

February 9th, 2021

BRIELLE PLANNING BOARD
TUESDAY, FEBRUARY 9th, 2021

The Regular Meeting of the Brielle Planning Board was held on Tuesday, February 9th, 2021 at 6:00 p.m., virtually. Ms. Trainor read the OPMA compliance statement. After a Salute to the Flag and a moment of silent prayer, roll call was taken:

Present – Mayor Nicol, Councilman Garruzzo, Mr. James Stenson, Mr. Glenn Miller, Ms. Corinne Trainor, Mr. Jim Maclearie, Ms. Karen Brisben, Mr. Andrew Chermark

Absent – Mr. Christian Siano, Ms. Madeline Ferraro

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

The following Planning Board Members were sworn in by Mr. Clark:

Mayor Thomas Nicol through 12/31/21

Councilman Frank Garruzzo through 12/31/21

Karen Brisben through 12/31/21

James Maclearie through 12/31/24

A motion was made to approve the Minutes of January 12th, 2021 this done by Councilman Garruzzo, seconded by Ms. Brisben, and approved by unanimous vote, all aye.

CORRESPONDENCE:

Copy of CAFRA notice regarding Block 100, Lots 1 & 1.01, 415 Osprey Lane, owned by Robert McCann, to allow reconstruction of an existing retaining wall.

Copy of the November/December issue of NJ Planner.

OLD BUSINESS:

Continuation of hearing for Major Subdivision for Block 64.06, Lot 18, 619 Rankin Road, owned by Bojac Realty, to create 5 buildable lots.

Ms. Trainor stated that when the Planning Board Meeting was closed last month, Mr. Henderson had finished presenting his witnesses in support of the application, and that the Board was moving on to hear from any objectors. Ms. Trainor asked Mr. Henderson if this was correct to which Mr. Henderson replied yes, that this was correct and that he reserved the right to make a summation after this was done.

Mr. Clark asked Ms. Trainor if he could make a correction. Mr. Clark stated that Mr. Henderson had presented Mr. Carr, the engineer, who testified about some environmental issues. Mr. Clark

stated that he thought that the Board Members had finished their questioning of Mr. Carr, but he didn't think that Mr. Carr was opened to the public for questions. Mr. Clark stated that he thought that the Board adjourned for the night without that occurring.

Ms. Trainor asked Mr. Henderson where he thought he was with the application. Mr. Henderson replied that he thought the Board was at the point of opening to the public and he didn't think there were any questions asked of their engineer.

Ms. Trainor stated that the Board did give an indication to any objector that they needed to bring their witnesses with them this week because that is where the Board was in the proceedings. Mr. Clark stated that this was true but that he didn't know if any members of the public had questions for Mr. Carr based on his re-direct. Mr. Clark stated that the Board was at the place where then it would open to the public for comments on the application.

Ms. Trainor stated to Mr. Carr that he was still under oath and under Mr. Clark's direction, the Board would open the floor to any questions the public may have of him. Ms. Trainor stated that if anyone from the public has any such questions, they would need to type their name in the chat box and that they would be taken in the order that their name was entered. Seeing none, Ms. Trainor stated to Mr. Henderson that his part of the case is closed, subject to his reservation.

Ms. Trainor announced it was now time for any objectors who are present and wish to present any information or an objection to the application.

Mr. Lackey stated he would like to ask a question to Mr. Perry Boquel, one of the applicants.

Ms. Trainor stated to Mr. Lackey that he could proceed and call his witness. Mr. Lackey called Mr. Boquel.

Mr. Clark swore in Mr. Boquel and asked if Mr. Boquel is one of the principals of the applicant. Mr. Boquel replied, correct.

Mr. Lackey asked Mr. Boquel if he understood that by having been placed under oath, that the possibility of a penalty of perjury applies if willfully false testimony is given by him. Mr. Boquel replied that he did.

Mr. Lackey asked Mr. Boquel if the plan is to move the existing house. Mr. Boquel replied, yes. Mr. Lackey asked Mr. Boquel to describe how the existing house would be moved. Mr. Boquel replied, on rollers, approximately 150 feet from its location right now. Mr. Lackey asked Mr. Boquel who would be responsible for moving the house. Mr. Boquel answered, Frank Myroncuk House Movers of New Egypt. Mr. Lackey asked Mr. Boquel if he had ever worked with them before. Mr. Boquel answered, 25 years. Mr. Lackey asked Mr. Boquel if he knew if they had any experience moving a house in a similar fashion. Mr. Boquel replied, yes. Mr. Lackey then asked Mr. Boquel if he knew approximately how many times, they had moved a house in a similar fashion in the past 5 years. Mr. Boquel answered, no, he did not.

Mr. Lackey asked Mr. Boquel if he knew anything about the removal of an underground storage tank from the subject property. Mr. Boquel responded that there are none. Mr. Lackey asked Mr.

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Boquel if there are none currently. Mr. Boquel replied, correct. Mr. Lackey asked Mr. Boquel if he knew of one being removed. Mr. Boquel replied, he did not. Mr. Lackey asked Mr. Boquel if he is aware of soil sampling having been performed on the subject property to detect the presence of oil in the soil. Mr. Boquel replied that he was not. Mr. Lackey asked Mr. Boquel if he was aware of anyone having done a tank sweep at the property. Mr. Boquel replied, he was not.

Mr. Lackey asked Mr. Boquel how many years of experience he had as a builder or contractor. Mr. Henderson stated he was going to object to this line of questioning. Mr. Henderson continued by saying he didn't see where this was going and didn't see that it is any business of the objector as to what experience Mr. Boquel has as long as he is a licensed builder.

