore stated that this will be very appealing for the ceremony and neighbors and the density of the Azek will absorb sound and deflect it. Mr. Condatore stated that they are proposing a gate be installed to help control the accessibility of the ceremony space by people after the ceremony. Mr. Condatore testified that this gate would be closed after the ceremony. Mr. Condatore stated that people would be able to access the outdoor reception deck. Mr. Condatore testified that the outdoor bar will be able to fit 31 stools. Mr. Condatore stated that the bar is a standard bar with granite or quartz bar top with a center island of equipment covered with a pergola system. Mr. Condatore referred to document Z5-1 to show the location of the trash enclosure in relation to some of the existing structures, the coolers.

Mr. Condatore stated that he had received a letter dated August 10<sup>th</sup> from Mr. Hilla and would like to touch on a few points raised in the letter. Mr. Condatore testified that the applicant has added handicap spaces that would be accessible through the parking lot to a walkway, alongside the building, into an ADA ramp. Mr. Condatore added that this will bring a person up approximately two feet to a deck level with the first floor.

Referring to document Z-9, Mr. Condatore testified that this exhibit shows that the pergola will be put over the bar area and second store ceremony space. Mr. Condatore stated this optical system will provide sun and shade and that they have no intention of closing any of the sidewalls.

Mr. Guinco asked Mr. Condatore to speak about the elevator shaft and the reduction of the height. Mr. Condatore testified they could rebuild the roof within the beam, instead of on top of the beam, which should eliminate six inches from the overall height so that the height is down under the 10% so that it will be a “c” variance rather than a “d” variance. Mr. Guinco asked Mr. Condatore for an example of the pergola in operation nearby, Mr. Condatore responded that he believes the Manasquan River Yacht Club has this pergola system in use. Mr. Guinco stated that he had no other questions for Mr. Condatore.

Ms. Trainor asked if there was anyone from the public that had questions for Mr. Condatore. Mr. Donald Gordon and his fiancé Ms. Caran Marra who reside at 206 River Mist Way were sworn in by Mr. Clark.

Mr. Gordon asked what the height of the pergola is. Mr. Condatore replied that the height of the pergola is 9 feet, which is less than what was previously there. Mr. Gordon asked Mr. Condatore what the plan for lighting is. Mr. Condatore stated that there are little LED lights that shine down and produce a glow. Mr. Gordon asked Mr. Condatore if the rooftop is going to be used for ceremonies. Mr. Condatore stated that the rooftop is used for the ceremony and for photographs. Mr. Gordon asked Mr. Condatore if everyone celebrates downstairs. Mr. Condatore replied that the reception is on the second floor. Mr. Gordon asked Mr. Condatore what time the ceremonies end. Mr. Condatore stated that he would not be able to answer that question. Mr. Guinco stated that the next witness, Barbara Ehlen, would be able to discuss the hours of operation. Mr. Gordon asked Mr. Condatore if they are proposing a wall or screen. Mr. Condatore answered that they are proposing a screen wall, which is a solid wall, about 8 inches thick and 9 feet high. Mr. Gordon asked Mr. Condatore if the initial plan was for a mesh screen. Mr. Condatore replied that was correct but based on the last hearing and some of the public’s concerns, the applicant has made it more of a permanent structure. Mr. Gordon asked Mr. Condatore what the change was based on. Mr. Condatore stated concerns of the neighbors, the inadequacy of the mesh to block sound and the permanency of it. Mr. Gordon questioned what material is being used and the height of the material versus the initial scenario of the mesh and the pros and cons of both. Mr. Condatore answered that along the sidewall they are installing 6x6 posts every 3 to 4 feet based on the structure and on either side of the post they will use a 1x6 Azek decking. Mr. Condatore stated that there will be horizontal boards put tightly together with no space from the ceremony floor to the top of the posts at 9 feet high. Mr. Condatore testified that aesthetically and functionally this is a much better solution. Ms. Trainor asked Mr. Gordon and Ms. Marra if either had any other questions. Mr. Gordon and Ms. Marra replied that they did not.

Ms. Trainor asked if there was anyone from the public that had questions for Mr. Condatore. Mr. Thomas Stuhmann who resides at 106 Ocean Avenue was sworn in by Mr. Clark.

Mr. Stuhmann stated that he had three photographs that he would like to present. Mr. Stuhmann started with photograph number 3, which was a photograph of the River House deck from a YouTube video. Mr. Clark marked this photograph as Exhibit O-7. Mr. Stuhmann asked Mr. Condatore where the bar would sit in relation to the previous bar. Mr. Condatore responded that the bar is pretty much at the center of where the bar was previously located. Mr. Condatore stated that the bar that they are proposing is square and shorter. Mr. Stuhmann asked if there will be tables for people to sit at. Mr. Condatore stated that on Exhibit O-7 where the tables are shown on

the right towards the main building is where an elevated deck area is for ADA access. Mr. Condatore stated that the little table area in Exhibit O-7 is smaller than what exists today. Mr. Stuhmann asked if the band will remain with their backs to the building and facing the water. Mr. Condatore responded that he did not know that answer. Mr. Guinco stated that the applicant did not have a plan about live music at the bar but if they did, it would be facing the river with the building behind them and all amplifiers, and other band equipment would be pointed towards the south. Mr. Stuhmann stated he was concerned if the area would be large enough for a dancing, nightclub environment at night. Mr. Stuhmann asked Mr. Condatore if there would be people seated at the tables and if it would be kept as a sit-down place. Mr. Condatore stated that they do not have a definitive seating chart and that the owner did not intend to change the existing operation.

Mr. Stuhmann asked if he could present photograph number 2. Mr. Clark marked this photograph as O-8. Mr. Stuhmann stated that this picture reflects tables between the bar and band. Mr. Clark asked Mr. Stuhmann to describe where this picture comes from. Mr. Stuhmann responded that there is a whole set of tables between the bar and the band. Mr. Stuhmann asked that photograph number 1 be presented. Mr. Clark marks this photograph as Exhibit O-9. Mr. Stuhmann stated that this picture shows people sitting at the bar, people at the tables and a low-key band. Mr. Stuhmann asked if it would be possible to keep the tables there. Mr. Condatore responded that they plan to keep the tables there. Mr. Stuhmann stated that he had no further questions.

Mr. Guinco stated that he was able to communicate with his client regarding the location of the band, relative to the tables. Mr. Guinco stated that if the board was inclined to approve the application with that condition, his client would be pleased to accept. Mr. Guinco stated that this would have the least impact to the adjoining residents. Ms. Trainor asked Mr. Guinco to clarify that they would be willing to keep the location of the band and the location of the tables as represented in the testimony. Mr. Guinco stated that this is correct, and they would follow the outline that was presented. Mr. Guinco testified that the band will play with its back to the building, the tables would be present and there would not be a stand-up crowd around the band.

Ms. Trainor asked if there was anyone from the public that had questions for Mr. Condatore. Dr. Salvatore Iradi who resides at 303 River Mist Way was sworn in by Mr. Clark

Dr. Iradi asked Mr. Condatore if the 9-foot fence that will be facing towards the residential area will encircle the entire deck. Mr. Condatore responded that the fence would just face the residential area. Dr. Iradi asked Mr. Condatore if there is a proposal to have a stairwell from the lower deck to the upper deck. Mr. Condatore responded yes. Dr. Iradi asked Mr. Condatore how they intend to minimize people from going from the lower deck to the upper deck after the wedding has ended. Mr. Condatore replied that they will be closing it off from the reception on the second floor and it is up to operations to control that area. Dr. Iradi asked Mr. Condatore what the purpose of steps were. Mr. Condatore responded that the purpose of the steps is because they are the only other means of egress from the second floor. Dr. Iradi stated that he had no further questions.

Ms. Trainor asked Mr. Guinco if he any questions that he would like to ask Mr. Condatore to clarify. Mr. Guinco asked Mr. Condatore to address the sound attenuation on the second floor. Mr. Condatore stated that the screen wall will connect the building on the second floor to the open air

with the ceremony space. Mr. Guinco asked Mr. Condatore if there is a solid wall where the dining is for the reception, that the ceremony area is open to the south and to the river for the view and if it is closed off as it goes to the west by virtue of the sound attenuation installed. Mr. Condatore testified that that is correct. Mr. Guinco asked Mr. Condatore if everything except that area is under the roof and what is above the ceremony area is the pergola system and Mr. Condatore replied the pergola is above the ceremony area. Mr. Guinco asked Mr. Condatore if they are able to direct sounds away from those residents to the west with those static techniques. Mr. Condatore responded yes; the purpose of the sound wall is to direct the sounds away from the residents. Mr. Guinco asked Mr. Condatore if any steps have been taken to assure that the lighting will be directed away from the western side. Mr. Condatore testified that the lighting fixtures are below the screen wall so you would not be able to see the lighting source. Mr. Guinco asked Mr. Condatore in his opinion could any additional steps be taken to limit sound to the west. Mr. Condatore answered not currently, they have done the best they could do in the situation. Mr. Guinco asked Mr. Condatore if they are using up to date standard techniques and materials that are most efficient. Mr. Condatore stated that they are.

Ms. Trainor asked if there any other members of the public that had questions for Mr. Condatore. Mr. Howard Dubinett whom resides at 100 Ocean Avenue was sworn in by Mr. Clark.

Mr. Dubinett asked Mr. Condatore if he had any idea about the volume or how many pieces would be playing in the band that plays with its back to the building. Mr. Condatore responded that this is more of an operational question so he would not be able to answer this question. Mr. Guinco stated that he would be able to provide this information through their planner's testimony. Ms. Brisben commented that the Board will probably be addressing the music and loudness at another meeting. Ms. Trainor asked Mr. Dubinett if he had any other questions for Mr. Condatore. Mr. Dubinett responded that he would reserve his questions for later.

Ms. Trainor asked if there any other members of the public that had questions for Mr. Condatore. Mr. Kevin Callahan indicated that he had questions for this witness. Mr. Clark stated the Mr. Kevin Callahan was sworn in and testified at the last hearing. Mr. Clark asked Mr. Callahan to state his address for the record. Mr. Callahan stated that he resides at 205 River Mist Way.

Mr. Callahan stated that he had some questions for Mr. Condatore about the square footage that he had indicated has been reduced from what it was previously. Mr. Callahan testified that when he looked at document Z-5.1, he sees two bays that are in red that were apparently demolished and removed. Mr. Callahan asked Mr. Condatore if that accounts for the difference between the previous square footage and the current square footage. Mr. Condatore answered no, they also removed an enclosed building area on the second floor. Mr. Callahan asked Mr. Condatore if the deck measurements were included in the square footage. Mr. Condatore replied, he believes that he previously testified that the deck area is increased. Mr. Callahan asked about the space where the building was taken down and replaced with a deck if Mr. Hilla could indicate whether that deck area is part of the square footage calculation. Mr. Hilla responded that it is counted for square footage, as he understands it, for at least the parking requirements but he does not think it counts as enclosed space.

Mr. Callahan asked Mr. Condatore how the dumpster they are proposing is going to reduce the noise. Mr. Condatore responded that the sound of the dumping is being deflected within the enclosed space. Mr. Callahan asked Mr. Condatore to confirm that it is going to be 8-foot-high with a metal roof and doors. Mr. Condatore responded, yes. Mr. Callahan asked Mr. Condatore if there will be a removable dumpster inside. Mr. Condatore answered that he did not know if there will be individual cans or 1- or 2-yard dumpsters. Mr. Condatore stated that he did not know the operation of the trash, but he could get that information. Mr. Callahan asked if they could eliminate the noise of bottles and cans that happen at 10, 11, 12 by moving it to 8 o'clock in the morning. Mr. Condatore responded that they could discuss that operational issue with the owner. Mr. Guinco stated that the whole intent of enclosing that dumpster is to limit the sound and the optics make it look better. Mr. Guinco stated that that is why they put a roof on it, to block the sound from going up and being an irritant.