Ms. Trainor asked Mr. Lackey what the relevance of the testimony was. Mr. Lackey replied that it goes to safety, the move of the house. Mr. Lackey continued by saying it seems like a big task and stated he didn't have a lot more questions, maybe a minute or two. Mr. Trainor stated she would allow Mr. Lackey to continue.

Mr. Lackey asked Mr. Boquel how many years of experience he had as a builder contractor. Mr. Boquel replied, 30

Mr. Lackey stated he had no further questions.

Ms. Trainor asked if there were any other questions for Mr. Boquel. Hearing none, Ms. Trainor thanked Mr. Boquel for his time.

Ms. Trainor asked Mr. Lackey if he had any other witness. Mr. Lackey replied that he did not.

Ms. Trainor asked if anyone else had any witnesses in response to this application. Hearing none, Ms. Trainor stated it was time for public comment. Ms. Trainor stated that any member of the public would like to comment with respect to this application, now is the time to enter their name in the chat box. Ms. Trainor stated that after the chat box, if there are people who have called in, they would be heard then.

Mr. Lackey stated that his position is that the report by engineer Mr. Carr is a net opinion. Mr. Lackey stated that when he cross-examined Mr. Carr, the cross examination indicated that the conclusions stated were insufficiently supported by factual investigation.

Mr. Lackey stated that throughout the course of the application, there has been quite a bit of inconsistency as to the number and nature of variances sought.

Mr. Lackey stated that was all he had to say.

Ms. Trainor stated that it seems to her that those are legal objections, maybe the variance comment is a legal objection and asked Mr. Clark if the Board should treat them that way or treat them with public comment. Mr. Clark responded by saying that certainly the net opinion is evidentiary and is a legal argument. Mr. Clark stated that for the benefit of those who do not know, a net opinion is essentially an opinion where an expert just reaches an opinion without a basis for it, without any

factual support. Mr. Clark stated he did not remember an objection being raised during the testimony itself of Mr. Carr but guesses it is being raised now. Mr. Clark stated that if deemed a net opinion, the Board could disregard it but subject to that, the Board could give it as much weight as it deems appropriate. Mr. Clark stated that he didn't recall that it was a net opinion, but he is sure Mr. Henderson would want to be heard on this issue.

Mr. Clark stated regarding the number and nature of variances sought in this application, he would think that Mr. Henderson would probably want to be heard on this as well. Mr. Clark stated that it was his recollection that part of the reason that the variances changed was because the plans changed, the application was re-noticed, and it led to a second review letter from Mr. Hilla at some point, after the first one, but was still about a year ago, if he recalled correctly.

Ms. Trainor asked Mr. Henderson if he agreed that the Board should at least treat the public comment about the net opinion as a legal objection rather than a public comment and that she should decide about it.

Mr. Henderson stated that what Mr. Carr said is not being identified as a net opinion, is everything he said the net opinion or is there something specific thing that objector finds is a net opinion. Mr. Henderson continued by saying he doesn't see how the Board could decide the issue because they don't know which part of the testimony Mr. Lackey is talking about.

Mr. Henderson stated, that with respect to the project, the project changed a great deal. Mr. Henderson stated that the applicant tried to react to the objections of the public, the road was moved, lots were reconfigured, a lot of massaging done to this project to try to make several people happier. Mr. Henderson stated they succeeded in doing that and entered into a number of agreements with the neighbors. Mr. Henderson stated that all of this will end up on Mr. Hilla's desk in a revised plan to reflect those agreements made but they won't change the variance. Mr. Henderson said Ms. Ehlen stated that it is a technical variance but also said it is a C-2 Variance and that she gave reasons for it based on the Kaufmann case, which is a New Jersey Supreme Court Case. Mr. Henderson stated that he doesn't see anything to either one of the objections.

Ms. Trainor asked Mr. Lackey if he would like to respond.

Mr. Lackey responded as to the net opinion; he could follow up with a supplemental writing to clarify the point.

Mr. Henderson objected to Mr. Lackey's comment and stated that if Mr. Lackey could not be ready for tonight, he is never going to be ready. Mr. Henderson stated that this has been going for 2 years.

Ms. Trainor stated to Mr. Lackey that she is prepared to make any evidentiary decisions tonight, but based on the lack of public comment, the Board could also be taking a vote tonight and so now is the time to state your objections. Ms. Trainor stated that the Board made that perfectly clear last month.

Ms. Trainor asked Mr. Lackey if he had any response to any substantive nature with respect to the net opinion comment he made. Mr. Lackey responded that he would reiterate the offer and demand to follow up in writing. Mr. Lackey stated that in summary, the net opinion as to the environmental conclusions, there was insufficient investigation, as to the traffic-based conclusions, there was insufficient, factual investigation and probably otherwise.

Ms. Trainor responded to Mr. Lackey that she could not make a decision with his, probably otherwise but that she could make a decision with respect to his comments about whether the environmental aspects of Mr. Carr's opinions were net opinions and whether the traffic portions were net opinions. Ms. Trainor stated to Mr. Lackey that she takes his comment as asking the Board to exclude consideration of Mr. Carr's testimony and that she will not do that. Ms. Trainor continued by saying that the Board, as Mr. Clark has instructed, can give appropriate weight to Mr. Carr's testimony based on the facts and based on the facts and testimony on cross examination of Mr. Carr, the extensive testimony that Mr. Carr provided over 3 or 4 different Planning Board Meetings. Ms. Trainor continued by saying with respect to Mr. Lackey's second comment, inconsistency in the nature of the variances, she doesn't view that as a legal objection. Ms. Trainor stated that when it comes time to make findings with respect to the various variances that the applicant seeks, the Board can address them in turn. Ms. Trainor then thanked Mr. Lackey for his comments.

Ms. Trainor announced that the next person listed in the chat box was Mr. Richard Curran.