Mr. Callahan stated that on the upper deck there is a doorway that accessed a stairway going down to the rear of the kitchen. Mr. Callahan asked Mr. Condatore if it is correct that a void has been left where the stairwell was. Mr. Condatore answered that was correct, the stair was removed but the slope ceiling which went over the stairwell remains in place. Mr. Callahan asked Mr. Condatore if the deck had been expanded over to fill that void of the stairwell. Mr. Condatore replied that it had not. Mr. Callahan asked Mr. Condatore if the stairwell could be restored and the kitchen could be accessed from the back of the building instead of from the front patio area. Mr. Condatore answered that it is more of an egress there than an access to the back of the kitchen. Mr. Condatore asked if there are other means to service the second floor from the kitchen within the building. Mr. Callahan asked Mr. Condatore if that is the case, why is there a need for this front stairwell. Mr. Condatore responded they need two means of egress for emergencies out of the second floor. Mr. Callahan asked Mr. Condatore why a third egress would be needed if you have the entrance at the front of the building and this stairway off the back of the building is restored. Mr. Condatore replied that they eliminated the one that goes to the back, that stairway is no longer there and is not going to be rebuilt and that the second means of egress turns towards the open deck so they could egress safely to the side street. Mr. Callahan asked Mr. Condatore if the rear stairway could be reinstalled and if reinstalled, it could eliminate the possibility of the public coming onto the deck. Mr. Condatore responded that it could be restored but that is not what the applicant is planning to do. Mr. Condatore replied that they don't want people egressing through the back of the house which is like a storage area and from a life safety standpoint, the stairs go to the open deck and the applicant will work with the owner to control access through the operations of the building after the ceremony is over.

Mr. Callahan asked if he could look at Exhibit O-7. Mr. Callahan asked if there were two bars down on the patio. Mr. Condatore responded, yes, that there is one underneath the metal roof which is enclosed as an interior bar for the reception and cocktail hour. Mr. Guinco asked Mr. Condatore if this plan has been revised it and have, they enclosed the bar area. Mr. Callahan asked Mr. Condatore if it had a roof area above it as shown in O-7 and that roof extended beyond the end of the interior reception area. Mr. Condatore agreed that that was correct. Mr. Callahan asked if it covered the bar area and if that had been changed to a deck area. Mr. Condatore responded that it is part of the interior space. Mr. Callahan asked Mr. Condatore if the area below the roof area has been enclosed. Mr. Condatore replied yes. Mr. Callahan asked Mr. Condatore if it had been enclosed before. Mr. Condatore responded that there were partitions that were put up there whether

permanent or not, they did enclose it at some points. Mr. Callahan stated that there were no walls. Mr. Condatore replied that there was glass put in there at some point. Mr. Guinco asked Mr. Callahan if that is what the applicant is proposing. Mr. Condatore responded no; they have folding doors. Mr. Callahan stated that what he was talking about is down on the ground level, where the second bar was against the wall of the building and completely open around except for the metal roof. Mr. Callahan asked Mr. Condatore if that was correct. Mr. Condatore responded that is correct. Mr. Callahan asked Mr. Condatore if that is area is now becoming enclosed. Mr. Condatore replied, yes. Mr. Callahan asked Mr. Condatore if the metal roof that was above that open bar has been changed and has become a deck area. Mr. Condatore responded, yes. Mr. Callahan asked if this deck area is being added to the ceremony deck except you are calling it the reception area. Mr. Condatore responded, yes. Mr. Callahan asked Mr. Condatore if the deck area has been included in any of the calculations or the enclosure in your square footage. Mr. Condatore replied, yes and it is all in the existing calculations that were presented and submitted in the original submission.

Mr. Callahan asked if the building is a non-conforming structure as far as satisfying setbacks. Mr. Condatore responded yes, all preexisting at that back area. Mr. Callahan asked Mr. Condatore if the setback under code, between the property line, that separates the condominiums from the restaurant is 10 feet. Mr. Condatore answered that he believes that Mr. Callahan is correct. Mr. Callahan questioned Mr. Condatore if the wall that is proposed, if it is physically possible for the wall to be set 10 feet in from the property line on the deck. Mr. Condatore replied that he would have to investigate that further. Mr. Callahan asked Mr. Condatore if it is correct that in the previous operation, that outside deck, the activity was blocked from his property by the structure that was there. Mr. Condatore responded that that was correct. Mr. Callahan asked Mr. Condatore if now after taking that structure down, the party moves right out to 2 feet from his property line. Mr. Condatore responded that he did not know how to answer the question. Mr. Callahan asked Mr. Condatore if the prior occupancy of that space was not as intrusive on their privacy as the open deck would be. Mr. Condatore answered that he feels that the applicant is screening the area in sufficiently where you would have the same sense of privacy whether it was provided by the building or the screen wall. Mr. Condatore stated that he does not think it's adversely going to impact the view and thinks flattening some of the roofs will provide the next-door residents with a better view over the top of the building.

Mr. Callahan asked Mr. Condatore where the screening of the mechanical sections, where the air conditioners are located, if the screening can be also be mounted to enclose the fan belts and the duct work. Mr. Condatore stated that he did not have a definitive answer for that. Mr. Callahan stated that he had no further questions for Mr. Condatore.

Ms. Trainor asked Mr. Guinco if he had any redirect based on Mr. Callahan's questions.

Mr. Guinco stated that that he would like to wait until the next meeting so Mr. Condatore can research the issues that were raised. Ms. Trainor stated that Mr. Guinco can reserve his ability to redirect at the next meeting. Mr. Clark stated that Mr. Guinco does not have any obligation to re-notice for the next meeting. Mr. Clark stated that the Board members and/or the public may have questions based on what Mr. Condatore testifies at the next meeting. Ms. Trainor announced this application would continue at the next meeting which is September 8<sup>th</sup>, 2020

## NEW BUSINESS:

Application for Site Plan/Use Variance approval for Block 85, Lot 1, 722 Ashley Avenue, Bogan's Basin and Block 85, Lot 2, 720 Ashley Avenue, Shipwreck Grill, owned by Payton Enterprises, to allow a portion of Brielle Basin to be used as a restaurant/patio Bar to serve as an accessory use to the Shipwreck Grill. Bogan's Basin site: Lot Width - 50 feet required; 15 feet existing. Side Yard Setback - 10 feet required, 4.7 feet existing, 7 feet proposed to new covered Bar area. Side Yard Setback (sheds) - 10 feet required; .9 feet existing. Side Yard Setback (refrigeration) 10 feet required; 8 feet existing. Unoccupied Open Space - 25% required, 5.4% existing. Water's Edge Setback - 25 feet required, .1 feet existing, 9 feet & 20 feet proposed. Boat Dockage - 1 slip per 4 seats required (15 slips required), 4 slips existing, 60 seats proposed. Proposed use is Non-Conforming, Use Variance required. Shipwreck Grill site: Front Yard Setback - 30 feet required; 29.8 feet existing. Side Yard Setback - 10 feet required; 1.8 feet existing. Side Yard Setback (shed) - 10 feet required; 2.4 feet existing. Side Yard Setback (walk-in Refrigerator) - 10 feet required; 7 feet existing. Side Yard Setback (trash enclosure) - 10 feet required, 6 feet existing, 6 feet proposed. Unoccupied Open Space - 25% required, 6.8 feet existing. Water's Edge Setback - 25 feet required; 8.9 feet existing. Boat Dockage - 1 slip per 4 seats required (estimated 30 slips required, 120 seats), 17 slips existing Variance relief needed for off-street parking deficit. Use is Non-Conforming, Use Variance required.

Mr. Keith Henderson stated for the record his name and that he is from the Law firm of C. Keith Henderson and Associates in Manasquan, NJ. He is representing the applicant Payton Enterprises in this application.

Mr. Henderson stated that the applicant previously submitted a letter of denial from Elissa Commins dated January 6<sup>th</sup>, 2020, an affidavit of proof of service, certified list of the property owners, a copy of the notice of the property owners and the public utilities, a copy of the certified mail receipts, and an affidavit of publication of copies of public notice including the virtual meeting provisions and that he would respectfully request that the Board move to accept jurisdiction. Mr. Clark asked Ms. Brisben if the Board has all those documents. Mr. Brisben responded that the Board did. Mr. Clark accepted jurisdiction.

Mr. William Cleary was sworn in by Mr. Clark.

Mr. Henderson stated that Mr. Cleary is a lay witness. Mr. Cleary testified that he resides at 49 Inlet Drive, Point Pleasant Beach, NJ. Mr. Henderson asked Mr. Cleary if he is the sole member of Payton Enterprises. Mr. Cleary responded yes, and that Payton Enterprises is a real estate holding company that he has owned since 1999. Mr. Henderson asked Mr. Cleary if Payton Enterprises leases to the Shipwreck Bar & Grill. Mr. Cleary replied that Payton owns 720 Ashley Avenue and that it leases that property to Shipwreck Inn trading as Shipwreck Grill. Mr. Henderson asked Mr. Cleary if in the past 20 years, has he experienced any problems with your neighbors or the operation of the facility. Mr. Cleary answered that he had not. Mr. Henderson asked Mr. Cleary if they play live music inside the facility. Mr. Cleary answered that on Thursday nights, they have jazz indoors. Mr. Cleary stated that the windows are closed, and the volume is controlled.

Mr. Henderson asked Mr. Cleary if in the new proposed facility, will there be live music. Mr. Cleary responded that there will be no live music because he does not want to disturb anyone. Mr.

Henderson asked Mr. Cleary if he would accept that as a stipulation in connection in a condition with this application. Mr. Cleary answered that he would gladly accept that stipulation as a condition of any approval for this application.

Mr. Henderson asked Mr. Cleary if during his period of ownership of the Shipwreck, has he ever had any interaction with NJDOT, regarding access to the property. Mr. Cleary testified that recently, when the NJDOT began work on the bridge, it notified Shipwreck that Shipwreck's ingress and egress would be impacted, and that the NJDOT worked with Shipwreck to make sure that the construction did not impede the restaurant by changing hours of construction and the location of its staging area. Mr. Henderson asked Mr. Cleary if Shipwreck had very good relations with the NJDOT on that issue. Mr. Cleary testified that it has extremely good relations and in fact despite completion of the work, Shipwreck still allows NJDOT vehicles to park in the its parking lot and that it also allows the bridge operators to use the Shipwreck parking lot.

Mr. Henderson asked Mr. Cleary if during his ownership of a Shipwreck if he had experienced any parking difficulties. Mr. Cleary answered none, except on an occasional day when there is an event on the water, or an event in the afternoon, coupled with a dinner crowd, and in that case, we have had to put maybe 10 or 15 cars next door at the Bogan's property. Mr. Cleary stated that at times Bogan's has also needed to use Shipwreck's lot and that parking difficulties has happened over the past twenty years, approximately twelve or fewer times.

Mr. Henderson asked Mr. Cleary if he had a lease with Bogan's for the area where he is proposing this facility. Mr. Cleary responded that he did.

Mr. Henderson asked what is in the building you are proposing to utilize for this facility. Mr. Cleary stated there is a very large catering kitchen. Mr. Henderson asked Mr. Cleary if in response to a question of lack of a loading area on lot 2 in the engineer review letter, did your engineer add that to the plan and would that be a shared facility. Mr. Cleary responded yes, to the extent that his facility needs a loading dock. Mr. Cleary stated that they use small, local vendors with smaller trucks, that may not need a loading dock, but that they are adding a loading dock that to comply with Borough requirements and that the loading dock will be available for use by everyone to the extent that's needed.

Mr. Henderson asked Mr. Cleary if the new facility is going to be operated as an adjunct to the existing Shipwreck Inn. Mr. Cleary replied yes and stated that it is part and parcel of the Shipwreck Inn trading as Shipwreck Grill.

Mr. Henderson stated that he had no further questions of Mr. Cleary but may that he may need to be recalled after testimony from the engineer and the architect.

Ms. Trainor asked if there were any questions from the public for Mr. Cleary. None being heard, Ms. Trainor then asked the Board if they had any questions for Mr. Cleary. The Board did not have any questions of this witness.

Mr. Henderson called his next witness, Mr. Robert Weinstein. Mr. Weinstein was sworn in by Mr. Clark. Mr. Weinstein stated that he is with the firm RW Architecture located in Spring Lake.

Mr. Henderson asked Mr. Weinstein if he holds an architecture license in the state of New Jersey and if he had previously testified before boards of adjustment and planning boards in the state. Mr. Weinstein responded that he received his architecture license 22 years ago in 1998 and that he had testified before other boards on several occasions. Mr. Henderson asked Mr. Weinstein if he has been accepted as an expert before these boards. Mr. Weinstein answered that he had. Mr. Clark stated that Mr. Weinstein was admitted as an expert in architecture.