Mr. Curran began by saying he has participated in all the meetings and stated that the property is in his backyard. Mr. Curran stated that he is not opposed to development and thinks it would be great to have a couple of homes back there. Mr. Curran stated that his concern is where the new proposed road comes in where Rankin Road bends and feels it is very narrow. Mr. Curran stated that he feels that it is a real safety hazard to put a road in at this location and that he would much rather see 2 to 3 luxury homes sharing a driveway, then 5 homes with a new road. Mr. Curran thanked the Board for the opportunity to comment. Ms. Trainor thanked Mr. Curran for his comments and stated that there were no other members from the public listed in the chat box or on the phone.

Ms. Trainor announced it was time to hear comments from the Board.

Mr. Stenson stated that he is curious if the Board is privy to the homeowner agreements that Mr. Henderson spoke about a while ago and at this meeting

Mr. Henderson replied that at the last hearing, he offered to submit the settlement agreements with 4 different property owners. Mr. Henderson stated that they worked hard to resolve the issues with neighborhood so that they would be happy with the subdivision. Mr. Henderson stated that the Board will see an amended plan which will be submitted to Mr. Hilla for review which will incorporate the various things which the applicant has agreed to. Mr. Henderson stated it will consist of things like environmental easements for neighbors, so that certain areas cannot be developed. Mr. Henderson stated that these are the kinds of things they addressed separately with the different homeowners. Mr. Stenson thanked Mr. Henderson and stated that he also agrees that the applicant has listened to and tried to make adjustments for the neighbors.

Mr. Glenn Miller asked if these agreements, with the neighbors, will be a part of the approval and if they will be enforceable. Mr. Miller stated that his concern is if they will be able to follow through these agreements and how they would be enforced.

Mr. Henderson stated that the agreements are contracts, so they are enforceable. Mr. Henderson stated that the applicant has no objection to submitting these to the Board, making them part of the Record. Mr. Henderson stated that for example, if they gave an environmental easement to one property owner, the plan would be marked to show that area as an environmental easement and that is what will be submitted to Mr. Hilla anyway. Mr. Henderson stated that they have no objection to the Board seeing copies of the settlement agreements.

Mr. Clark stated for clarification these agreements are not part of the record yet because they have not been submitted, but the Board could require that they be. Mr. Clark continued by saying just like the Board can normally put conditions on an approval, one of the conditions could be the submission on these files.

Mr. Henderson stated that the applicant will stipulate to that.

Mr. Maclearie asked Mr. Hilla, regarding the drainage, if what the applicant has there is satisfactory to him, with the dry wells and all that.

Mr. Hilla responded that the recharge is in keeping with the Best Management Practices. Mr. Hilla stated that in concept, it all works but that he has a couple of details that need to be worked out with Mr. Carr. Mr. Hilla stated that he believes that it all hangs together, both with the pond, the forebay and various recharge. Mr. Hilla stated that houses, driveways, and a single road on a 3-acre parcel is not really an intensive development and is probably less intensive than almost any neighborhood that any of them live in. Mr. Hilla continued by saying that of course they must conform with the State Stormwater Regulations, and that is what the Board is holding Mr. Carr's design to, but he believes that this can be achieved with what has been submitted today.

Ms. Brisben asked Mr. Henderson to confirm that each deed will have mention of the homeowner's association.

Mr. Henderson replied, yes, each of the 5 deeds will contain this information and that he will submit a copy of the proposed homeowner's documents, for review, to the Planning Board Attorney, Mr. Clark. Mr. Henderson stated that these documents have not been prepared to date because without an approval there wouldn't be much point in it.

Ms. Brisben stated that Mr. Curran's comments were very well taken and that she can appreciate the concern, however she thought the traffic engineer did a very good report and personally didn't know that 5 homes, maybe 10 cars, not on the road at the same time, is an onerous thing. Ms. Brisben stated she would be for approval and thought was a very well-done application.

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Mr. Chermark reiterated Mr. Miller's comments regarding the third-party contracts and stated that these are contracts and that he wants to make sure that the people that surround this property get what they wanted.

Ms. Trainor stated that this has been a lengthy application that goes back to November 2019. Ms. Trainor continued by stating that that the Board then heard the application again in October, November, December of 2020, and January and now February of 2021. Ms. Trainor thanked everybody for sticking with this.

Ms. Trainor stated that the information presented by Mr. Jafolla about the standard that applies to the road and the number of cars that would be on it on any given day in accord with the standard, and as a result of that threshold, it seems like it wouldn't cause the issues that Mr. Curran is concerned about. Ms. Trainor stated that from a safety perspective and the amount of traffic that is to be generated, she is satisfied.

Ms. Trainor stated one of the concerns raised by the public was the pedestrian traffic. Ms. Trainor stated that she is satisfied that there is no undue safety hazard with respect to pedestrian traffic.

Ms. Trainor stated that she accepts Barbara Ehlen's analysis with respect to the standard that applies to the variances at issue and doesn't find that there is a safety issue with respect to the sight lines at the new intersection. Ms. Trainor stated she feels that that issue was adequately addressed by the applicant's witnesses.

Ms. Trainor stated she appreciates the public's comments, she does feel satisfied about the various safety issues that have been raised.

Ms. Trainor stated she believes Mr. Henderson has agreed to provide the letters of approval with respect to the environmentals. Ms. Trainor thinks the record should include the settlement agreements, so to the extent that the settlement agreements are not part of the record, she would condition any approval that she would give the application on submission of the settlement agreements and make them be part of the record.

Ms. Trainor stated her last concern was with respect to the homeowner's association. Ms. Trainor stated she does not want the Borough of Brielle to be on the hook for any liability caused by drainage issues, design issues and whatnot. Ms. Trainor asked Mr. Henderson how the homeowners association was going to be funded for any liabilities.