Mr. Henderson asked Mr. Weinstein if he would give the Board an overall description of the proposed property. Mr. Weinstein responded that what they are proposing is to renovate the existing main building and add a kitchen in a covered bar area, including an addition that will be part of the covered bar area, and develop 895 square feet of open deck dining area. The new facility would be a free-standing bar restaurant and is proposed to be called the Anchor Bar. There is an existing ticket booth on site now and there's a structure that's sustained some damage from Hurricane Sandy, which will be replaced with the Anchor Bar which would create a beautiful place for people to gather which is a small extension of the Shipwreck Grill.

Mr. Henderson asked Mr. Weinstein if he is only talking about an 895 foot. Mr. Weinstein replied, that is correct. Mr. Henderson asked Mr. Weinstein if he had an exhibit that he would like to show the Board. Mr. Weinstein said that he did, and Mr. Clark stated that this document would be marked as Exhibit A-1 and asked Mr. Weinstein to describe what this document is showing. Mr. Weinstein responded that Exhibit A-1 is showing a post and beam structure made of timbers to create the covered area with screening on the back side of the bar area from the parking lot and there is a kitchen that is accessed from the corner of the bar, and there is also an exit onto the parking lot at the rear. Mr. Weinstein added that there are ten seats proposed at the bar and a series of tables, two of the tables have eight seats that are under the covered portion of the bar and the remaining tables are outside. Mr. Weinstein stated that they also are proposing a railing system around the perimeter of the bar. Mr. Weinstein testified that there is a walkway that leads to the parking lot of the Shipwreck Grill and to a bathroom facility.

Mr. Clark stated that a copy of the Exhibit A-1 that was being shown on the screen would need to be sent to Ms. Brisben, the secretary of the Planning Board so the Board would have a hard copy for the file. Mr. Henderson agreed that he would do that.

Mr. Henderson stated that he had no further questions of Mr. Weinstein.

Ms. Trainor asked if there were any questions from the public for Mr. Weinstein. With none being heard, Ms. Trainor asked if any of the Board members had questions for Mr. Weinstein.

Mr. Stenson asked Mr. Weinstein if the building portion is part of the 2 ½ story building that is there now or if this is a new structure. Mr. Weinstein responded that they want to replace a section of one story and build a small corner to square off the structure to create a uniform look. Mr. Stenson asked Mr. Weinstein if the rest of the building will remain. Mr. Weinstein replied that the rest of the building will remain, untouched. Mr. Stenson asked Mr. Weinstein if the deck will be new. Mr. Weinstein replied that the decking is new and will be at the same elevation as the kitchen and the existing structures.

Mr. Miller asked Mr. Weinstein if there are restrooms in the existing building. Mr. Weinstein responded that the existing portion of the building that we would like to convert does not have bathrooms as part of it.

Mr. Maclearie asked Mr. Weinstein if they would be building a new bath house. Mr. Weinstein stated yes, they are proposing to have a remotely located luxury trailer that will be placed on site during the time of the season when the Anchor Bar will be opened. Mr. Maclearie asked Mr. Weinstein if the kitchen is shared with the River Queen or if it is an independent kitchen. Mr. Weinstein replied that it is its own independent kitchen, a separate entity, that is adjacent to the other side of the wall of the River Queen kitchen. Mr. Maclearie asked Mr. Weinstein if this would act as a satellite to the existing Shipwreck which Mr. Weinstein replied, yes. Mr. Weinstein testified that it is on the site on the right, on the neighboring property adjacent to the parking lot currently utilized and owned by the Shipwreck Grill, and it has complete access to that parking lot.

Ms. Brisben asked Mr. Weinstein if they are planning to put some protection on the side where the poles are to prevent someone from falling into the water. Mr. Weinstein responded that they would be incorporating a railing on top of those pilings and filling them in and stated that they purposely left that detail off the rendering at this time to get a better representation of the facility. Ms. Brisben stated to Mr. Weinstein that she had visited the site and there is a large diesel tank that she assumes is fuel for the boats. Ms. Brisben asked Mr. Weinstein if the tank is going to stay. Mr. Weinstein stated that he had no comment and that they can defer to the engineer.

Mr. Hilla asked Mr. Weinstein if there is any other way to get to the Anchor Bar other than from the right side or if that is the single point of access to the facility. Mr. Weinstein stated that that is the single point of access. Mr. Hilla asked Mr. Weinstein if the handicap spaces on the far side of the building are not intended for the Anchor Bar which Mr. Weinstein responded that they are not. Mr. Hilla's asked Mr. Weinstein if there is a set plan for the tables. Mr. Weinstein asked if they could look at floor plan exhibit. Mr. Clark marked this as Exhibit A-2 and asked Mr. Weinstein to explain what this exhibit is. Mr. Weinstein replied that A-2 is the floor plan which shows the kitchen facility, the bar area, covered and uncovered seating areas and specifically, shown is 40 seats accommodated on the open deck area tables and 8 seats under the covered deck dining area and the 10 stools proposed at the bar. Mr. Clark asked Mr. Weinstein if the seats are movable or fixed. Mr. Weinstein testified that the chairs could pull out. Mr. Hilla asked Mr. Weinstein if there is no need for a second egress from this space, from a code perspective. Mr. Weinstein replied he is assuming because this is an outdoor facility, and there's a wide enough point of egress, that exiting this facility from this location would not be an issue, but that in the event that the code requires a second means of egress, it could be possible, that a gate could be put on the opposite side of where the tables are on the Bogan property to provide a second access point to exit the deck. Mr. Hilla asked Mr. Weinstein if there are plans to enclose any of the space, that this would be like a three-season arrangement. Mr. Weinstein responded that this is proposed as a seasonal facility, which would be open to the outdoors and that the only portion of the building that is completely enclosed is the kitchen area. Mr. Weinstein stated that there may be a possibility of some weather screens to pull down in the event of rain but nothing permanent. Mr. Hilla stated that he had no further questions for Mr. Weinstein.

Ms. Trainor stated that there were no other questions from the Board.

Mr. Henderson called Mr. Jason Fichter to testify. Mr. Fichter was sworn in by Mr. Clark. Mr. Fichter stated that he is with Insight Engineering in Wall, NJ.

Mr. Henderson asked Mr. Fichter what professional licenses he held. Mr. Fichter replied that he is a professional engineer, professional planner, certified floodplain manager and certified municipal engineer. Mr. Henderson asked Mr. Fichter if he had testified before Boards of Adjustment and Planning Boards in those capacities. Mr. Fichter responded that he had. Mr. Clark accepted Mr. Fichter as an expert witness in engineering, planning and floodplain management.

Mr. Henderson asked Mr. Fichter if he was familiar with the site and with the review letters, the denial letter from the zoning officer, and what the application requires in terms of relief. Mr. Fichter stated that he was familiar with all these things. Mr. Henderson asked Mr. Fichter to take the Board through the various requirements. Mr. Henderson stated to Mr. Fichter that the Board knows this as a D variance but that this a D-3 variance. Mr. Fichter stated that is the type of variance needed for not meeting all the conditions of a conditional use. Mr. Henderson asked Mr. Fichter if the standards are different from those applicable to a D-1 variance. Mr. Fichter stated that they are different as a D-3 variance has more relaxed standards, and that a D-1 or D-2 variance. Mr. Henderson asked Mr. Fichter to take the Board through the other issues that Ms. Trainor had recited at the very beginning of the hearing on this application. Mr. Fichter asked if the site layout exhibit could be put on the screen. Mr. Clark marked this sit layout document as Exhibit A-3 and asked that a hard copy be supplied to Ms. Brisben, Board secretary. Mr. Fichter testified that this project consists of two lots that are in the C-2 marine commercial zone, Lot 1 which could also be called the Bogan lot, is 24,075 square feet and lot 2, which is called the Shipwreck lot is 50,774 square feet. Mr. Fichter stated that all together the two lots are 74,849 square feet or 1.72 acres.

Mr. Fichter asked that the aerial exhibit be put up on the screen. Mr. Clark marked this exhibit as Exhibit A-4. Mr. Fichter stated that this is an aerial exhibit that is the previous exhibit, A-3, overlaid onto an aerial. Mr. Fichter stated that they took property lines from Monmouth County GIS, tax map lines, that is intended to show the site in the context of the neighborhoods.

Mr. Fichter asked if he could go back to Exhibit A-3. Mr. Fichter stated that the crux of the application is the existing building along the waterfront. Mr. Fichter stated that the application is a very simple basic project but when zoning is analyzed the simplicity of the project may get lost. Mr. Fichter testified that the applicant is proposing to convert a portion of the existing building to create a patio bar with an open patio area covered patio area which includes squaring off the existing roof.

Mr. Fichter stated that while going through the approval process with the Board and the NJDEP, they wanted the opportunity to better organize the parking lot for the Shipwreck and the Anchor Bar to provide more parking and better circulation.

Mr. Fichter testified that the existing building is in a flood hazard area and they have received CAFRA approval from the NJDEP for the proposed improvements to the Anchor Bar and parking lot.

Mr. Fichter stated that all existing utilities will remain in place and are available for the Anchor Bar.

Mr. Fichter testified that they are proposing a portable restroom that would be placed above the base flood elevation as required and it would be connected to public water and would be pumped out regularly.

Mr. Fichter stated that they would not be changing run off patterns and existing traffic patterns would remain.

Mr. Fichter stated that the plans reflect, and they are happy to accommodate the request by the Borough fire official.

Mr. Fichter testified that they are proposing a loading zone on lot 2 in order to satisfy the borough's ordinance. Mr. Fichter stated that they located it on lot 2 to avoid interruption to internal traffic circulation, they are buffered by a steep slope up to Route 35 and have an existing vegetation line along the east side of the property. Mr. Fichter stated that the common practice with loading activities is to take deliveries early in the day when the Shipwreck is closed. Mr. Fichter testified that if this application is approved that they will add the designated loading space.

Mr. Fichter stated that in terms of parking, they evaluated the parking requirements for the Shipwreck Grill, the proposed bar, the balance of the building with the Anchor Bar and Bogan's party boat operations and altogether require 182 parking spaces. Mr. Fichter stated that they are proposing 119 parking spaces. Mr. Fichter stated that if the parking requirements are analyzed by lot, then lot 2, the Shipwreck lot, requires 52 parking spaces and today there is 81 and with reorganizing they got the count to 86. Mr. Fichter stated that on lot one, the requirement is 130 parking spaces and there are 27 parking spaces exist on lot 1 and 33 are proposed. Mr. Fichter testified that historically, lot 1 accommodates a lot more than 33 cars because this is the head boat operation and people show up and leave at the same time so what they commonly do is to stack their cars when they park. Mr. Fichter stated that he looked at some aerials through the years and he saw as many as 70 cars parked there and all along the drive aisle.

Mr. Fichter testified that they are proposing to relocate the refuse area, on lot 2, which is on the east side of the property by about 20 feet as part of the parking lot reorganization and are proposing to enclose it as ordinance requires. Mr. Fichter stated that the refuse area will handle refuse for the Shipwreck and the Anchor Bar. Mr. Fichter testified that refuse from lot 1 will be handled by the Bogan operation, as it is today. Mr. Fichter stated that with regard to the arrangement that the applicant has with the Bogan's, it is a lease to operate the bar, it is not taking over the whole property.

Mr. Fichter testified that they are proposing lighting in lot 2 in order to ensure safety in the parking lot and stated that the lights are pole mounted at 14 feet high they are decorative lights and decorative poles. Mr. Fichter stated that they would have house side shields on the lights that are along the common property line with Brielle Landing, and that will avoid any adverse impacts to

the residential neighbors and made sure to provide light along the walking path from lot 2 to the Anchor Bar. Mr. Fichter testified that lighting in lot 1 would be left in its current condition.

In terms of landscaping, Mr. Fichter testified that they are proposing an evergreen hedge row between lots 1 and 2 that would follow the walking path that goes from the Anchor Bar to the restroom.

Mr. Fichter testified that the biggest variance that they are asking for is the D-3. Mr. Fichter stated that the C-2 zone provides for five conditional uses, one is restaurants and the other is multi-use marina.

Mr. Fichter testified that what is being proposed for this project for both lot 1 and 2 qualifies under either one of these conditions, which are essentially the same, but that the application does not comply with all of the conditions, which is why they require the D-3 conditional use variance. Mr. Fichter testified that one of the conditions they do not comply with is parking. Mr. Fichter stated 182 parking spaces are required and they are proposing 119 parking spaces. Mr. Fichter testified that the applicant is confident that parking will be met on the site, coming from his 20 years of operating at the site.