Mr. Henderson replied that it would be like all homeowners' associations, there is a special assessment made annually, which is budgeted for, and the assessment occurs. Mr. Henderson added that homeowner associations are a very common thing in developments.

Ms. Trainor stated if there is some assurance in the homeowner's association documents, as they are drafted up, that they will be properly funded and insured, with respect to the standard that Mr. Henderson is referencing, then she is satisfied. Mr. Henderson stated that this will be done.

Mr. Miller asked, regarding the traffic flow and the safety of the roadway, is it possible for a no parking sign to be put up in front of the property on the bend. Mr. Miller stated that at times he has had trouble getting through there because when there are cars on both sides of the road, it blocks the view coming around the bend.

Mr. Hilla stated that regulations on the streets are beyond the Board's purview. Mr. Hilla stated that the Board might be able to come up with some recommendations on a roadway to be created but on a current municipal street, it would be the Governing Body, done by Ordinance. Mr. Clark agreed that what Mr. Hilla had said was correct and assuming that these are township roads, the power would be in township Governing Body to regulate parking, speed limits and the like.

Councilman Garruzzo stated that there is a Traffic Safety Officer in the Brielle Police Department that handles issues along these lines. Councilman Garruzzo stated that this officer would review and look to see if there is an issue and if he found it to be a hindrance or a problem, he would be the one to make the recommendation to the Governing Body. Councilman Garruzzo stated that this would be the first way to pursue this.

Mr. Miller stated there is there is only a driveway there now and a new roadway will increase traffic, so it could change the dynamic. Mr. Miller asked if the public would have to approach the Borough Council or is that something that the Board could request.

Mr. Clark stated that he thought if the majority of the Board was in favor of it, it could be requested and could be in the Resolution that the Board has requested that this be examined, but other than that, it is not within the Planning Boards purview what ultimately happens.

Ms. Brisben stated that she could write a letter to the Police Department requesting that they look at parking on Rankin Road, but it would be up to the Board to ask her to do so.

Councilman Garruzzo stated that a letter sent does not give the Police Department any obligation to recommend anything to be done there, but a letter could be written for him to at least review the property or the road and see if there are any other recommendations that can be made. Ms. Brisben stated that she could write the letter if the Board so chooses. Councilman Garruzzo and Mr. Stenson stated they felt this was a good idea.

Ms. Trainor asked Mr. Clark if he would go through what conditions the Board has talked about on the record with respect to this application.

Mr. Clark stated the conditions that he has are that the applicant has agreed that if this 5-lot subdivision application is approved, one of the lots is going to be occupied by that existing farmhouse that is on the property now, which will be moved onto one of the new Lots.

Mr. Clark stated that another condition was that all deeds for the 5 properties, if they are approved, will contain language requiring that all owners of the properties are members of the homeowner's association that will be created for this subdivision and that the deeds will be submitted to the Board Attorney, himself, for review to make sure they have the required language. Mr. Clark stated

that Mr. Henderson represented that the homeowner's association will be adequately funded and adequately insured in conformance with industry standards.

Mr. Clark stated that another requirement is that the applicant will obtain all other governmental approvals and will submit, to the extent it has not already, any NJDEP permits and approvals, which he believes were represented during the hearings.

Mr. Clark stated that the applicant is going to be submitting an amended plan that captures all these things.

Mr. Clark stated that the applicant is going to comply with the Stormwater Requirements of the NJDEP, as well as they are going to consult with the Board Engineer, to the extent that Mr. Hilla still has comments about some of the technical issues with those.

Mr. Clark stated that in one of the beginning hearings, the applicant talked about how they were going to preserve the trees to the extent they could and that they were only going to destroy certain trees. Mr. Clark stated that he believed the applicant then gave amended plans that showed at least some of that, but to the extent possible, they were going to preserve the existing vegetation so that there is a buffer, where possible.

Mr. Clark asked Mr. Henderson what he is going to do in terms of perfecting the subdivision, whether it is by plat or by deed. Mr. Henderson replied that he thinks with 5 Lots, it is almost impossible to do it by deed and would probably be by map filing. Mr. Clark stated for the Board's benefit, there is two ways of perfecting a subdivision and it is either by deed or by a map or plat filing.

Mr. Clark stated that the applicant has also agreed that they will submit the settlement agreements with the adjoining property owners so that those can be part of the Record and they have agreed to comply by whatever they have said in those settlement agreements.

Mr. Clark stated that those are the conditions he has as well as the normal conditions that the Board would put in any application.

Ms. Trainor asked the Board if there was anything else. Hearing no replies, Ms. Trainor asked the Board for a motion to approve the application, including in this approval, the conditions that Mr. Clark outlined.

Councilman Garruzzo stated that before he gave his vote, he would like to explain that one of his concerns was always on the safety Rankin Road and that he knows the road can be a busy road at times. Councilman Garruzzo stated that another one of his concerns is the buffer zones for the neighbors and thinks the applicant has addressed many of those issues. Councilman Garruzzo stated that looking at the property and its size and the best use of it, he does feel that the variance is technical and is going to vote, yes.

Mr. Miller stated that he would vote yes, with the conditions that the contracts and the property owners are part of this agreement and that there is a safety study done by the safety officer in town.

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Ms. Trainor stated that she would yes, for the reasons she set forth before.

Mr. Stenson made a motion, seconded by Mr. Maclearie, and followed by a roll call:

Ayes: Mayor Nicol, Councilman Garruzzo, James Stenson, Glenn Miller, Corinne Trainor, Jim Maclearie, Karen Brisben

Noes: None

Not eligible to vote: Andrew Chermark

Absent: Chris Siano, Madeline Ferraro

Ms. Trainor stated to Mr. Henderson and his client, congratulations, best of luck and she hoped they meet all those conditions.