Mr. Fichter testified that another condition for a multi-use marine facility is that the property be two acres. Mr. Fichter stated that the combined site is 1.72 acres, that this cannot be reasonably cured, and this condition does not actually exist for the restaurant conditional use.

Mr. Fichter stated that there was a comment in the review letter about a loading zone not being provided on lot 1 and that they would provide a loading zone on lot 2. Mr. Fichter stated that the intent of this requirement is met, because the loading zone can serve the combined site.

Mr. Fichter testified that he evaluated as a C-2 variance, which he stated is the flexible C but could also be a C-1, landscape areas must provide five feet wide at the perimeter of commercial sites. Mr. Fichter stated that they have Route 35 as their buffer to the west, the Manasquan River to the their south, an existing buffer to their east along Brielle Landing and their driveway, the Shipwreck building to their north, and they are proposing an evergreen hedge row between lots 1 and 2. Mr. Fichter stated that he believed that the intent of this requirement has been met.

Mr. Fichter stated that another condition is pavement within 5 feet of a property line is prohibited. Mr. Fichter stated that each property showed zero feet and that was how it was stated in the review letter. Mr. Fichter testified that they are proposing to move the pavement further away from Brielle Landing and will exceed the 5-foot requirement, everywhere else remains in its existing condition and does not impact any neighbors.

Mr. Fichter testified that some variances that he believes are more of a hardship C-1 could also be considered under the C-2 criteria, for example the requirement that parking must be on the same lot. Mr. Fichter testified that they are relying on parking across two lots. Mr. Fichter stated that there is a formal agreement between the two properties to share parking and that the Borough Code allows joint parking facilities, provided that they achieve the requisite number of parking spaces. Mr. Fichter stated that the parking demand is met on the combined sites. Mr. Fichter testified that

parking aisles are required to be 24 feet wide. Mr. Fichter testified that the 24 feet is met but the reality of parking on lot 1 is even tighter than that but Bogan's and their customers have been managing just fine for many years operating this way and it isn't the applicant's intention to interrupt Bogan's operation.

Mr. Fichter stated that going through the purposes of planning in terms of the required proofs for these variances, he does believe that this is an appropriate use and development, which promotes general welfare. Mr. Fichter testified that the borough's ordinance encourages and promotes physical and visual access to the water's edge and to preserve continuous, physical, and visual access to the water's edge and he believes that this was achieved by this application. Mr. Fichter stated that the whole idea of the Anchor Bar is to provide a place to relax and enjoy the waterfront, and for this reason they are providing general welfare and they are securing safety, fire, flood, panic, and natural and man-made disasters. Mr. Fichter stated that they secured a CAFRA permit for the project, which includes a flood hazard review by the DEP. Mr. Fichter testified that there is nothing proposed by this application that would impede upon light air and open space for the neighbors or the public and that the Anchor Bar uses existing building area. Mr. Fichter stated they are providing sufficient space and appropriate location for a commercial use in order to meet the needs of citizens. Mr. Fichter stated that there is an existing building along the waterfront that the applicant is able to make use of to provide a small bar restaurant in a spectacular location and he location is also already improved with a marina restaurant, charter boats parking, making it an ideal fit to provide a terrific destination for New Jersey's citizens. Mr. Fichter testified that they are providing a desirable visual environment and lastly, he believes they are conserving property values in the neighborhood. Mr. Fichter stated that in terms of negative criteria, the purpose of the C-2 zone is to promote expanded and upgraded recreational boating and sport fishing facilities and to provide an area for a variety of uses that capitalize upon and enhance the unique community wide resources, the waterfront. Mr. Fichter testified that the appeal of the Anchor Bar is its setting along the waterfront, and the applicants anticipate boaters, and Bogan customers will make great use of the Anchor Bar, and also residents that simply want to enjoy the beauty of the waterfront. Mr. Fichter stated that, for those reasons, they think they have achieved the purpose of the C-2 zone. Mr. Fichter testified that one of the conditions of the conditional use that we're proposing is that the board must make a finding that this application promotes the use of the waterfront or compliments or serves other existing or planned uses in the C-2 zone. Mr. Fichter stated the Anchor Bar is along the waterfront, it is next to the Route 35 bridge, it complements the Bogan's operation, and its 240 feet from the nearest residents at Brielle Landing and for all those reasons he doesn't feel this development would cause a substantial detriment to the public good, nor does he believe it would substantially impair the intent and purpose of the zone plan.

Ms. Trainor asked Mr. Henderson if he had any other questions for Mr. Fichter. Mr. Henderson replied that he did not and that concluded the applicant's testimony.

Ms. Trainor asked if there were any questions from the public for Mr. Fichter. With none being heard, Ms. Trainor asked Mr. Hilla if he had any questions.

Mr. Hilla asked what would happen to the Anchor Bar if the lease agreement was voided by one or both of the parties. Mr. Henderson answered that it is the same as any other facility where you have a landowner and a separate person who is leasing it to run a restaurant bar, when it ends, it