NEW BUSINESS:

Application for Minor Subdivision to create two buildable lots for Block 61, Lot 6.01, 22 Crescent Drive, owned by Michael Centrella. Right-of-Way Width- this property abuts Donnelly Place and needs land dedication to this right-of-way; applicant is requesting design waiver from this requirement.

Mr. Keith Henderson stated for the record that he represents the applicant.

Mr. Henderson stated that they previously submitted a denial of permit from Zoning Officer, Elissa Commins, an affidavit of proof of service, a certified list of property owners, a copy of the notice of the property owners and public utilities, a copy of certified mail receipts, an affidavit of publication, a copy of the public notice and that he respectfully requests that the Board accept jurisdiction of the application.

Ms. Trainor stated that Board accepts jurisdiction.

Mr. Henderson began by saying this is a fairly simple application with a complicated past. Mr. Henderson stated this file was in litigation for a number of years as a 3-Lot subdivision. Mr. Henderson stated that it has been reduced to a 2-Lot subdivision and the lots are significantly oversized, almost double the required size.

Mr. Henderson stated that he had the Professional Engineer, Robert Burdick, here that designed the project and would like to have him sworn in. Mr. Burdick was sworn in by Mr. Clark. Mr. Burdick stated he has appeared before the Board several times previously. Mr. Henderson asked if Mr. Burdick could be qualified as a Professional Engineer and Planner. Ms. Trainor stated yes, based on prior approvals and representations.

Mr. Henderson asked Mr. Burdick if he was retained in connection with this application. Mr. Burdick replied that he was. Mr. Henderson asked Mr. Burdick to describe the property in this

application. Mr. Burdick stated the property is a 46,618 square foot parcel, basically at the east intersection of Crescent Drive and Donnelly Place, which is basically a public access to the waterfront. Mr. Burdick stated that the existing home will be removed as part of this application. Mr. Burdick stated that they believe that the application is fully conforming to the Borough's Standards and the lots are significantly oversized, 20,954 square feet for the interior lot, where 11,250 is required and 25,664 for the corner lot where 12,500 square feet is required.

Mr. Burdick stated that the only oddity is that the applicant is requesting a waiver from the necessity to provide additional Right-of-Way along Donnelly Place. Mr. Burdick continued by saying that Donnelly Place serves only this parcel, the parcel adjacent and basically to the south of this, which is 18 Crescent Drive was recently paved and is about 15 feet wide but only goes from Crescent Drive to Crabtree Creek, which is directly east of the property. Mr. Burdick stated that any future improvements are quite doubtful and for that reason they would request the waiver. Mr. Burdick stated that even if the Board granted the right-of-way, this would still be a conforming project.

Mr. Burdick stated that there are two riparian rights that are basically in the process of being approved, the one further south already exists but the one to the north they are proposing, NJDEP has been approached with regard to this, and is ready to approve them, but cannot approve it on one lot, so if the applicant is granted approval for the subdivision, that will be perfected.

Mr. Burdick then addressed Mr. Hilla's letter dated August 23rd, 2019. Mr. Burdick stated that in response to number one, the structure will be demolished prior to the perfection of the subdivision. Mr. Burdick stated that the applicant will obtain approval from the Tax Assessor for the numbers and the applicant intends to file this application, or this perfected subdivision by deed and will provide the deeds to the Board Attorney, Mr. Clark and Engineer, Mr. Hilla for their review and approval prior to perfecting the subdivision.

Mr. Henderson stated that they received today from their environmental consultants, copies of the CAFRA approval, and stated that this is in place and will remain in place for several more years. Mr. Henderson stated that they will provide a copy of that approval to the Board.

Mr. Henderson asked Mr. Burdick if he was referring to the boat docks when he talked about the license agreements. Mr. Burdick replied, yes. Mr. Henderson asked if these are exterior of the subdivision of itself, the subdivision line goes out into the water, at the end of the dock and that is the process which cannot be completed without having that subdivision in place. Mr. Burdick responded, correct.

Mr. Henderson stated he had no further questions for Mr. Burdick and stated that this is a subdivision of right with no variances associated with it. Mr. Henderson continued by saying whether Donnelly Place is expanded or not, this will not affect the Land Use issues that are at hand.

Mr. Henderson stated this was previously approved for a 3-Lot subdivision, which was appealed in the courts, and eventually the court reversed the Planning Board, resulting in much larger lots than what were proposed then. Mr. Henderson stated that at that point in time the Planning Board's

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decision to not accept any road widening because the Governing Body did not want it. Mr. Henderson stated he has no idea if this is still the same position.

Ms. Trainor asked Mr. Hilla if had any concerns with respect to the testimony of Mr. Burdick and his correspondence and report to the Board. Mr. Hilla responded he did not.

Ms. Trainor announced it was time for the Board to ask questions of Mr. Burdick.

Mayor Nicol stated he did not have any questions of Mr. Burdick but would like to reiterate his opinion that the Borough does not want to get involved in any improvements to Donnelly Place and that he doesn't think it will impact Donnelly Place severely if this application is approved.

Ms. Brisben stated to Mr. Burdick that she did get from the tax assessor the proper block and lot numbers and addresses. Ms. Brisben stated she just received it and apologized for not getting it to him but will see to it that he gets it.

Ms. Brisben stated that she has a question on the CAFRA report that was dated April 25th, 2019. Ms. Brisben stated the report said that the NJDEP said that the permittee must submit a public access project for review and approval and asked Mr. Burdick if he could explain exactly what that is. Mr. Burdick replied that the NJDEP is now requiring public access along the waterfront for all general permits as well as individual CAFRA permits. Mr. Burdick continued by saying in this case, they were able to negotiate that by making a contribution to the Borough's projects with regard to public access to the right-of-way and this condition was met as opposed to providing actual physical access along the waterfront at the rear of the properties.

Hearing no other questions from the Board, Ms. Trainor announced it was time for the public to ask questions of this witness. Ms. Trainor asked anyone with questions to please put their name in the chat box. Ms. Trainor asked if there was anyone on the phone who would like to ask questions of this witness. As there was no response, that portion of the hearing was closed.

Mr. Henderson stated he would respectfully request that the Board approve this application. Mr. Henderson stated this is a subdivision of right, there were no variances sought and there is not a lot going on here, the Lots are almost double the size required by the zone.

Ms. Trainor asked if anyone from the public wished to make a comment with respect to this application. Ms. Trainor stated she did not see any names in the chat box and asked if there was anyone from the public on the phone. Hearing none, Ms. Trainor stated the public comment with respect to this application was closed and will now hear from the Board.

Mayor Nicol stated he did not have a problem with this application.

Councilman Garruzzo stated he agreed with Mayor Nicol and said he thought it would be an advantage to the community and to Crescent Drive and it would be a benefit for everybody. Mr. Stenson stated he agreed with Councilman Garruzzo and has no problems at all with it.

Mr. Miller stated he had no issues.

Mr. Maclearie stated he had no problems at all.

Ms. Brisben stated that she had wished the neighbors hadn't done this and that she was on the Board when they did the 3-Lot subdivision. Ms. Brisben stated that she thinks three homes would have been better there and if you look at the building envelope, there could be huge homes being built here. Ms. Brisben stated she has no problem with this subdivision.

Mr. Chermark stated he likes it and stated that he felt it was a shame they had to wait this long.

Mr. Trainor asked Mr. Clark if there were any conditions raised with respect to this application. Mr. Clark responded that Mr. Henderson will provide the CAFRA approvals, and the riparian right approvals, to the extent they are relevant to the subdivision. Mr. Clark continued by saying they are going to be doing the subdivision by deed and that they will submit the deeds to the Board Attorney for review and approval prior to finalizing them. Mr. Clark stated that the Board needs to clarify for the vote, while there are not any variances being sought, there are two design waivers being sought, one of them was the right-of-way width and one was also about the streets. Mr. Clark stated basically, they deal with whether there would be right-of-way given by this development for the road that was being discussed and that he knew that Mayor Nicol and Councilman Garruzzo had both stated that they didn't believe this was warranted or needed but today when voting the Board would need to vote to give the design waivers along with approval or not because if they are given, then the Borough will not get the right-of-way.

Mayor Nicol asked Mr. Hilla what his opinion is. Mr. Hilla responded that the taking of additional right-of-way there narrows the corner lot a little bit at the front, which makes it actually seems a little odd, even if not improved and the right-of-way itself is paved. Mr. Hilla continued by saying that an increase of impervious over on Donnelly Place probably wouldn't be good, it's an overland flow and the amount of roadway that is there has posed problems in the past for the overland flow of stormwater from the roadway, across the beach and ultimately to the river. Mr. Hilla stated that certainly the amount of impervious coverage should not be increased because there is no way to discharge via the sand on Donnelly Beach.

Councilman Garruzzo asked Mr. Hilla if his point is that you really don't want to make it bigger. Mr. Hilla responded that more pavement would be bad.

Ms. Trainor announced that the comment portion of the meeting closed and asked for a motion

Councilman Garruzzo make a motion to approve with the design waivers, seconded by Mr. Stenson, followed by a roll call:

Ayes: Mayor Nicol, Councilman Garruzzo, James Stenson, Glenn Miller, Corinne Trainor, Jim Maclearie, Karen Brisben, Andrew Chermark

Noes: None

Mr. Trainor congratulated Mr. Henderson and stated that his client's application has been approved.

NEW BUSINESS:

Application for variance relief for Block 72, Lot 1, 836 Riverview Drive, owned by 836 Riverview Drive, LLC (Ron Dana), to allow construction of a 12-foot Tennis Fence. Maximum Fence Height- 6 feet allowed; 12 feet proposed.

Mayor Nicol, Councilman Garruzzo and Mr. Miller stated they were recusing themselves from this application. Mr. Miller asked Mr. Clark if he could still listen even though he recused himself. Mr. Clark stated he could listen as long as he does not participate, just like any member of the public.

Mr. Henderson stated that the applicant previously submitted to the Board, the Zoning Violation Letter from Elissa Commins, dated August 13th, 2018, an affidavit of proof of service, certified list of the property owners, a copy of the notice to the property owners and the public utilities, a copy of the certified mail receipts, an affidavit of publication, a copy of the public notice, and stated that on that basis he would respectfully request that the Board accept jurisdiction of the application.

Ms. Trainor stated that Board accepts jurisdiction.

Mr. Henderson stated that this appeared before the Planning Board in regard to the retention of a 65-foot net installed by the applicant to protect his property and family from errant golf balls landing on his property. Mr. Henderson stated that the Planning Board Application was denied, the denial was appealed to the Superior Court and the appeal led to additional litigation involving the Planning Board, the Golf Club and the applicant, fortunately that resulted in mediation which resulted in a settlement agreement that was entered into by all parties.

Mr. Henderson stated that one portion of the settlement agreement permitted the applicant to make an application before the Planning Board for a 12-foot fence, which would not be objected to by the golf club and as part of the settlement agreement, certain buffering and trees had to be planted both within the golf course property and on the Dana property.

Mr. Henderson stated that a good deal of the work has started and that Melillo, Bauer & Carman, a well know landscape architect company was involved and he has Kim Nuccio here tonight to describe the project. Mr. Henderson asked to have her qualified as a Licensed Landscape Architect.

Mr. Clark stated he would like to correct one thing, since the settlement discussion was being put on the Record, there were two lawsuits that had been filed in court, one was the challenge to the Planning Board decision and the second lawsuit that involved the Borough and the Manasquan River Golf Club. Mr. Clark stated the second lawsuit, the one with the Borough and the Manasquan River Golf Club is the one that settled, but one of the conditions of the settlement was that the case against the Planning Board would also be dropped since they were no longer pursuing that 65-foot fence and instead they were going to file a new application, but to clarify, the Planning Board was not party to that settlement. Mr. Clark stated that the Planning Board was just mentioned as the Board that would be hearing this application that is now before it for the new revised fence.

Ms. Kim Nuccio was sworn in by Mr. Clark. Ms. Nuccio stated she was employed by Melillo, Bauer & Carman Landscape Architecture.

Mr. Henderson asked Ms. Nuccio if she is a licensed Landscape Architect and if she worked on this project. Ms. Nuccio replied, yes. Mr. Henderson asked Ms. Nuccio if she was engaged by the applicant to do this. Ms. Nuccio responded, yes.

Mr. Henderson asked Ms. Nuccio if she could describe the situation as it now exists. Ms. Nuccio replied yes, and that she had several exhibits to demonstrate what has been going on.

Ms. Trainor stated to Mr. Henderson that the Board needed to qualify this witness as an expert. Mr. Henderson replied that that Ms. Nuccio indicated that she was a Professional Landscape Architect and that is the capacity that they want her to be qualified in. Ms. Trainor asked Ms. Nuccio how long she has been a landscape Architect. Ms. Nuccio responded that she has been employed at Melillo, Bauer and Carman for 7 years and licensed for 2 years. Ms. Nuccio stated she has lived in Brielle for more than 20 years and working at Melillo, Bauer, & Carman since receiving her Graduate Degree, 7 years ago. Ms. Nuccio stated that she holds a master's degree in Landscape Architecture from Rutgers's University, an MBA from Monmouth University, and an undergraduate degree in Art and Architecture from Northern Arizona University. Ms. Trainor asked Ms. Nuccio if she has been qualified by any other Boards previously. Ms. Nuccio stated that she had not and that this is her first public Planning Board, but she has assisted other principals in her firm at Planning Board's in front of other townships. Ms. Trainor welcomed Ms. Nuccio to the Planning Board and stated that based on her testimony so far, the Board approves her as a Landscape Architect.

Mr. Clark advised Ms. Nuccio when she shares the documents they will be identified and marked so that there is a record of them. Mr. Clark asked Ms. Nuccio to send a hard copy to the Planning Board Secretary.

Ms. Nuccio stated that she had prepared a number of exhibits that include a landscape plan, an existing conditions photo, proposed conditions rendering, a collection of existing conditions photos that she had taken the day before and some progress photos that were taken on the day that work commenced.

Ms. Nuccio displayed and then described a landscape plan prepared by her office, marked Exhibit A-1.

Ms. Nuccio stated that the proposed fence will be a 12-foot high open mesh chain link fence covered by typical tennis court wind fabric buried in vegetation, both existing and proposed.

Ms. Nuccio stated the next image, Exhibit A-2, she was going to display is a before image that is of the 65-foot fence that has been taken down. Ms. Nuccio stated that this photo was taken from the golf course, looking at the Dana pool house. Ms. Nuccio continued to describe the photo displayed.

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Ms. Nuccio displayed and described a rendering done in photoshop that shows how a 12-foot fence would be completely screened by vegetation, marked Exhibit A-3.

Ms. Nuccio displayed and then described a photo taken on the golf course, that shows the size of the trees that were planted, marked Exhibit A-4. Ms. Nuccio stated that the tree in the photo is more than 35-feet high.

Ms. Nuccio stated that there are 21 trees, half of them this size and the remainder at 24-feet high, more than twice the height of the proposed fence.

Ms. Nuccio displayed a photo showing the progress and one of the very large shade trees and the first row of a double row of evergreens, marked as Exhibit A-5.

Ms. Nuccio displayed an image taken from the golf course, looking back at the Dana property, showing how large the trees and how close they will be planted, marked Exhibit A-6. Ms. Nuccio stated that what is shown are one row of smaller trees, planning will continue, and larger trees will fill in the gaps.

Ms. Nuccio displayed and described a photo taken yesterday that shows the existing vegetation, marked A-7.

Ms. Nuccio displayed and described a photo that shows where the fence will be installed on the Dana property, marked A-8.

Ms. Nuccio stated that it is her professional opinion that these solutions, both the landscaping and the 12-foot fence will satisfy the terms of this settlement, ensuring a safer condition for the Danas and a mature vegetated esthetic for the golf course. Ms. Nuccio stated that the fence will not be visible from the golf course.

Mr. Henderson asked Ms. Nuccio sees any negatives attached to this application, substantial detriment to the public good or to the Zoning Ordinance. Ms. Nuccio replied that she did not.

Mr. Henderson asked Ms. Nuccio if in fact, the Zoning Ordinance allows for a tennis fence to be at 12-foot. Ms. Nuccio, responded, it does.

Mr. Henderson asked Ms. Nuccio in her professional opinion, will the net with mesh over it, not only be invisible but will this prevent balls that are below 12-feet from going on the Dana's property. Ms. Nuccio replied, yes.

Mr. Henderson asked Ms. Nuccio if it would be fair to say that this advances the Municipal Planning Act goal to provide safety. Ms. Nuccio answered, yes, indeed.

Mr. Henderson stated to Ms. Nuccio if it is correct, that she has already testified that it would provide a better esthetic. Ms. Nuccio replied, most certainly.

Mr. Henderson stated he has no further testimony.

Ms. Trainor announced it was time to hear questions from the Board.

Mr. Stenson asked Ms. Nuccio how long the fence is. Ms. Nuccio replied, approximately 275 feet.

Mr. Maclearie asked if there was an approval by the golf club for this whole fence. Mr. Henderson replied, yes, there was a full section in the agreement dealing with the plantings that had to go in, followed by a fence and the applicant would make an application for approval of a 12-foot fence, which the golf club would not oppose. Mr. Henderson stated this doesn't mean other people can't oppose it, but the golf club would not oppose it. Mr. Henderson stated based upon feedback received, they believe that the golf course has been very pleased.

Ms. Brisben asked Mr. Henderson if they have gotten approval from the golf course to put these trees on their property. Mr. Henderson stated that it is all spelled out in the agreement, which he could provide a copy to the Board. Ms. Brisben asked if the 65-foot poles have been taken out. Ms. Nuccio, replied, yes. Ms. Brisben stated that on the plan, the 17th fairway was moved, and asked if that can be confirmed. Ms. Nuccio responded that she cannot confirm that it has been moved but will likely be. Mr. Henderson stated that part of the settle agreement is for redesign of the 17th hole. Mr. Henderson stated that the settlement agreement is very complex and that the gist of it is that the parties through mediation were able to arrive at an agreement which would create an invisible fence to protect the Dana's property while at the same time, provide an esthetic. Mr. Henderson stated that he would get a copy of the settlement agreement to the Board.

Mr. Chermark asked what the length was of the original net with the poles. Mr. Henderson stated that he believes it was 65-feet tall and 130-feet wide. Mr. Chermark asked if it will be in the same spot. Mr. Henderson replied, yes. Ms. Nuccio showed the Board on Exhibit A-1 where the old fence was and where the new fence will be.

Ms. Trainor asked Mr. Henderson if there is anything in the settlement agreement with respect to who is supposed to be caring for these trees going forward. Mr. Henderson stated he was not sure. Ms. Nuccio stated that her understanding is that the trees will be purchased by the Dana's and the golf course. Ms. Nuccio stated there is a 2-year warranty should a tree fail. Ms. Nuccio stated that there will be 11 trees on the Dana property and the remainder on the golf course property. Ms. Nuccio stated that she believed after the warranty period expires, she believes the maintenance would be divided, depending on which property the tree is on.

Ms. Trainor announced it was time for the public to ask questions of this witness, either by putting their name in the chat box or by phone. Hearing none, Ms. Trainor thanked Ms. Nuccio for her testimony.

Mr. Henderson stated that he would like to suggest that this is a C-2 variance situation, protects the safety of the Dana property but also provides an esthetic for the people on the golf course. Mr. Henderson stated that the trees are beautiful and huge. Mr. Henderson stated that this is also the settlement of a dispute that has gone on a long time and that he thinks it's a good thing for the Borough and the residents of the town. Mr. Henderson stated that he would respectfully request the Board approves the application.

Ms. Trainor announced it was time to hear from anyone from the public that may have an objection to this application. Hearing none, Ms. Trainor stated it was time to go to the public comments with

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respect to this application. Ms. Trainor asked anyone from the public who would like to comment to state their name or enter their name in the chat box. Hearing none, Ms. Trainor announced it was time for the Board to make comments with respect to this application.

Mr. Stenson stated that the way Ms. Nuccio outlined the program, covers all the bases and that the house cannot be seen behind the trees. Mr. Stenson stated that he thinks that this does solve the problem and has no problem with it.

Mr. Maclearie stated that he thinks it is very positive for the golf club and for the Danas. Mr. Maclearie asked Ms. Nuccio if she said there was going to be mesh on the chain link fence. Ms. Nuccio replied, yes.

Ms. Brisben stated that the Board already has Exhibit A-1 but needs the photos if Ms. Nuccio could get them to the Board. Ms. Brisben stated that she thinks it's great and would be for approval.

Ms. Trainor stated that she is a little on the fence with respect to the application. Ms. Trainor stated that a 275-foot long tennis fence really does not reflect the purpose and intent of the Tennis Fence Ordinance. Ms. Trainor stated that she does recognize the history here and stated that the trees are gorgeous, continuing by saying that there are no objectors present, so she considers all those things with respect to the application.

Ms. Trainor asked Mr. Clark if he could list any conditions. Mr. Clark answered that the only conditions, besides the regular ones that the Board always has, is that the applicant will submit all Exhibits that were marked tonight. Mr. Clark stated that Mr. Henderson also represented that he would submit a copy of the settlement agreement for the Board's file.

Ms. Trainor stated she would ask for a motion to approve or not approve this application. Ms. Brisben made a motion to approve, seconded by Mr. Stenson and followed by a roll call:

Ayes: James Stenson, Corinne Trainor, Jim Maclearie, Karen Brisben, Andrew Chermack

Noes: None

Not eligible to vote: Mayor Nicol, Councilman Garruzzo, Glenn Miller

Ms. Trainor stated to Mr. Henderson that all of the members approved his client's application, congratulated and thanked him for his time.

Ms. Trainor asked if there was any other business that anyone would like to present to the Board.

As there was no other business to come before the Board, Ms. Trainor announced that the next meeting is scheduled for Tuesday, March 9th, 2021 at 6:00 PM and will be virtual. Ms. Trainor stated that to all those in the public who do not have the capability of speaking through their computer, and wish to comment on any agenda, may do so in writing by regular email only to townhall@brielleboro.com. Ms. Trainor continued by saying that these comments should be specific as to what item the comment applies to and must be received at least 4 hours before the scheduled meeting time and shall be read into the Record and the conclusion of the public comment portion of the meeting. Ms. Trainor stated there are no such letters tonight so she would not be reading any.

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Ms. Trainor asked for a motion to adjourn. Mr. Stenson made a motion, seconded by Ms. Brisben, and unanimously approved by the Board, all ayes.

Ms. Denise Murphy, Recording Secretary

Approved: March 9th, 2021