ends. Mr. Hilla stated that the properties rely upon one another, it is not like other entities can come into this and operate the one without the other. Mr. Henderson stated that the liquor license belongs to the Shipwreck and that Bogan's could not operate a bar without a liquor license. Mr. Hilla stated that he is just trying to determine what becomes of the Anchor Bar development if the lease allowing the joint use of the properties is terminated, because he does not think lot 1 on its own supports that use, even without the ability to serve liquor. Mr. Henderson responded that Bogan's would get a free building because the applicant is doing all the work and it is are paying the money to have the facility built. Mr. Clark asked Mr. Hilla if what he was saying is that if Bogan's got a free building and then started operating a restaurant/bar in it, that use is reliant on the ability to use the Shipwreck lot for parking, restrooms and other things, and without the use of the Shipwreck lot, that use should not be allowed to continue. Mr. Hilla replied, correct. Mr. Henderson stated that the use would have to terminate with the lease because the uses are dependent upon use of both lots and on the liquor license. Mr. Hilla stated that he is trying to anticipate something down the line here because this is kind of an odd application because it involves two properties and he thinks that the Board needs to consider what would happen if the existing right to use both properties is ever an enforcement disaster? Mr. Henderson responded that the Bogans got out of the restaurant business, that this was originally a diner and it did not work and has been sitting idle for years. Mr. Cleary asked why the use cannot die with the lease. Mr. Clark stated that the Board could condition its approval for these various improvements and this use and these variances, upon the continuation of a lease, whether it's between Bogans and Shipwreck or whether it is somebody who buys Bogans property or whatever it is, if the lease ever disappears, and there's no longer any rights to use both properties, then the approval goes away. Mr. Henderson stated that he believes that his client has a right of first refusal to purchase the Bogans property. Mr. Clark responded that it may not ever become an issue, but, but certainly in any event, he would think the Board would want to put that as a condition because clearly the approval is reliant upon the ability to use two lots with two different owners. Mr. Clark stated that there needs to be an agreement in place between those owners in order for this approval to really go forward, and that he thinks everybody can see that. Mr. Clark stated he would think that the way to do it would just be to condition the approval and all the variances and the rest upon the fact that there is an existing and continuing lease, and if the lease ever disappears, and there's no longer any right unless they buy it, then the approval goes away. Mr. Henderson responded that he doesn't think they would have any objection at all if the lease terminated, to having that as a condition, that the approvals would end unless they made a new application, and the Board granted that new application. Mr. Cleary stated that he would be willing to do that and that the lease could be amended to include that as well. Mr. Hilla stated that this sounded reasonable to him, but it is up to the Board to decide if it is reasonable.

Mr. Hilla asked about signage stating that he knows that Shipwreck has a sign out front but how is signage going to work for both passersby on Ashley Avenue and interior to the site and how people will get to the new facility, the Anchor Bar. Mr. Fichter responded that his understanding in this application was that the signs would be more of an afterthought, but would be completely conforming and would be subtle, there would be no variances related to signage. Mr. Hilla asked about lighting in lot 1. Mr. Fichter responded that what they did was, they re-organized the parking lot 2 and lit it, and then they made sure that the walking path from lot 2 to the Anchor Bar was lit. Mr. Fichter stated that the use of lot 1 is governed by an agreement between Shipwreck and Bogans. Mr. Fichter stated that Shipwreck is being allowed to construct and operate the Anchor

Bar but is not permitted to interrupt the operations of Bogans on lot one and it is their intention to leave it that way. Mr. Fichter stated that the Anchor Bar itself has plenty of light and the path to and from the Anchor Bar in the parking lot has plenty of light, and lot 1 which is really for Bogan's operations will just stay that way it currently is. Mr. Hilla asked Mr. Fichter if they are seeking variance relief for lot 1 to the extent that it does not conform with the lighting requirements of the ordinance. Mr. Fichter responded, correct. Mr. Hilla asked Mr. Fichter about the lighting, indicating that it is shown as controlled between dusk to dawn, is there a specific reason for that and is it necessary for that to happen. Mr. Fichter responded that what he anticipates is going to happen is, as the details of this project are fine-tuned, select lights will remain on dusk to dawn for security, which is common to commercial facilities. Mr. Hilla stated that his point is that being close to the residential properties, right now, they don't endure hardly any lighting compared to what is being proposed. Mr. Fichter responded that the lights that are proposed along that eastern property line of Brielle Landing, they're going to have house side shields, they're going to cut it off, we'll update the plan to reflect that, but if we're going to have select lights dusk to dawn for security, those would not be the lights that would be on. Mr. Cleary stated that there are big and bright existing lights in the parking lot now and they are going to try to do a nice set of uniform lighting and that he is confident that the impact on our neighbors would be less than what is there now.

Mr. Hilla asked Mr. Fichter to explain what the remote bathroom arrangement is and how it is going to be served. Mr. Fichter replied that it is a portable restroom that is essentially a very attractive trailer and will be located between the Shipwreck and the Anchor Bar. Mr. Fichter stated that it will arrive at the beginning of the season for the Anchor Bar, which he believes is May, and leaves at the end of the season, which he understands is October. Mr. Fichter stated that if there are any major events like a Sandy event or something like that, there has been discussions and there is a plan in place for the owners to cart it out of there. Mr. Fichter stated that the NJDEP asked them a lot of questions and the bathroom itself is elevated above the flood hazard elevation, so it fully complies with all NJDEP requirements and NJDEP is satisfied with it. Mr. Fichter stated that the restroom is attractive and when it is there it will not look temporary, but it is portable. Mr. Hilla asked if the restrooms is going to use town water and have holding tanks. Mr. Fichter replied yes, and that there would be a contract with a company that would come, pump it out, and clean it very often to keep it neat and clean with little to no odor. Mr. Henderson asked Mr. Fichter to explain the reason why they are not putting in permanent bathrooms at this time. Mr. Fichter replied that it was largely driven by the NJDEP Regulations, being in a flood hazard area, we're able to renovate the building to do what is being proposed here, but they have rules in place where they didn't want restrooms there so we had to come up with a solution to keep it as close to the Anchor bar as we could. Mr. Fichter stated that it has three rooms in it with the intention of a his, hers and an ADA. Mr. Hilla stated in the new lay out the trailer unit kind of crowds the parking spaces that it sits in front of and asked Mr. Fichter if it could be moved back a little bit. Mr. Fichter stated that there is no reason that it could not be moved back from the parking spaces. Mr. Hilla stated that the walkway from the entrance from the entrance to the restaurant toward the bathroom is only like a four foot wide sidewalk butting up against the front ends of those cars, normally you try for a 5 or 6 foot walkway when you have that sort of arrangement because otherwise any car that fully pulls up to the parking stop then occupies a fair portion of the walkaway as well. Mr. Fichter responded that when they move the portable restroom, they can move it a bit away from the parking spaces, pull the sidewalk with it and create a little additional space there.

Ms. Trainor announced that she thought this application was reaching the end of the Boards time threshold and stated, that if the Board agreed, this would need to be carried to the September 8<sup>th</sup> meeting. All members of the Board agreed.

Ms. Trainor stated if there was no other business, she would ask for a motion to adjourn. Mr. Miller made the motion, seconded by Mr. Stenson, and unanimously approved by the Board, all aye.

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Ms. Carol Baran, Recording Secretary  
Approved: