

March 9th, 2021

BRIELLE PLANNING BOARD
TUESDAY, MARCH 9th, 2021

The Regular Meeting of the Brielle Planning Board was held on Tuesday, March 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 Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, M Jim Maclearie, Glenn Miller, Chris Siano, Karen Brisben, Andrew Chermark

Absent- Madeline Ferraro

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

A motion was made to approve the Minutes of February 9th, 2021 this done by Ms. Brisben, seconded by Mr. Stenson, and approved by unanimous vote, all ayes.

OLD BUSINESS:

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

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF BOJAC REALTY, LLC SEEKING MAJOR SUBDIVISION APPROVAL AND VARIANCE RELIEF FOR PROPERTY LOCATED AT 619 RANKIN ROAD WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 64.06, LOT 18

WHEREAS, Bojac Realty, LLC (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking major subdivision approval and variance relief for the property located at 619 Rankin Road in Brielle which is identified on the Borough tax map as Block 64.06, Lot 18 (the “Property”); and

WHEREAS, the Applicant is the contract purchaser of the Property and has submitted this application with the owner’s consent; and

WHEREAS, the Property is a 172,025 square foot lot which currently contains one (1) single family two-story residential dwelling with a detached garage, green house, various other accessory structures, and a pond; and

WHEREAS, the Applicant is proposing to subdivide the Property into five (5) oversized lots to be known as Lots 18.01, 18.02, 18.03, 18.04, and 18.05; and

WHEREAS, the Applicant is proposing to relocate the existing two-story residential dwelling on the Property, to retain the existing lined pond and to integrate it into the proposed stormwater management system for the Property, to demolish the detached garage, green house, and other accessory structures, to subdivide the Property into five (5) oversized lots (one of which will be used as the relocated location for the two-story residential dwelling on the Property), and to construct four (4) new single-family dwellings along a new street to be constructed with typical facilities and utilities, all as described more fully within the application; and

WHEREAS, the Property is located within the Borough's Single Family R-2 Residential Zone (the "R-2 Zone"); and

WHEREAS, the proposed subdivision creates conforming residential uses for the R-2 Zone, but the Applicant's plans propose non-conforming conditions that will require variance relief from the requirements of the Borough Code; and

WHEREAS, the Applicant amended its plans a number of times while the application was pending to address concerns raised by the Board and the public and such amendments changed the variance relief sought by the Applicant;

WHEREAS, as a result of these amendments, the Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type):

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(a) Minimum lot depth (proposed Lot 18.05)—125 feet required; **approximately 61.32 feet proposed;**

(b) Maximum lot width (proposed Lot 18.01)—125 feet required; **approximately 100 feet proposed;**

WHEREAS, the Applicant submitted the following documents in support of its application:

(a) Plat of Major Subdivision prepared by William H. Doolittle, P.L.S. dated May 29, 2019 (last revised July 21, 2020);

(b) Outbound and Topographic Survey prepared by William H. Doolittle, P.L.S. dated August 20, 2019;

(c) Preliminary and Final Subdivision Plans (10 sheets) prepared by Jeffrey J. Carr, P.E., P.P. dated May 29, 2019 (last revised July 21, 2020);

(d) Stormwater Management Report prepared by Jeffrey J. Carr, P.E., P.P. dated May 29, 2019 (last revised July 21, 2020);

(e) Environmental Impact Statement prepared by Jeffrey J. Carr, P.E., P.P. dated November 22, 2019;

(f) Application package which includes a Zoning Permit denial letter from the Zoning Officer; and

WHEREAS, the Board was also provided with letters dated September 24, 2019, January 6, 2020, and July 28, 2020 prepared by the Board's Engineer and Planner Alan Hilla of H2M

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Associates, Inc. providing a technical review of the application and all amendments to the application; and

WHEREAS, the Board was also provided with a letter dated December 7, 2020 from the Brielle Environmental Commission with its recommendations regarding the application; and

WHEREAS, the Planning Board held hearings on this application on November 12, 2019, January 14, 2020 (no testimony provided), October 13, 2020, November 10, 2020, December 8, 2020, January 12, 2021, and February 9, 2021, and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1 colored rendering of site;
- b. Exhibit A-2 aerial photo of site;
- c. Exhibit A-3 sheet 3 of site plans;
- d. Exhibit O-1 aerial photo of tree line; and

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

November 12, 2019 hearing

C. Keith Henderson, Esq. came forward to present this application on behalf of the Applicant and said that he had two witnesses, Jack Van Horne, one of the owners of Bojac Realty, and Jeffrey Carr, Engineer. Before going any further, Mr. Bernard Reilly, Esq. came forward as an objecting attorney, he is representing Kenneth & Hope Olenyik of 821 Scott Road. He said there are a number of deficiencies with the application and he did not see why the Board should go forward; there is no lighting plan along with a whole host of other deficiencies; he said the application is not complete and why would the Board even hear this? He submitted that the Applicant should be made to conform. Mr. Condon said this is going to be a multi-month meeting and the Applicant will have to address these things as the hearings proceed, the Board will go from there.

Mr. Henderson agreed with the Board Chairman, this property has been vacant for a number of years and they want to see what the Board might want to have here as far as lot coverage. They have a couple of ideas on what to present and have gone from as many as 6 lots to as little as 4 lots before submitting this application seeking subdivision approval for 5 lots. The original Rankin Road Farm was done by the Goldthwaites and the applicant wants to save the home, if they reduce this application to 4 lots then the home will have to be taken down.

At this time Mr. Van Horne of Bojac Realty testified. He stated that Bojac has been working on this matter for 1 ½ years and that it has looked at different configurations; this is a beautiful property and a lovely old farmhouse. They thought of dividing this up into 6 smaller lots and they wanted to save a lot of trees, then they thought if they make 5 lots, they can save more trees. If they can have 5 lots, they will relocate the existing home and have looked into the costs of such relocation; he said it would be cheaper to demolish the home but they will commit to keeping the home if they can obtain approval for a 5 lot subdivision. If they can only have 4 lots, however, then the existing home will have to be demolished as it would not be financially feasible to keep it if there were only 4 buildable lots. Mr. Henderson asked if they have plans for construction of the homes and Mr. Van Horne said one of the partners wants to buy one lot and build on it, the rest will be sold.

Mr. Langenberger was concerned about the existing farmhouse, it had water damage and he wondered if it was even feasible to consider moving it. Mr. Van Horne said the water leak was repaired and mold remediation was done so the existing home is now habitable and can be moved. Councilman Garruzzo asked if the home cannot be kept for economic reasons if only 4 lots are approved rather than the 5 lots being sought through this application. Mr. Henderson said it is easier and cheaper to demolish the existing home, but they will keep it if they can obtain approval for 5 lots. Mr. Van Horne added that if they divide the property into 4 lots they would have larger homes that would be built and he did not think they would fit in the neighborhood, if there are 5 lots the homes that will be built will be more consistent with the other homes in the area.

Mr. Reilly asked where the farmhouse would be relocated to; Mr. Van Horne showed him, on a colored rendering of the site, that it would be relocated to the rear of one of the lots and commented it will cost about \$100,000 to move. Mr. Reilly asked if there was a written estimate and Mr. Van Horne said no, he was verbally told this estimate by a partner who got this from an expert on moving homes. Mr. Reilly asked if there was a written estimate on this and the answer was no. He then asked when the last time was the home was inhabited and the answer was 2-4 years ago, it has been vacant since Mr. Goldthwaite died. There are caretakers there, Mr. Van Horne believed they have quarters above the barn/garage area, that is where they were living when he was there 4-5 months ago. Mr. Reilly asked if Bojac will be building the homes or just selling the vacant lots and Mr. Van Horne said both, Mr. Perry Boquel, one of the partners, would like to construct a home and they may market the other lots as vacant lots or they may build homes on the other lots and then sell them. Mr. Reilly asked about the price range for the lots and Mr. Van Horne said the vacant lots would be priced from \$550,000 to \$700,000 as they are different in size, if there are homes built on the lots first then the prices would range from \$950,000 to \$1.2 million. Mr. Reilly asked if the farmhouse was going to be restored and Mr. Van Horne said yes. Mr. Reilly then questioned if the home can be moved at all and was told one of the partners looked into it and said it can be moved. Mr. Reilly asked if a structural engineer looked at whether the home can be moved, and the answer was no. Mr. Reilly asked if Bojac Realty has developed any other properties and Mr. Van Horne said yes, although not of this size.

Mr. Kenneth Lackey, Esq. then came forward as another objecting attorney, he is representing Emily Lackey and had questions as well on the existing home. Mr. Van Horne said they hope to save the entire home, but they may have to lose the patio. They plan to build a new

foundation on another lot then lift the existing home and move it, he did not know if it would be moved by crane or not but said his partner, Perry Boquel, can testify better on this as he will be the General Contractor; the work will be sub-contracted out and added they will have insurance on this for whatever amount that it makes sense to have.

Mr. Reilly asked if there are underground tunnels on this property and Mr. Van Horne said no but there are extensive rooms in the basement, he has not found any tunnels. Mr. Lackey asked if there are underground storage tanks and have they been removed, Mr. Van Horne did not know.

At this time Mr. Henderson said Mr. Lackey is representing his wife and, as Mr. Boquel will have to testify to answer his questions, he wanted Mrs. Lackey to be produced by Mr. Lackey to testify. Mr. Clark felt that attorneys can represent objectors without producing the objectors to testify and that it is up to the objectors if they want to testify or just want to question the applicant's witnesses.

Mr. Robert Houseal of the Environmental Commission then came forward and he asked if Mr. Van Horne read the Environmental Commission report and the answer was yes, Mr. Van Horne read it then called his engineer and asked him about it. Mr. Houseal asked if they were aware the stream that runs through this property is known as Rick's Run and Mr. Van Horne was not aware of that name. Mr. Houseal then asked about the concrete structures in the stream and Mr. Van Horne was not aware of that either but said they have applied to the DEP and will comply with the DEP's requirements for the project.

At this time, the hearing was opened to the public for questions to Mr. Van Horne and Faith Jones of 812 Schoolhouse Road came forward and was sworn in, the side of her home is on Rankin Road and asked what size the lot is that the home will be moved to? Mr. Van Horne answered 31,652 square feet or 7/10 of an acre. Ms. Jones said her lot is 100 x 125 and would the home being moved fit in, Mr. Van Horne said the lot they will create is more than double the minimum required. She then asked why they are making lots less size than required and Mr. Van Horne explained they are creating a cul-de-sac, so the lots are narrower in the front. Ms. Jones said there is no cul-de-sac there now so why are they asking for less; Mr. Van Horne said the Engineer can address this, but it has to do with the way the lot depth is measured.

Next to come forward was Jeniene Stango of 620 Rankin Road, who was sworn in, and questioned the statement that they can only save the home & barn if they have 5 lots; Mr. Henderson corrected her and said they are not saving the barn. She then asked for clarification of not having only 4 lots and Mr. Van Horne said it is not economically feasible to make only 4 lots and to still save the existing home and if there are larger lots there will be larger homes. Mrs. Stango felt that more homes will mean more money and also questioned the lot sizes. Mr. Van Horne showed her the configuration of the lots on the colored rendering on the easel and said the engineer can testify on this; he agreed the lots are an odd shape. Mrs. Stango asked again for confirmation that 4 lots are not financially feasible and Mr. Van Horne said yes.

Mr. Richard Curran of 826 William Drive came forward and was sworn in. He wanted to know if any other applicants are going to occupy a home here and Mr. Van Horne said yes, Perry Boquel will. Mr. Curran then asked if a traffic study was done, and the answer was no.

Mr. Kevin Carton of 826 Scott Road then came up to the front and was sworn in. He wanted to know why they were going to eliminate the trees in back of Scott Road, they are holly trees that provide a buffer. Mr. Van Horne said they are 100 feet from the property line and are inside the lots. Mr. Carton did not agree and had an aerial photo, from Google maps, that showed the tree line. That photo was marked into evidence as Exhibit O-1. Mr. Carton asked what position the road where the trees are and not on where the grassy area is that is open space? Mr. Van Horne said he would defer this answer to the Engineer; they want to save as many trees as they can, but he couldn't address this question from Mr. Carton. Mr. Carton wanted to know if the berm that buffers his property will be taken away and Mr. Horne could not answer that either. Mr. Carton then asked if there is asbestos in the existing home and Mr. Van Horne said he did not know.

Next to ask questions was Danial Burzon of 828 William Drive who was sworn in. He asked about the 50-foot trees by William Drive, and will they be removed? Mr. Van Horne answered they would be taken down; they are 100 feet in on the property and are where the homes will be built. He then asked if the greenhouse is being taken down and the answer was yes; Mr. Burzon then asked for the reason that is being razed and Mr. Van Horne deferred that answer to the Engineer or Mr. Boquel, the builder.

Marybeth Kelly of 823 Post Road was next to be sworn in and wanted to know the cost per pupil for Brielle; Councilman Garruzzo answered and thought it was \$13,000 or so per child for Manasquan High School. Ms. Kelly then wanted to know how much of an impact these homes will have on kids coming in; Mr. Van Horne said the taxes on these new homes will cover this. Ms. Kelly then wanted to know if a traffic study is going to be done, the traffic now is absurd; Mr. Van Horne said that is up to the town. Mr. Condon commented the Planning Board has not yet heard from the Engineer on this project. Ms. Kelly felt that traffic has a lot to do with this application and Councilman Garruzzo said the Board is not there as yet; Mr. Condon said her question was noted.

Tom Beaton of 623 Rankin Road came forward and was sworn in. He wanted to know how large the site is and was told 3.9 acres; Mr. Beaton wanted to know how much is wetlands. Mr. Van Horne said there is a 50-foot buffer from the stream, and he would defer any other information about wetlands to his Engineer. Mr. Beaton commented they are taking one lot and making it five lots, do they need a CAFRA permit? Mr. Van Horn again deferred to his Engineer.

As there were no other questions to Mr. Van Horne that portion of the hearing was closed. Mr. Henderson said his next witness is the Engineer, it was discussed and decided to close the hearing for this evening and continue it at the next Planning Board hearing scheduled for Tuesday, December 10th at 7:30. Before adjourning the colored rendering of the site that was referred to during the evening was marked as Exhibit A-1 and Mr. Condon reminded the entire audience that the plans and maps are available for inspection at the Borough Hall during the business day.

January 12, 2020 hearing

No testimony was provided as the Applicant chose to re-notice the hearing as a result of objections raised by members of the public to the sufficiency of the notice provided by the Applicant.

October 13, 2020 hearing

Ms. Trainor announced that around 3:30 p.m. the Planning Board received correspondence from the Law Office of Kenneth Lackey, LLC. Ms. Trainor asked Ms. Brisben if this had been made available to the Board members. Ms. Brisben responded yes it had gone out to the Board members. Ms. Trainor asked Mr. Henderson if this was his application. Mr. Henderson responded yes it was.

Ms. Trainor reminded everyone from the public if they wish to speak during public questions or comments to enter their name in the chat and they will be addressed in the order which they are received. She reminded the public that called in that they would be heard after the folks who entered their name in the chat.

Ms. Trainor asked Mr. Henderson to remind everyone where they were with the application. Mr. Clark asked to interrupt, he addressed Mr. Chermak. Mr. Clark told Mr. Chermak if he listened to the other recorded meetings that have occurred already for this application, then he would be able to participate with this application. Mr. Clark suggested the Board address some of the issues in Mr. Lackey's letter including the jurisdictional issue before going forward on the merits of the application. Ms. Trainor agreed with Mr. Clark and wanted to get a sense of what had already occurred with the application. Ms. Trainor stated Mr. Lackey had the opportunity to ask questions of prior witnesses and the recent letter is supplemental, though she wanted Mr. Henderson to address this.

Mr. Henderson responded he could address the question in two different ways. Mr. Henderson continued there has been a prolonged period because there were objectors. Mr. Henderson explained one of the principals in the organization is planning to build a home in the development. Mr. Henderson continued they want to address the property owners concerns and complaints. Mr. Henderson stated he feels they have addressed and resolved all the issues. Mr. Henderson stated the plans are significantly different and they will explain the differences and respond to Mr. Hilla's review letter. Mr. Henderson stated according to Mr. Hilla's letter, the applicant is down to one variance.

Mr. Henderson responded to the letter from Mr. Lackey. Mr. Henderson testified they have several copies of the application on file and they are signed, and he stated that the Board would not have allowed the application to proceed if the application had not been signed. Mr. Henderson continued the second issue raised was the notice. Mr. Henderson said in land use law, you do not want to omit possible variances when making the notice. Mr. Henderson testified they noticed with

several possible variances. He continued there is a lot of case law on what constitutes a proper notice, and the statute is vague, stating the notice must name the nature of the matters to be considered. Mr. Henderson cited Case 420 New Jersey Super 193, an active case from 2011, and several others. Mr. Henderson stated under case law you do not have to address the individual variances. Mr. Henderson felt they have met all the jurisdictional requirements and should proceed.

Ms. Trainor stated the Board would hear from Mr. Lackey and then Mr. Clark. Before proceeding, Ms. Trainor asked Mr. Henderson who is Mr. Steven Goldthwaite, referenced in Mr. Lackey's letter. Mr. Henderson replied Steven was the owner at the time of the application.

Mr. Lackey was asked by Ms. Trainor to share with the Board his jurisdictional concerns. Mr. Lackey started with the signed application, stating the copy the public had access to was not signed by any member of Bojac. Next, Mr. Lackey spoke of the notice issue. He continued the public is required to be clearly noticed on what is in the application and he felt the notice was vague, ambiguous, and subject to interpretation. Ms. Trainor gave Mr. Henderson a chance to respond to Mr. Lackey's comments. Mr. Henderson reiterated he did not have to give every variance according to case law. Mr. Henderson thought the important issues had been noticed properly.

Ms. Trainor asked Mr. Clark to advise the Board. Mr. Clark started with the signature issue; he stated the Board would not process an application unless it was signed by the applicant. Mr. Clark stated he had a signed copy, and the law states the owner at the time must sign off on the application. Mr. Clark added the application states Mr. Goldthwaite was the consenting owner and not the applicant which is required. Mr. Clark said that in terms of the notice, the application had been heard several times, Mr. Lackey had appeared at the previous meetings and questioned witnesses and Mr. Lackey discussed there may be a discrepancy in the variances noticed, which those variances may not even be needed anymore. Mr. Clark stated his view was the notice was done properly and there is no jurisdictional issue. Ms. Trainor asked Mr. Hilla if he had any information to believe the application was not signed. Mr. Hilla responded no he believed they were signed. Ms. Trainor asked Mr. Clark how the Board should proceed with the jurisdictional issue decision, as Chairperson of the Board would Ms. Trainor make the decision or by vote from the Board. Mr. Clark advised as Chair, Ms. Trainor would be the one that would make decisions about evidence and about proceeding, or not proceeding with the application. Ms. Trainor testified she accepted Mr. Hilla's statement that the application he has on file is signed and Mr. Clark's legal analysis that the notice provided by the Applicant is sufficient. Ms. Trainor thanked Mr. Lackey for his letter and decided the Board would proceed.

Mr. Henderson introduced Mr. Jeff Carr as his first witness. Mr. Carr was sworn in by Mr. Clark. Mr. Carr stated he was a principal with the firm Lindstrom, Diessner, and Carr, P.C and a Licensed Professional Engineer and Licensed Professional Planner in the State of New Jersey. Ms. Trainor stated that the Board accepts Mr. Carr's credentials and that they qualify him as an expert in those areas. Mr. Henderson asked Mr. Carr if he was in receipt of Mr. Hilla's most recent review letter. Mr. Carr stated that he was. Mr. Henderson asked Mr. Carr if Mr. Hilla's letter with

description of the property accurate. Mr. Carr stated the Mr. Hilla's letter stated that there were five oversized lots, much larger than the minimum required and that the proposed new street is a typical roadway with typical facilities and utilities, so there was nothing out of the ordinary except that these are oversized lots. Mr. Henderson asked Mr. Carr if he agreed that a variance is required for lot 18.05 where 125 feet is required and approximately 61.32 feet is proposed. Mr. Carr responded that he would describe this as a technical variance. Mr. Carr continued by saying that in a sense when you look at definitions, it may appear to be a variance situation but when you look at the shape and size of lot 18.05 it is somewhat of an odd shaped lot because of the configuration of the existing property that narrows down at Rankin Road which he would kind of call a tail on one portion of the lot that borders Squan Brook Way and touches Rankin Road. Mr. Carr stated that on a practical sense in his estimation the lot is extremely deep and more than 125 feet when measured off Squan Brook Way, it is roughly 160 feet deep so it's far in excess of 125 feet, by definition. Mr. Carr stated that in a practical sense, the buildable area and where the house will be put hasn't changed. Mr. Henderson asked Mr. Carr to address Mr. Hilla's comment about street lighting. Mr. Carr responded that there are three lights proposed shown on Plan Sheet, Number 5 of 10, one at the end of the cul-de-sac, one at the middle of the road and one at the entrance of the road. Mr. Carr stated the lights are lighting up the areas that are most critical on a residential street. Mr. Carr testified that the lighting is adequate for this development. Mr. Henderson then asked Mr. Carr to comment on shade trees. Mr. Carr stated that they would be providing street trees along the road, a very simplistic plan as landscape plans go and in accordance with the law, professional landscape engineers could provide that on their plans.

Mr. Henderson asked Mr. Carr to explain what would happen with the utilities. Mr. Carr responded there is an existing pole in the back which is not required for the proposed plans. Mr. Carr continued the utilities would be underground, they would work with the utility companies and the existing pole would be removed unless it is serving Lot 16.

Mr. Henderson asked Mr. Carr if the sight distances conform with AASHTO. Mr. Carr responded yes, they do conform with the American Association of State and Highway Traffic Officials, whose standards are to ensure safe distances when turning in and out of the development.

Mr. Henderson testified in all his years, he had never been requested to supply a report from a traffic expert for new houses in a suburban area, but if the Board requests it, he will bring an expert to the next hearing. Mr. Trainor stated the Board would take it under advisement.

Mr. Henderson asked Mr. Carr to respond to item "G" in Mr. Hilla's letter. Mr. Carr stated there were two items, one the curb detail which the information is located on sheet nine of ten in the upper left-hand corner, standard detail for Belgium block curb. Mr. Carr continued the other item was additional information on the various swale components which have been removed since the original plans.

Mr. Henderson stated Mr. Hilla wanted a response to I, 4 and 6 of the Stormwater Management report and Mr. Henderson felt the most important item was who would be responsible

for managing and maintaining the stormwater management system. Mr. Henderson said he would prepare and submit to the Board attorney and engineer for approval, that a Homeowner's association which would be responsible to manage and maintain the system so the Borough would not be responsible. Mr. Henderson requested they receive submission waivers for the couple of items left as a condition of post approval. Ms. Trainor asked Mr. Henderson which paragraph items he was referring to and Mr. Carr clarified H1, H4 and H6 on page 5. Mr. Henderson asked Mr. Carr to address item "I". Mr. Carr responded the storm drainage system will be a part of the Homeowner's Association. Mr. Carr explained they were using storm tech system, which was high density polyethylene pipe, pipes that have been used in shopping centers and under pavement.

Mr. Henderson addressed Ms. Trainor pointing out the remaining items up to page 8 of 9 have been revised to comply with Mr. Hilla's comments. Mr. Carr was asked to discuss the comment on the bottom of page 4. He stated this was five single family homes, a small cul-de-sac on large lots, grading and earth work would need to be done to ensure proper drainage. Mr. Henderson asked Mr. Carr if he engaged a CAFRA expert and Mr. Carr responded yes, there are wetlands and buffers, so an environmental consultant was retained. Mr. Carr testified the consultant determined no other permits were required based on the plan.

Ms. Trainor explained the Board has a forty-five-minute limit per application, the Board allows the testimony from the applicants, followed by questions from the Board and public, the Bojac applicant has run out of time and will be heard again next month.

November 10, 2020 hearing

Ms. Trainor announced that the Board would hear the continuation of hearing for Major Subdivision for Block 64.06, Lot 18, 619 Rankin Road, owned by 619 Rankin Road, LLC (applicant Bojac Realty), to create 5 buildable lots.

Ms. Trainor said that she would like to note that this afternoon, on the day of the Board meeting, like last month, the Board has received a late submitted correspondence from the Law Office of Kenneth J. Lackey LLC., counsel for an objector with respect to this application, dated November 10th, 2020 and for the record, the correspondence has been circulated to the Board and has been reviewed. Ms. Trainor stated that it would make sense to hear from Mr. Lackey before going forward.

Mr. Kenneth Lackey said that he will stand by the argument in the letter and added that there were exhibits that the expert, Mr. Carr, was referring to that should be visible and were not and he thinks that this prevented the public from being able to understand the application and follow along with the expert's testimony. Ms. Trainor gave Mr. Keith Henderson, attorney for applicant, an opportunity to respond.

Mr. Henderson began by stating that before he addressed the letter, he would like to correct a statement he made at the last hearing. Mr. Henderson stated that he had stated to the Board that

the letter from Mr. Lackey was received at 3:30 but it was forwarded from the Board's attorney. Mr. Henderson stated that his computer records show that it reached his office after closing hours at 5:30. Mr. Henderson stated that if he had not gotten it from the Board attorney, he wouldn't have even known about it and that it was an effort to delay and it cost the applicant a lot of time. Mr. Henderson stated that he does not think there is any merit to it and it's very clear that the applicant has the right to present the case and if Mr. Lackey has an objection, he can object. Mr. Henderson asked that this letter be thrown out and disregarded completely.

Ms. Trainor stated that because this is an evidentiary issue, this is not submitted to the Board and that the Chair would make the call. Ms. Trainor thanked Mr. Lackey for the correspondence but noted that his correspondence, like last time, was received just hours before this meeting and stated that the Board needs more time and asked Mr. Lackey going forward to please not do that.

Ms. Trainor stated that Mr. Lackey's objection, with respect to the entirety of the testimony by the applicant's engineer, Mr. Carr, is overruled and that Mr. Lackey and the public have the right to cross-examine the applicant's witnesses. Ms. Trainor stated that there is an order of procedure and that Mr. Henderson presented Mr. Carr's testimony last month. Ms. Trainor stated if Mr. Henderson didn't see fit to mark exhibits during that testimony, that's his prerogative, it's his case to present. Ms. Trainor added that it is also Mr. Lackey's prerogative to make objections to evidence. Ms. Trainor noted that she could see that Mr. Lackey is signed in using a computer and if he isn't open to interrupting, he could use the chat feature to object or voice an objection. Ms. Trainor stated that at this point, to the extent that Mr. Lackey didn't waive his objection at the time that he has no harm either, because he can certainly mark exhibits, should he so choose tonight to cross-examine Mr. Henderson's witness.

Ms. Trainor noted that there is another issue Mr. Lackey raised in his letter concerning a procedural issue with respect to the Minutes. Ms. Trainor stated that to be clear for the record, Mr. Lackey argued that the Minutes because they are in draft form are not available on the Planning Board website and that he had objected to that. Ms. Trainor stated that those draft Minutes are not public until the Board reviews and approves them, and that the Board has done that by motion tonight and they will now be made part of the public view.

Ms. Trainor reminded the Board and the public that this application was first heard November 12, 2019 and that there was no testimony again until October 13th, 2020 and that there are Minutes of those proceedings so the Board and the public can refresh their memories.

Ms. Trainor announced that it was now time for questions from the Board, with respect to Mr. Henderson's witness, Mr. Carr.

Ms. Trainor asked Mayor Nicol if he had any questions and he stated that he did have a question about the water management program that has been submitted. Mayor Nicol stated that it is rather complicated and presented with volumes of material. Mayor Nicol suggested that if and/or

when the Board approves this application, they could put the caveat in there that the water management system meets all criteria of the DEP. Mayor Nicol stated that he believed this would protect and be beneficial for the Borough. Mayor Nicol stated that in the past the Borough has had developments occur upstream and created a lot of havoc for the Borough with sedimentation and run off into Rick's run.

Mr. Carr replied that he would agree with that as a condition of approval and that they would provide any backup documents to Mr. Hilla, proving that it meets those criteria for the DEP, Stormwater Management.

Mayor Nicol had no other questions at this time. Ms. Trainor then asked Ms. Brisben if she had any questions for Mr. Carr. Ms. Brisben stated that she did and referred to the first page of Mr. Hilla's report, which states that the applicant is going to demolish the detached garage, greenhouse and various other accessories but on Mr. Carr's site plan it shows that they are to remain. Ms. Brisben questioned whether they are to remain or be taken down.

Mr. Carr responded that the accessory structures and garage on the right side will be demolished. The greenhouses, planter areas, small shed, and a garden on lot 18.03 that will remain, the existing dwelling will also remain and be relocated to one of the lots.

Ms. Brisben then stated to Mr. Carr that it looks like that there is an encroachment from the driveway to Rankin Road on sheet 4 of 10. Ms. Brisben asked Mr. Carr to address this.

Mr. Carr asked Ms. Brisben if she was looking at the shaded area that looks like stones to which Ms. Brisben replied, yes. Mr. Carr then stated that this is the existing driveway and will be removed.

Ms. Brisben asked Mr. Carr if all the trees were going to be removed. Mr. Carr replied that to the extent that they can save the trees, they will. Mr. Carr stated that there are a couple of trees that are in the roadbed that will be removed. Ms. Brisben stated that she had no further questions.

Having no further questions, Ms. Trainor asked Mr. Stenson if he had any questions for Mr. Carr and he stated that he did. Mr. Stenson asked Mr. Carr if the number of homes that are going to be built are the same as originally presented. Mr. Carr replied that this is correct. Mr. Stenson then asked Mr. Carr in the one that says there will be a building moved, is that in the original program. Mr. Carr replied, yes, there are five homes, one of which is an existing home which will be relocated to lot 18.02.

Having no further questions, Ms. Trainor asked Mr. Miller if he had any questions to which he replied yes. Mr. Miller stated that he is still concerned with the new proposed road, Squan Brook Way. Mr. Miller stated that he is concerned about visibility coming around that corner. Mr. Miller asked Mr. Carr if the plantings and stuff can be cleared out, that this will open and cause better

visibility for in and out of the driveway. Mr. Miller asked Mr. Carr how the lighting in the driveway is going to affect the current residents on Scott Road.

Mr. Carr responded that there are shrubs and undergrowth that will be cleaned out as part of the application with the construction of the new road, so sight visibility will be improved. Mr. Carr stated that they did check it for the AASHTO standards, and the sight distances do meet the AASHTO standards for safe sight distances. Mr. Carr stated that lighting is low level and that they are proposing three lights in the subdivision, one at the intersection, one at the cul-de-sac and one approximately midway. Mr. Carr stated the lights are generally low, colonial type, low lighting to define where the roadway is.

Mr. Miller asked Mr. Carr if the greenhouse that is remaining has facilities such as bathrooms, water, sinks, anything of that sort and how the regrading and new drainage will be handled. Mr. Carr answered that to his understanding, it is just a greenhouse, but he has never been in it, so he does not know.

Having no further questions, Ms. Trainor asked Mr. Maclearie if he had any questions for Mr. Carr to which he stated he did. Mr. Maclearie began by asking Mr. Carr if there will be a Homeowner's Association responsible for the water drainage.

Mr. Carr replied that all of the storm drains, which are within individual lots, can be held by a Homeowner's Association other than an inlet at the end of the cul-de-sac to pick up the roadway drainage, there is no drainage within the right of way. Mr. Maclearie asked Mr. Carr if the greenhouse would be impervious because it is a temporary structure. Mr. Carr replied that there is a small greenhouse and a small shed that would be impervious, but they don't affect lot coverage or building coverage. Mr. Carr stated that everything else in that area is loose gravel for walking between the planting beds, the shaded areas are the gravel walk areas and the rectangles are open landscape beds. Mr. Carr stated that this is a private garden owned by Lot 88.03.

Having no further questions, Ms. Trainor asked Mr. Siano and Mr. Chermark if they had questions for Mr. Carr which all replied that they did not.

Ms. Trainor asked Mr. Carr if there has been a traffic study. Mr. Carr replied that there has not been. Ms. Trainor then asked Mr. Carr if he could give the reasoning for that and why the Board should approve the application without one.

Mr. Carr replied that there are numerous roads like Rankin Road, other cul-de-sacs in the area. Mr. Carr stated that this is a cul-de-sac that will serve five dwellings and is not a traffic generator. Mr. Carr stated that as indicated on the plans, the applicant meets the AASHTO standard. Mr. Carr continued by saying the roadway is a conforming township road with adequate slopes, drainage and curving. Mr. Carr stated that he did not see the need for a traffic report.

Ms. Trainor asked Mr. Carr what kind of development or subdivision would require a traffic report. Mr. Carr responded that generally commercial, high generator commercial and large developments would.

Ms. Trainor asked Mr. Carr to confirm that when he is referring to AASHTO, he is referring to the American Association of State Highway Officials and that the standards are to ensure safe distances when turning in and out of a development. Mr. Carr replied that this is correct and that there are no sight distances shown on the plan. Mr. Carr stated that he believed that in Mr. Hilla's report it specifically states that it is designed in accordance with the AASHTO standards.

Ms. Trainor asked Mr. Hilla if this is stated in his report. Mr. Hilla responded that to an extent he does say this in his letter but looking at the AASHTO plan, there are a couple of things he's concerned about that he may have not picked up in his first review. Mr. Hilla stated that the AASHTO issues are the sight distance that has to do with stopping distance from the time a user is driving along Rankin Road, sees a vehicle pull out and has the available stopping distance to avoid a collision. Mr. Hilla continued that the posted speed for this road is 25 miles per hour and the stopping distance by the chart in AASHTO is 150 feet, however not everyone drives 25 mph on this road and it is a well-known fact that speeding is an issue and stopping distance is very important. Mr. Hilla expressed his concerns with the site triangle but stated he is not an expert and is not comfortable and has been clear about having some traffic testimony to satisfy the safety of that intersection, primarily because of its location of the curve.

Ms. Trainor asked Mr. Carr if he is a traffic expert. Mr. Carr responded that although he has forty years of experience doing site plans, and subdivisions, he does not profess to be a traffic engineer.

Ms. Trainor stated that Mr. Carr was qualified as an engineer, for purposes of the hearing, and asked Mr. Carr, in this capacity, if he is qualified to, as an engineer, determine whether the sight lines that Mr. Hilla has compliance concerns with respect to the AASHTO standard. Mr. Carr replied that he certainly is and that he doesn't profess to be a traffic engineer.

Ms. Trainor stated that she has no further questions and asked Mr. Hilla if he had any follow up questions. Mr. Hilla reiterated that he is not comfortable and is very concerned about the safety of this intersection.

Ms. Brisben stated that on page six on Mr. Hilla's report, Mr. Hilla states that the revised plans are using plastic pipe, plastic stormwater chambers, and plastic drain basins and has a concern for the suitability of this plastic piping. Ms. Brisben asked Mr. Carr to address this.

Mr. Carr responded that this is a manufactured pipe, a high-density polyethylene pipe typically used in shopping centers, large commercial sites, underneath pavement. Mr. Carr stated that it handles H 20 loading, which is tractor trailer loading and is a standard industry product that has been around for a number of years. Mr. Carr stated that this would be maintained by the

Homeowner's Association, all on individual lots. Mr. Carr stated that this is a type of pipe that allows it to be installed in stone beds that promotes recharge and groundwater recharge and filtration.

Ms. Trainor stated that Mr. Carr's mentioning of the Homeowners Association and the testimony with respect to its oversight of the water management issues and Mayor Nicol's concerns about that, brings to light whether the association is an insured and has the appropriate assets to indemnify the Borough to the extent that there are already stormwater issues. Ms. Trainor asked if Mr. Carr could comment on this to which he replied no, that sounds like a legal question. Mr. Carr stated that what he would say is that the stormwater system is relatively small, relatively low maintenance piping, the lower part of the system is recharge basins.

Ms. Trainor asked if anyone on the Board had any further questions for Mr. Carr. Mr. Miller stated that he had a question. Mr. Miller asked Mr. Carr on Lot 18.01, it looks like along the driveway out to Rankin Road there is a small strip of property, is this all on homeowner's property or is this the Homeowner's Association. Mr. Carr responded that this would be all Lot 18.01 and proposed to remain neutral. Mr. Miller asked if the Board could stipulate what is put in this space or how this is maintained. Mr. Hilla responded to Mr. Miller that one thing that could be considered would be a conservation easement and that would allow that strip of land to remain in the condition that it is in right now, keeping a future homeowner from clear cutting something that was intended by the Board to remain. Mr. Miller stated he had no further questions for Mr. Carr.

Ms. Trainor asked Mr. Garruzzo if he had any questions. Mr. Garruzzo asked Mr. Carr what the intentions were for the whole line from the back portion of the homeowner's on Scott Road. Mr. Garruzzo stated that it looked like there is 20-25 feet of greenery and shrubbery as a buffer zone to the road. Mr. Carr responded that it is 20 feet and at the request of the homeowners Squan Brook Way was shifted to the west for the approach of Scott Road as to keep a 20-foot strip there and the intent is it remain natural.

Ms. Brisben asked Mr. Henderson if he would confirm that every deed that is made for this subdivision will have a stipulation that they will be part of this Homeowner's Association. Mr. Henderson replied yes and in addition to that, there will probably be a not for profit corporation, bylaws, and deed restrictions that will deal with some of these issues. Mr. Henderson stated that all these documents regarding the Homeowner's Association will be submitted to the Board attorney for review, long before construction is started.

Ms. Trainor asked the Board if there were any other questions for Mr. Carr. Hearing none, Ms. Trainor announced it was time for the public portion of the question and answer.

Mr. Brian and Mrs. Desiree Carton residing at 823 Scott Road were sworn in by Mr. Clark. Mrs. Carton asked Mr. Carr what the concepts are to ensure that the current and future sightlines will not be blocked by landscaping, or additional fencing along the developments of 100

March 9th, 2021

feet of frontage. Mr. Carr responded that those lots could have deed restrictions which would maintain any vegetation within the site triangle. Ms. Trainor asked Mr. and Mrs. Carton if they had any other questions for Mr. Carr to which they replied that they did not.

Mr. Thomas and Mrs. Suzanne Beaton residing at 623 Rankin Road were sworn in by Mr. Clark. Mr. Beaton asked if the public could see the exhibits. Mr. Clark responded that so far, the applicant has only marked one exhibit, right at the very beginning of the hearing in November, which was a blow up of the site. Mr. Clark stated that he believes what is being referenced by this witness and by the Board members is the plans on file at the Borough Hall which can be seen, and a copy purchased by anyone. Mr. Clark stated that there is a way to have the plans shown on the screen if there is a question about a particular plan.

Mr. Beaton stated his property is Lot 16 joins 619 Rankin Road on three sides and is concerned about the negative impact on Lots 4 and 5. Mr. Beaton asked Mr. Carr if the applicant would be willing to agree to some conditions and also stated that he has been talking to Mr. Henderson. Mr. Henderson interjected that Mr. Carr would not be able to answer this and that he is aware of the conditions Mr. Beaton is referring to and that Mr. Henderson simply ran out of time sending an email to Mr. Beaton and tonight will have an agreement drawn up, agreeing to certain restrictions. Ms. Trainor asked if Mr. and Mrs. Beaton had any other questions for Mr. Carr, they replied they did not.

Ms. Trainor stated that this application has reached the 45-minute mark and will continue this application at the December meeting.

December 8, 2020 hearing

Ms. Trainor read the letter from Mr. Houseal, Environmental Commission chairperson. Ms. Trainor asked Mr. Henderson if he had seen the letter and Mr. Henderson responded he had received that afternoon and reviewed it. Mr. Henderson stated they could respond tonight or with a report. Mr. Houseal's letter strongly recommended the applicant confirm the generalized soil data used for the Stormwater Management Report dated 29 May 2019 Rev. 21 July 2020 and the applicant account for the deliberate strategy of stormwater infiltration.

Ms. Trainor then reminded the members of the public should they wish to be heard with reference to Mr. Carr, they would need to use the virtual meeting chat box and would be heard in the order received.

Ms. Trainor begin with Mr. Lackey who was set to ask questions of Mr. Carr at the last meeting before time ran out.

Mr. Lackey asked Mr. Carr if he authored the environmental impact statement dated 11/22/2019 and was it true and accurate. Mr. Carr responded yes.

Mr. Lackey asked if Mr. Carr did an investigation. Mr. Carr responded they had input from an environmental consultant, did some research and reviewed other documents. Mr. Lackey stated “you stated the proposed project will not generate any of the EPA measured air pollutants, carbon monoxide, nitrogen dioxide, ozone sulfur dioxide, or lead, therefore this project will not adversely impact the regional air quality” then asked Mr. Carr if that was his conclusion. Mr. Carr responded yes. Mr. Lackey asked Mr. Carr what was the factual basis for that conclusion? Mr. Carr responded it is a residential community and not a commercial type facility that would generate emissions.

Mr. Lackey asked if there were cedar trees on the property and Mr. Carr responded he was not sure. Mr. Lackey asked if Mr. Carr had walked the property and Mr. Carr responded yes. Mr. lackey asked Mr. Carr if his conclusion was no impact to the wetlands because of the project and Mr. Carr responded correct. Mr. Lackey asked for the factual basis for Mr. Carr’s conclusion. Mr. Carr responded it was his study opinion based on the design of the site and criteria by the NJDEP. Mr. Lackey asked what the criteria was. Mr. Carr responded there are regulations about the disturbance and impact of wetlands and buffers. He continued they were not disturbing the wetlands and they are meeting the NJDEP water quality standard so based on that criteria.

Mr. Lackey asked who the Environmental Consultant on the project was. Mr. Carr responded DuBois Environmental consultants submitted reports to the NJDEP.

Mr. Lackey asked what the impact to the wildlife would be at the site. Mr. Carr responded minimal impact as there are currently two buildings, a house, and a garage with a separate unit.

Mr. Lackey asked Mr. Carr if he was referring to the concrete pond as the previous disturbance to the wetlands buffer. Mr. Carr responded partly, also the walkways and greenhouses.

Mr. Lackey aske “In your environmental impact statement at section three entitled Zoning Review, you stay the proposed project will result in the minimal disturbance and minimal adverse environmental impacts to the site and surrounding area, Is that your conclusion.”. Mr. Carr responded correct. Mr. Lackey asked what was meant by minimal disturbance. Mr. Carr responded “There of course will be disturbance to the property as you would do on all residential construction. In my opinion, the construction of five homes on this property is generally a minimum amount of disturbance and is not a significant environmental impact.”

Mr. Lackey read section five entitled hydrology from the Environmental impact statement and asked if that was his statement and what was the basis. Mr. Carr responded yes, and the stormwater management systems are designed with the NJDEP regulations. Mr. Carr added there are a lot of design calculations that have been addressed.

Mr. Lackey asked if soil samples have been taken from the site for presences of oil. Mr. Carr responded no. Mr. Lackey asked if there was knowledge of underground storage tank. Mr. Carr responded no.

Mr. Lackey asked Mr. Carr other than referencing IT trip generation manual 10th edition, what investigation did he perform regarding traffic on Rankin Road. Mr. Carr responded he was confused by the question; the manual is the standard guideline for trip generation. Mr. Carr continued he draws his conclusions from the trip generation, site visits, and 40 years of experience. Mr. Lackey asked Mr. Carr for the basis of his conclusion on the minimal traffic impact and Mr. Carr stated he would repeat it again, the IT trip generation studies, familiarity with the area and years of experience. Mr. Lackey asked what an average daily trip was, and Mr. Carr responded a trip when you leave or arrive at your house, some houses have more or less but there are averages. Mr. Lackey asked Mr. Carr if he had dealt with a subdivision where there was a negative impact and Mr. Carr responded yes.

Mr. Lackey asked how many variances are being sought and Mr. Carr responded two and they are lot depth variance on lot 18.05 and lot width on lot 18.01. Mr. Lackey asked what is a “technical variance” and how does it differ from other types, quoting Mr. Carr from the October 13th, 2020 meeting. Mr. Carr responded different cases and extenuating circumstances on how you perceive the various shapes and sizes of properties and whether it visually meets the criteria. Mr. Lackey asked what it would take to eliminate the two variances. Mr. Carr responded you cannot eliminate them; they ride with the “mother lot”. Mr. Lackey asked if there was a hardship that necessitates the variances and Mr. Carr responded yes because of the existing conditions of the site.

Mr. Lackey asked if Mr. Carr if he analyzed the detriments of benefits to the Master Plan and what was his analysis. Mr. Carr answered he had not given planning testimony and he believed they would present a planner for additional testimony.

Mr. Lackey asked if Mr. Carr had analyzed the impact on nearby properties from moving the utility pole and where was it going to go. Mr. Carr responded it was going to shift down approximately 20 feet along the roadway and zero impact.

Mr. Lackey asked if the plan was to move or demolish the existing house. Mr. Carr responded it is to relocate to one of the new lots. Mr. Lackey had no further questions of Mr. Carr.

Ms. Trainor stated that this application has reached the 45-minute mark and given all the traffic issues that various people had raised the Board would continue this application at the January meeting. Before closing this portion of the hearing, Ms. Trainor asked if anyone from the public had any questions for Mr. Carr and none were heard.

January 12, 2021 hearing

Mr. Keith Henderson stated that he would like to report back to the Planning Board before starting with testimony. Mr. Henderson stated that he told the Board at the last meeting that they were working hard with the neighbors to try to resolve some discrepancies and differences of opinion that existed between the developer and the neighbors. Mr. Henderson announced that he

is happy to report to the Board that they have entered into agreements with four property owners and have resolved our differences in all four cases.

Mr. Henderson then stated that he wanted to check with the Board to see if they would be given additional time, since there is nothing else on the agenda tonight, and hoped they might be able to get through most of the application. Ms. Trainor responded by asking Mr. Henderson what he had to present to complete his application. Mr. Henderson replied that he had a traffic engineer and a planner. Mr. Henderson then addressed a letter read into the record at the last meeting from the Environmental Commission. Mr. Henderson stated they were not able to respond because it came in on the 7th and the meeting was on December 8th. Mr. Henderson stated that if he did not have the time to address it, he would like to get to the two other experts. Mr. Henderson stated that they have been here for other meetings and that he would like to finish up the Planner and Traffic Engineer.

Ms. Trainor stated that the Board would start with their normal 45 minutes, and then will ask the Board for a motion for more time and if a motion were made and approved then the Board would hear the applicant longer. Ms. Trainor stated that she wanted to give to Mr. Henderson some assurance that the Board is open and interested in finalizing the application to the extent they are able to tonight. Ms. Trainor then noted that this application was first introduced on November 12th, 2019 when the Board heard from Mr. Van Horn and that the Board has spent the last three Planning Board meetings hearing testimony from Mr. Carr, the applicants engineer and planner.

Mr. Henderson called his first witness, Mr. Andrew Jafolla, a traffic engineer. Mr. Jafolla was sworn in by Mr. Clark, the Board Attorney. Mr. Jafolla stated that he is a principal at Dynamic Traffic. Mr. Clark asked Mr. Jafolla if he would be testifying as a traffic engineer and if he has an engineering license. Mr. Jafolla replied that he is professionally registered in New Jersey and a certified professional traffic operation engineer. Ms. Trainor accepted Mr. Jafolla as a traffic engineer.

Mr. Henderson asked Mr. Jafolla if he was retained by the applicant to explore any traffic issues that might affect this application. Mr. Jafolla answered that yes, his firm was retained for that purpose. Mr. Henderson asked Mr. Jafolla if his office did an analysis of what approvals from a traffic point of view might be required. Mr. Jafolla responded that the approvals that are needed are from the Board and from an impact perspective they looked at two things, sight distance and trip generation. Mr. Jafolla stated that trip generation was briefly touched on by the site engineer and that he was also here to provide a little bit more clarity about the numbers provided.

Mr. Henderson asked Mr. Jafolla, when he did the analysis of the site, if he explored the Municipal Ordinances to see if there was a Sight Distance Ordinance. Mr. Jafolla replied yes, but this is not necessarily a Sight Distance Ordinance but more of a specification on an area that should be kept clear of shrubs over a certain height. Mr. Jafolla continued by stating that in order to determine what distance is required for this specific location and the specific environmental conditions on this route, they looked to the American Association of State Highway and

Transportation Officials (AASHTO) policy on geometric highway design. Mr. Henderson asked Mr. Jafolla to explain to the Board what the national standards are based upon. Mr. Jafolla answered that the AASHTO standard specifies the minimum distance that is required for a vehicle to come to a complete stop, given the speed traveling and the perception reaction time of the vehicle for that the person driving and also the rate of deceleration. Mr. Jafolla stated that on this specific road, the posted speed limit is 25 miles per hour and that typically a design speed of five miles per hour over that posted speed limit would be used, for 30 mile per hour design. Mr. Jafolla stated that for a 25 mile per hour posted speed limit, 155 feet of visibility would be needed when exiting the new road and that for a 30 mile per hour speed, 200 feet of visibility would be needed. Mr. Henderson asked Mr. Jafolla if he would recommend the 200 feet. Mr. Jafolla responded yes and stated that this would meet the design speed for the road. Mr. Jafolla stated that there are a number of trees that are located along the frontage of the property and that as part of the site improvements, these trees would be removed and that this would provide adequate lines of sight. Mr. Jafolla continued by saying that just to the south of proposed Squan Brook Way, there are holly bushes that are overhanging within the right of way that they would recommend be limbed up to about 10 feet off the pavement and that this is consistent with the Ordinance. Mr. Jafolla stated that all this work is within the right of way or within the property that is under control by the applicant. Mr. Henderson asked Mr. Jafolla if this completes his testimony on line of sight. Mr. Jafolla answered, yes.

Mr. Henderson stated that Mr. Jafolla referred to a second issue of investigation and asked him to review that with the Board. Mr. Jafolla responded that in the environmental impact statement that he believed was testified to in the prior hearing, there was some testimony regarding the traffic generation. Mr. Jafolla stated that he does concur with the trip generation that was provided in that impact statement but wants to provide some clarity as to where that came from. Mr. Jafolla stated that within the statement it was provided that there's 47 trips on a typical weekday, four occurring during the morning peak hour, morning rush hour and five trips during the afternoon rush hour. Mr. Jafolla continued by saying this information comes directly out of the Trip Generation Manual published by the Institute of Transportation Engineers. Mr. Jafolla explained that this manual publishes the average trip generation rate on a per dwelling unit basis and that rate is based on studies that have been performed across the country, over a span of the last 30 years. Mr. Jafolla stated that based on these numbers, there is no further analysis that would typically be warranted on a project of this size. Mr. Henderson stated that he had no further questions.

Ms. Trainor asked Mr. Hilla if he had any questions for Mr. Jafolla. Mr. Hilla stated that to the west of the proposed intersection, part of the triangle that the sight distance covers is across private property, part of it covers the applicant property and then part of it crosses parallel to the front lot line of Lot 17. Mr. Hilla continued by saying that he knows this is beyond the ability of the applicant and outside the confines of the applicant's property but by ordinance, a homeowner could put a six-foot fence at that front property line and asked Mr. Jafolla if there is a way to ameliorate that circumstance because once this application is approved, those things are out of the Board's purview and then maybe the safety that's implied here is no longer the case. Mr. Jafolla

responded by saying that he understood Mr. Hilla's concern and that he would get more specific about the sight distance calculation and how that is measured. Mr. Jafolla stated that Mr. Hilla is correct that a portion of that 200-foot sight line distance, the line of sight does cross into that adjacent property. Mr. Jafolla stated that sight distance is typically measured where the driver's eye is located 15-feet behind the edge of the pavement line which means that this is measured in a way that the front of the vehicle that is entering onto Rankin Road is about nine to ten feet before hitting the edge of pavement line. Mr. Jafolla stated that if there was to ever be an obstruction constructed in the future, he would expect that the front of the vehicle that is entering Rankin Road would just end up being more aligned with that edge of pavement line and would bring that driver's eye out in front crossing that right of way line. Mr. Jafolla stated that measuring the AASHTO distance, as shown on the plans, that this is how it is plotted but in reality, there is a little bit of room for someone who is leaving Squan Brook Way and entering Rankin Road to creep up further and still be outside the confines of Rankin Road and have even additional sight distance if something were to be constructed on that adjacent property.

Mr. Hilla stated that the sight triangle to the east includes a couple of obstructions including a fence within the right of way and a utility pole. Mr. Hilla the utility pole is fairly close to where the driver would be on Squan Brook Way. Mr. Hilla asked Mr. Jafolla how this would affect the ability at this location. Mr. Jafolla responded that the utility pole is about 40 feet away and typically a utility pole is not considered an obstruction when it is within a sight triangle. Mr. Jafolla stated that he doesn't have a concern with the utility pole because the cross-section of the utility pole is not going to block the full view of the vehicle that is 16 feet long or so. Mr. Jafolla stated that the fence is a post and rail fence that has openings and is in the right of way. Mr. Jafolla continued that is in his opinion the fence can remain based on viewing it but if it something of a concern for the Board, it could be looked at for removal because it is in the right of way.

Mr. Hilla asked Mr. Jafolla to discuss the fact that the position of Scott Road and the left turn out of Scott Road falls shorter than from Squan Brook Way. Mr. Jafolla responded that he would not envision that someone pulling out of Scott Road would have enough time to really accelerate to the full 30 miles per hour and that this is common when you have roads adjacent to each other. Mr. Jafolla stated that if someone exiting Scott Road were to move first, Squan Brook Way would almost have immediate visibility of someone turning into Scott Road and would have the opportunity to either wait for the vehicle to pass or to continue on because they would both be accelerating concurrently, and the vehicle wouldn't be at full speed. Mr. Jafolla stated that this is not a concern of his. Mr. Hilla stated that he had no further questions.

Ms. Trainor stated that it was time to take questions from the Board.

Councilman Garruzzo asked Mr. Jafolla if there was any analysis done on the actual traffic that comes up and down Rankin Road, speeding cars, or anything along those lines. Mr. Jafolla answered that they didn't record any existing speeds or volume simply because of the very, very low intensity associated with this type of development.

Mr. Maclearie asked Mr. Hilla if the 47 trips per day falls into what he would have thought for a 5-resident street. Mr. Maclearie stated that if you have five at rush time, if you have two working people a day, that is going to be ten. Mr. Maclearie stated then when he heard the number, he thought it was low. Mr. Hilla responded that traffic is not really something that he does and that he doesn't have an opinion one way or the other. Mr. Jafolla stated that this a question they hear often. Mr. Jafolla continued by saying that if you have two working parents and someone leaving could happen but the odds of that happening in all five households, concurrently, to rise to that level where in every household is creating that level of trip generation is unlikely to have it happening altogether. Mr. Jafolla stated that they look at it on the average basis. Mr. Jafolla took it a step further by saying in a very exaggerated, worst case scenario, if every household had four trips in the morning rush hour it would still only be 20 trips and still wouldn't rise to the threshold.

Ms. Brisben stated she had no questions but said that she appreciated hearing from the traffic engineer and that she found it a very interesting and informative report.

Mr. Chermak asked Mr. Jafolla if any consideration had been taken into actual cars parked on Rankin Road and around the intersection. Mr. Jafolla responded that when he was at the site, he didn't observe any cars parked there. Mr. Jafolla stated that by looking through the community and stated that all the houses had driveways and it appeared that people were using them. Mr. Jafolla continued by saying that someone could park out on the road, something that occurs in many residential communities and what this does is allows someone to creep up a little further to the edge of the parking lane or maybe they would not proceed, where their view would be obstructed by that parked vehicle and look beyond it on the backside before they pull out. Mr. Jafolla stated that this is an occurrence that happens in residential areas but that he does not anticipate it given the level of parking, based on the driveway setups.

Ms. Trainor asked Mr. Jafolla if the 100 hundred trips that he is referencing is an industry standard. Mr. Jafolla answered that it is an industry standard published by Institute of Transportation Engineers, (ITE), and the other standard out there is New Jersey Department of Transportation, (NJDOT). Mr. Jafolla stated that the NJDOT also recognizes that as a standard and in fact, the NJ DOT doesn't require any kind of analysis until you reach 200 trips.

Ms. Trainor stated that all questions from the Board have been heard and now this is time for questions from the public. Mr. Trainor announced that for those who wished to ask a question would need to type their name into the chat box in the GoToMeeting software and the Board will proceed in the order that they announced themselves.

Mr. Clark swore in Ms. Jeniene Stango, 620 Rankin Road, Brielle, NJ. Ms. Stango asked Mr. Jafolla if there was any consideration, understanding or recognition of the pedestrian use of this road. Mr. Jafolla responded that it was a nice day when he was out there and that there were several people walking, but he didn't think the level of traffic being proposed for this subdivision is something that would create such an intensity that would end up having multiple cars on the road, two cars passing side-by-side, and pedestrians competing for space. Mr. Jafolla stated that

although the analysis shows that there is going to be five additional trips during the peak hours, one trip every twelve minutes, it is not something that he envisions and that the common pedestrian is going to be recognized on the street because of the low intensity. Ms. Stango asked Mr. Jafolla where he got the idea of five cars and how he felt he had a good idea of pedestrian activity when going at this time of year and the problems with traffic going both ways on the street. Mr. Henderson stated that he objected to Ms. Stango combining opinions and questions. Ms. Trainor stated to Ms. Stango that the Board will give some leeway and asked Ms. Stango to streamline her questions going forward.

Mr. Jafolla stated how they determine the five trips is based on an industry publication used for residential developments throughout the country. Mr. Jafolla stated that it is utilized by Traffic Engineers throughout New Jersey and that it is the standard. Mr. Jafolla stated that when he projects five trips, this is not necessarily his opinion or thought but is his interpretation of the nationally recognized data that is out there, this is his projection of the data. Mr. Jafolla stated that what this data does is it studies existing single-family residential developments through the state and determines the number of trips per dwelling unit, utilizing that rate to project the number of trips for this project. Mr. Jafolla stated that by industry standard with a five-unit development and worst-case peak hour, it would be a trip per unit, which is how they come up with five trips here. Mr. Jafolla stated that he couldn't say that he had a full understanding of the pedestrian activity because he doesn't live there but that he does understand similarly spaced residential developments in Monmouth County. Mr. Jafolla stated that he would expect more people be out in the summer in a residential community, but this is irrelevant to his conclusion that this project is not going to adversely impact existing pedestrian movements in this area because the level of intensity associated with this proposed project is so low.

Ms. Stango asked Mr. Jafolla if he noticed the blind spot on Rankin Road. Mr. Jafolla asked Ms. Stango if she was referring to the curve that is located just to the west of this site, or the horizontal curve on which this proposed road is located. Ms. Stango responded, both. Mr. Jafolla responded by saying that they looked to see that there would be sufficient sight distance for this specific proposal. Mr. Jafolla stated that this driveway is located along the interior of that curve and there is a lot of vegetation presently along the frontage of what will be developed. Mr. Jafolla said that as part of this project, a lot of that vegetation contributing to a possibly perceived blind spot would end up being cleared. Mr. Jafolla stated that he didn't know what blind spot Ms. Stango was referring to but if he is referring to the inside part of Rankin Road curve where Squan Brook Way is proposed, he would envision that driving along Rankin Road would be easier with the vegetation cleared.

Ms. Stango asked Mr. Jafolla to clarify how he came up with five cars. Mr. Henderson objected to this question. Ms. Trainor stated to Mr. Henderson that she believes that Ms. Stango could ask the question again but has already done so and that Mr. Jafolla has responded to her question in this regard. Ms. Trainor stated to Ms. Stango that she had already asked this question, that Mr. Henderson has objected twice, and this is going to be the last time Mr. Jafolla is going to answer this question. Mr. Jafolla responded that he thinks one thing that is being confused is this

distinction between the number of cars that an individual household may own and park in their driveway, versus the number of trips exiting a specific household during a peak hour. Mr. Jafolla continued by saying that the number of vehicles that are present on a given property are not related to the number of trips that would be expected during the morning and afternoon rush hour. Mr. Jafolla stated that this is really related to the need for someone to move from their household, either to a work environment, or to a school environment and it really doesn't matter how many cars that you have on the property to do that. Mr. Jafolla stated that is the distinction between the number of cars at the household versus the trips. Mr. Jafolla stated that the five trips came from the Institute of Transportation Engineers which summarizes a trip rate per dwelling unit that would be expected during the morning rush hour and afternoon rush hour. Ms. Stango stated she had no further questions.

Ms. Trainor announced that Mr. Richard Curran, 826 William Drive, Brielle, NJ was the next to enter his name and that he had appeared before with respect to this application. Mr. Curran asked Mr. Jafolla what time of the day he visited the property and how long he stayed. Mr. Jafolla answered that he was there this afternoon around 3:00 PM and stayed for about a half hour. Mr. Curran asked Mr. Jafolla if by looking at the code, 25 miles an hour is 155 feet, 30 miles per hour with 200 feet, does that mean it's another 45 feet for each 5 miles per hour. Mr. Jafolla answered no, it is a non-linear relationship. Mr. Curran asked Mr. Jafolla if someone is going 35 or 40, what does it become. Mr. Jafolla responded at 35, its 250 and at 40, it's 305.

Mr. Curran asked Mr. Jafolla if the code he referred to makes any consideration for sidewalk or no sidewalk. Mr. Jafolla responded that there really isn't a code that would account for if there is or isn't a sidewalk, pedestrians have rights to utilize an existing road in absence of the sidewalk pedestrians walk at a much slower speed than a vehicle traveling at 25, 30 miles per hour, so if there is visibility that is allotted for a vehicle traveling along Rankin Road, than a pedestrian that would be within that same roadway would also be visible. Mr. Curran asked Mr. Jafolla if the narrowness of Rankin Road has any bearing on his calculations. Mr. Jafolla responded that no, because anyone coming out of Squan Brook Way, regardless of the width of Rankin Road would need to wait for a clear area along Rankin Road to turn in or out of the road. Mr. Jafolla continued by saying the narrowness isn't a consideration because they are not having them turn into the road concurrent with other vehicles that are occupying that same width, they would wait for that road to be clear before they turn.

Mr. Curran asked Mr. Jafolla if the code is assuming that the drivers are all doing the right thing and if there is not a margin for space. Mr. Jafolla responded that the methodology that the 200 feet of sight distance for 30 mile per hour road, does include an allotment for perception and reaction time, and how long does it take to view an oncoming obstruction and then get your foot on the brake pedal. Mr. Jafolla stated that this is called perception reaction time and the AASHTO uses a very large number for that as a factor of safety. Mr. Jafolla stated that the other consideration is that the rate of deceleration at which this stopping site distance is calculated that rate of deceleration, is something that's been in effect for several decades now. Mr. Curran asked Mr. Jafolla if the growth in the backyard at the property adjacent to this proposed development is going

to have to be removed to achieve the sightlines envisioned. Mr. Jafolla answered that no, there isn't anything that's needed to provide clear line of sights along that property line. Mr. Jafolla continued by saying that the areas that would require some limbing up would be along the frontage of Rankin Road, within the right of way, to about within 10 feet above grade. Mr. Curran stated he had no further questions.

Ms. Trainor announced that the last person to enter their name is Mr. Lackey. Ms. Trainor stated that Mr. Lackey has appeared before and did not need to be sworn in. Mr. Lackey asked Mr. Jafolla if he considered the speed that drivers drive when they are traveling southbound on Rankin Road from Schoolhouse Road towards Riverview Drive. Mr. Jafolla answered that they consider the design speed of 30 miles per hour for that approach.

Mr. Lackey asked Mr. Jafolla if an actual driver were driving 40 miles per hour, would that impact his opinion as to the safety of the design. Mr. Jafolla responded that by looking that direction, there would quite a bit more visibility when the trees along the frontage are cleared out. Mr. Jafolla continued by saying there is one small tree located on the property, just to the west, but you can see beyond that tree, up the hill, in which the distance would actually be visible 300 to 500 feet, which corresponds to a speed of 45 miles per hour. Mr. Jafolla stated that they looked at 200 feet, which is for a design speed of 30 miles per hour, so there is quite a bit more distance looking in that direction.

Mr. Lackey stated that Mr. Jafolla's response seemed to be analyzing from the perspective of the driver coming out of Squan Brook Way and onto Rankin Road. Mr. Lackey asked if he had that correct to which Mr. Jafolla responded that it would be in both directions. Mr. Lackey asked Mr. Jafolla if his response would apply to a driver going south, down the hill on Rankin Road toward Riverview Drive, doing 40 miles per hour. Mr. Jafolla replied he was not sure what Mr. Lackey was summarizing but what he would say is that for a stopping sight distance to Squan Brook Way, and that he is not testifying to the available stopping sight distance along Rankin Road in general, he is specifically testifying for a user who's exiting proposed Squan Brook Way, that there would be sight distance in excess of 200 feet, in the range of 300 to 500 feet. Mr. Jafolla stated that as far as sight distances beyond Squan Brook Way, when traveling from Schoolhouse down Rankin Road, they didn't view that because that isn't really related to this application because that would be an existing operational consideration.

Mr. Lackey asked Mr. Jafolla if someone is stopped at the stop sign on Squan Brook Way and there is a car traveling down the hill on Rankin Road from Schoolhouse Road, towards Squan Brook Way, the sightline and ability to stop of the driver driving south towards Squan Brook Way is irrelevant. Mr. Jafolla answered no and that he didn't think Mr. Lackey summarized his testimony. Mr. Jafolla stated that he certainly thinks it is relevant that someone should have the ability to come to a complete stop if they were to view an obstruction within Rankin Road, however, the idea here is that someone who is waiting on Squan Brook Way at the stop sign and they're waiting to enter Rankin Road has a full view of Rankin Road so that they do not decide to enter if there is a vehicle approaching and that is what they want to provide. Mr. Jafolla stated if

someone who is on Squan Brook Way and decides to erroneously enter Rankin Road, you want to make sure that that vehicle that is on Rankin Road has the ability to stop, that is what we looked at and that is what they provided in accordance with industry standards.

Mr. Lackey asked Mr. Jafolla if he generated a written report. Mr. Jafolla replied that they had not. Mr. Lackey stated he had no further questions but is going to make a reservation of rights to consult a traffic expert and potentially supply a report and/or testimony.

Ms. Trainor announced that there weren't any other members of the public that had entered their names and asked Mr. Henderson if he had any redirect. Mr. Henderson replied that he did not.

Ms. Trainor stated that before continuing, 45 minutes had passed and asked for a motion to continue to 8:00 PM and then the Board would reassess. Ms. Brisben made a motion, seconded by Mr. Stenson and then by roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Karen Brisben, Andrew Chermack, James Maclearie, Chris Siano, James Stenson, and Corinne Trainor.

Noes: None

Ms. Trainor asked Mr. Henderson to call his next witness. Mr. Henderson called Ms. Barbara Ehlen, a professional planner with Beacon Planning. Mr. Clark swore in Ms. Ehlen. Mr. Henderson asked Ms. Ehlen if she had testified before this Planning Board before and if her credentials were excepted as an expert planner. Ms. Ehlen replied, yes. Mr. Henderson asked Ms. Trainor that based upon the prior approval of Ms. Ehlen, she should be approved again. Ms. Trainor stated that the Board approves in Ms. Ehlen's capacity as a planner.

Mr. Henderson asked Ms. Ehlen if she had visited the site and if she is familiar with the neighborhood. Ms. Ehlen replied that she walked the neighborhood and site and asked if she could share her screen to give context. Mr. Clark replied that he thought if something is shown, it needs to be referred to and say it is part of the application or and needs to be marked so it can be identified. Mr. Clark asked Ms. Ehlen to submit a copy to the Planning Board Secretary so it is in the file. Mr. Clark marked this as Exhibit A2. Ms. Ehlen stated that she prepared this Exhibit A2 herself and it is an aerial exhibit on the subject property and the surrounding neighborhoods. Ms. Ehlen stated that the subject property or the approximate boundaries are outlined in yellow. Ms. Ehlen stated that the subject property is dramatically oversized for the zone, it contains approximately 172,000 square feet where actually only 15,000 square feet required for an interior lot and 15,625 square feet is required for a corner lot. Ms. Ehlen stated she wanted to show how dramatically oversized this parcel is compared to its neighbors. Ms. Ehlen then showed the Board how the proposed development pattern consists of a cul-de-sac and where it would come in. Ms. Ehlen stated that this is actually similar to what is south-east of the property at Scott Road and Club Road where cul-de-sacs were used to develop properties that were most likely similar in that they contained more depth than width.

Ms. Ehlen displayed Exhibit A3, which she stated was sheet three of ten, the preliminary and final major subdivision plan, prepared by Lindstrom, Diessner and Carr, dated May 29th, 2019 with revisions July 21st, 2019. Mr. Ehlen stated that this exhibit depicts the overall site plan of the proposed project. Ms. Ehlen stated that the applicant is proposing subdividing the property into five single lots, the existing dwelling is proposed to remain and will be relocated, and the existing garage is supposed to be demolished and removed. Ms. Ehlen stated that the variance being requested is only associated with one lot and as discussed is more of a technical variance due to the unique shape of the proposed lot. Ms. Ehlen continued by saying that the applicant is requesting lot depth, 125 feet required where 61.3 is proposed and the depth non-conformity is not across the full lot and rather only in a small section of the lot. Ms. Ehlen stated that the lot more than meets the minimum lot area standard and all other setbacks and development regulations, such as lot coverage, building coverage and building setbacks.

Ms. Ehlen stated that when discussing variances, she likes to start with the Communities Master Plan. Ms. Ehlen stated that Principles of the 2000 Master Plan include encouraging residential development in locations and densities, which are compatible with existing development patterns and can be privately serviced by public roadways, utilities, and services. Ms. Ehlen stated that this application is directly on point with this. Ms. Ehlen continued by saying that the applicant is proposing five residential dwellings within the developed area of the community. Ms. Ehlen stated that the density is right on point, roadway access, water, sewer, all infrastructure is readily accessible to this parcel. Ms. Ehlen stated that the second principle is to encourage the development pattern, which will protect and enhance the long term economic, environmental, and social welfare values of the present, future residents of Brielle. Ms. Ehlen stated that this is a development pattern that is sought by the community, relocating single family in a single-family neighborhood.

Ms. Ehlen noted that the 2000 Master Plan references the New Jersey State Development and Redevelopment Plan, and the parcel is located within Planning Area One. Ms. Ehlen continued by saying that pursuant to the state development redevelopment plan communities within Planning Area One are envisioned to accommodate future growth or take advantage of existing infrastructure which this parcel can do. Ms. Ehlen referenced the 2016 Master Plan re-examination states that the predominate change that has occurred is the development of residential homes on pre-existing, vacant parcels within the south western area of the Borough, infill development throughout the Borough and redevelopment for in part, Super Storm Sandy. Ms. Ehlen stated that for the most part these developments are keeping with the zone plans within the municipality. Ms. Ehlen stated that the applicant is proposing a development that respects the use and density envisioned for this area, each of the parcels meets or exceeds minimum lot area requirements and only one parcel requires a technical variance. Ms. Ehlen stated that this is keeping with the description of the 2000 Examination Report.

Ms. Ehlen stated she looked to the municipal land use law for special reasons and would opine that the application promotes to provide adequate light, air, open space and each lot has

sufficient space to accommodate a single family detached dwelling, respect associated setbacks, HAIFA, height limitations, coverage limitations, and to promote the establishment, of appropriate population, densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities, and regions and preservation of the environment. Ms. Ehlen referenced three different cases that referred to lot size. Ms. Ehlen stated that the proposed subdivision presents a better zoning alternative as it brings the oversized lot into closer visual conformity to the surrounding neighborhood and no longer is a standout. Ms. Ehlen stated that with respect to the substantial detriments that would have to be found to deny the variance, she doesn't see any. Ms. Ehlen stated that the community permitted this density, so it anticipated any traffic generated by this type of use, much like a community focuses its retail along a more public roadway. Ms. Ehlen stated as discussed, it does promote the goals of the Master Plan as well the Zoning Ordinance. Ms. Ehlen stated that it is her professional opinion that the benefits outweigh the negative impacts in this case. Ms. Trainor asked Mr. Henderson if he had any other questions for Ms. Ehlen. Mr. Henderson replied that he did not.

Ms. Trainor stated it was time to take questions from the Board. Hearing none, Ms. Trainor asked if there any questions for Ms. Ehlen from the public. Hearing none, the testimony of Ms. Ehlen was concluded.

Mr. Henderson stated that back in 2018, the applicant applied to New Jersey Department of Environmental Protection (NJDEP) for information on the wetlands and received a report and approval which is incorporated and referenced in the plans. Mr. Henderson stated that when this application was made the Planning Board, Environmental Commission and the Mayor and Council were all cc'd and that he had copies of the certified mail receipts. Mr. Henderson stated that the Planning Board has all that environmental information and has a copy of the actual NJDEP letter, which was the wetland interpretation. Mr. Henderson stated that he could put all this into evidence again and have someone testify. Mr. Henderson stated that if there are any more environmental questions, he would be happy to call a witness to deal with them. Mr. Henderson referenced that the Environmental Commission questioned the soils analysis and stated that he sent Mr. Hilla a fairly extensive soils analysis for that area.

Ms. Trainor asked Mr. Clark if he agreed with Mr. Henderson that the environmental NJDEP correspondence is part of the record. Mr. Clark stated he needed some clarification and asked Mr. Henderson if he is saying that this was submitted as part of the applicant's application or is, he saying that he filed for NJDEP approval before the application was filed and cc'd the Planning Board. Mr. Henderson responded that it is a little bit of both. Mr. Henderson stated that the application for the line of where they could go had to be filed before they could actually create the map. Mr. Henderson stated that they started doing that and asked for the letter of interpretation back in 2018. Mr. Henderson stated that he believed they got the letter back dated March of 2019 and that it is referenced on the site plan. Mr. Henderson stated that what he is also saying is that the application itself was not prepared by the engineering firm in this case, but by an environmental company that specialized in this back in 2018 and a copy of that application, in case anyone had

an objection, went to the Planning Board, Environmental Committee and to the Borough Council by certified mail.

Mr. Clark stated that what he thinks is that the Planning Board gets copied on applications that go to other agencies like the NJDEP. Mr. Clark stated it is noted on the record that the Board has received a piece of correspondence, but when the Board is now actively considering an application, he is not sure that the Board would or should be required to remember that three years ago the Board was cc'd on a letter before the application was filed. Mr. Clark stated that the Board may not have appreciated the significance since they would not necessarily have known an application was coming. Mr. Clark continued by saying that the concern that he would have would be if someone pulled the file on this application to look at the documents on file, would those pre-application documents that had been cc'd to the Board and/or Council and others be in the file or not. Mr. Clark stated he didn't know the answer to that, but he feels that if there were things submitted as part of the application package then the Board Members has the full package, and any member of the public would have the ability to have that and would maybe have a copy too. Mr. Clark stated his thought that the applicant would present, represent or there would be some representation in this proceeding of what they are so the Board knows what those things are.

Ms. Trainor stated to Mr. Henderson that it appears that unless he has submitted it with his application, the Board would not recognize that correspondence as being evidential in part of or in support of the application right now, so to the extent that Mr. Henderson thinks he needs to present it, he should. Ms. Trainor continued by saying to Mr. Henderson if he is happy to go forward without it, it is up to him. Mr. Henderson responded that he wanted to go with the Board's preference and stated that he thinks the Board would like him to present it. Ms. Trainor responded that she didn't think this was something that she has seen and stated that many members on the Board were not on the Board back then and that it appears, from what Mr. Clark stated, it is not part of the package, so it has not been considered yet. Mr. Hilla stated that there is also a package that Mr. Carr had sent him directly with the soil information that was to back up or correct what was perceived through the Environmental Commission's letter as well as a package received today from them with further soil information.

Ms. Trainor stated to Mr. Henderson, for everyone's clarification, for the good of the order, all of this is raised in response to the December 7th, 2020 letter from the Environmental Commission letter. Mr. Henderson responded that this is correct. Mr. Henderson stated that if that is going to be addressed that he would ask that he permitted to get the environmental company to testify at the next hearing because it was not prepared by their engineer because it was prepared by an environmental firm and can be discussed and marked into evidence.

Ms. Trainor asked Mr. Hilla if he reviewed that December 7th, 2020 Environmental Commission letter that was read into the record at the last meeting. Mr. Hilla replied, yes. Ms. Trainor asked Mr. Hilla in his estimation, does it require the Board's further consideration and the consideration of the two reports that were the correspondence between the applicant and NJDEP on the one side, and that soil boring environmental investigation on the other. Mr. Hilla responded

by saying that even though the application was filed in 2018, wasn't necessarily in the context of this application and how it applies to this application. Mr. Hilla continued by saying that line was established and approved by the NJDEP, but he thinks what we're looking for is a discussion of the permitting that went into it, and how this application is within the foursquare of the environmental regulations. Mr. Hilla stated that the second part goes to the Environmental Commission's discussion which he thinks is fairly compelling information that the applicant provided to him, but it is not for him to present it to the Board, it is for the applicant and professionals to present.

Ms. Trainor stated that so everyone is on the same page, she reminded the Board members about the December 7th letter and in normal times a representative from the Environmental Commission would come in and cross-examine these witnesses or present comment or argument with respect to these issues. Mr. Trainor stated in normal times, in a worldwide pandemic, the Board would not read into the record someone's comments like we are now advised to do as a Planning Board, as a best practice and that is what the Board did. Ms. Trainor stated that in this letter, Mr. Robert Houseal indicated that he had a recommendation that the applicant confirm the generalized soil data used for the Stormwater Management Report dated May 29th, 2019. Ms. Trainor stated that this is directed towards Mr. Carr's claim on page six of his report. Ms. Trainor stated that the second point is that the Environmental Commission recommends that the applicant account the deliberate strategy of stormwater infiltration.

Ms. Trainor stated to Mr. Henderson to the extent that you need additional witnesses to number one, confirm the generalized soil data and that you want to do so in support of your application, it will be carried to next month. Ms. Trainor asked Mr. Henderson if in the extent that he needs an additional witness and wants to account for the deliberate strategy of stormwater infiltration would he like to carry to next month. Mr. Henderson responded by saying if you look at the first paragraph of that letter, Mr. Houseal's sources differ and that he doesn't say what his sources are. Mr. Henderson stated that he finds this to be grossly inaccurate. Ms. Trainor responded by saying that is why she put all that on the record, because we are operating in special times where the Planning Board is advised to read these kinds of things into the record. Ms. Trainor stated to Mr. Henderson that if he thinks his application needs to respond and you need to do so through a witness, then the Board would respect that.

Mr. Henderson stated to Ms. Trainor that he would like to recall Mr. Carr. Mr. Henderson asked Mr. Carr if back in 2018 if he called for an environmental firm to prepare an application before the NJDEP for a letter of interpretation. Mr. Carr responded, yes. Mr. Henderson asked Mr. Carr what the letter of interpretation is and does. Mr. Carr replied that basically, a letter for interpretation is a ruling by the NJDEP to establish and approve two items, the presence or absence of wetlands on a particular site and if there are wetlands on a site to establish required buffers on the site. Mr. Carr stated this is typically done as a predecessor to most projects, or at least concurrently with most projects. Mr. Carr stated that a letter of interpretation had been obtained. Mr. Carr stated that by reference, their plan indicates in a couple of instances, on the cover sheet it lists in general note number seven that the wetland boundary was delineated by DuBois

Environmental Consultants, surveyed by Lindstrom, Diessner & Carr, LLC on August 20th, 2018. Mr. Carr continued by saying that based on that information and based on the information from the NJDEP that information was then added it to the plan set prior to submission to the Board. Mr. Carr stated there are two lines that appear on the plan, one is the actual wetland boundary, and the second line is a 50-foot buffer line established by NJDEP. Mr. Carr stated that both photos lines are shown on the applicable plans, the existing condition plans, the grading plans. Mr. Carr stated that the permit number that was issued by NJDEP is also referenced in there, and that's typically how that information is submitted to a Board. Mr. Carr stated that in his 40 years' experience, he has never submitted an entire package that was submitted to the NJDEP as a back up to this, and that often times as a condition of approval, they will provide approval letters from other outside agencies.

Mr. Henderson asked Mr. Carr if he had an opportunity to review the letter from the Environmental Committee that was received just before the last meeting. Mr. Carr replied that he did. Mr. Henderson asked Mr. Carr if he could comment on the soil issue. Mr. Carr responded that Mr. Houseal had stated that he disagreed with their soil information, and subsequent to that, he provided Mr. Hilla additional information and this information is readily published and is information that environmental firms and engineering firms use as authoritative documents. Mr. Carr stated that this information is published by the United States Department of Agricultural and it is a soils analysis site specific for the area. Mr. Carr stated that he submitted that information as back up to what was already submitted as part of the original application. Mr. Carr stated that he provided additional site-specific soil borings prepared under his direction by his firm on this site. Mr. Carr stated that the soil samples were sent to Rutgers Soil Testing Laboratory which is an authoritative source used by engineers and environmental firms and that information was received and forwarded to Mr. Hilla as a second source of information that substantiated the information provided on the original application. Mr. Carr stated that there is nothing in Mr. Houseal's letter that indicates where he obtained his information so he can't speak of what he put in his memo.

Mr. Henderson asked Mr. Carr if he could comment on the second paragraph in the letter. Mr. Carr responded that the second paragraph has to do with groundwater, infiltration, and clay layers. Mr. Carr stated that he would speak of the clay layer first. Mr. Carr stated that this is some of the opinion that Mr. Houseal has and that he provides no backup data and doesn't know where he obtained his information. Mr. Carr stated that using the authoritative sources from the United States Department of Agriculture, site-specific soil borings, and lab tests performed by Rutgers Soil Testing Laboratory, neither of which said there is presence of clay on the site. Mr. Carr stated that the soil testing revealed that the soils are what is known as K5 soils which are extremely permeable, sandy soils with an absence of clay.

Mr. Carr stated that regarding storm water infiltration, he is guided by rules and regulations promulgated by the NJDEP, specifically what can be infiltrated and what cannot be infiltrated. Mr. Carr continued by saying that the calculations he submitted are in accordance with the Stormwater regulations, there was nothing deliberate and no type of strategy to eliminate or hide from Mr. Houseal any infiltration or sources into Rick's Run. Mr. Carr stated that streams are normally fed

by groundwater, which is not surprising, as water flows downhill and will eventually reach a low area and that's generally a source of water for streams, so is not uncommon. Mr. Carr stated that they are not trying to analyze what the sources are, their job is to determine stormwater management as it relates to this site and control stormwater, so it does not negatively impact the site and surrounding areas. Mr. Carr stated that he believes that they have done that in accordance with the NJDEP Stormwater Rules and Regulations. Mr. Henderson stated that he had no further questions for Mr. Carr.

Ms. Trainor stated it was time to take questions from the Board.

Mayor Nicol stated that he had questions from residents and other entities in Brielle that have an extreme concern about the runoff on this project, the existence of a pond that is unnatural to this area and was man made, the history of this pond, and why this pond was allowed and not picked up by the NJDEP. Mr. Carr responded that he cannot answer the question regarding the history of the pond, how or why it was constructed but it appears to be basically just an esthetic feature of the site and is concrete lined. Mr. Carr stated that water enters in through a slough from the stream and is controlled as an outlet discharged to the stream. Mr. Carr stated he can only surmise that it was constructed prior to NJDEP regulations. Mr. Carr stated that NJDEP is aware of it and it was a part of their application, they have determined that it is a man-made, preexisting feature and is allowed to remain. Mr. Carr stated that it in itself is not considered a wetland area because of the lining of the pond.

Mayor Nicol stated that he would like to make Mr. Henderson and Mr. Carr aware of the fact that in the recent history of Rick's Run the Borough of Brielle had a tremendous amount of siltation come downstream from a development upstream that created quite a problem for both the Borough and the golf course. Mayor Nicol stated that the Borough does not want that to reoccur. Mr. Henderson asked Mayor Nicol if he was saying that this originated upstream from this proposed project. Mayor Nicol replied, yes but that water and silt flow downstream. Mr. Henderson asked Mayor Nicol if the silt was from this site or someplace else. Mayor Nicol responded that it was from another development and that there is a concern about siltation getting into the stream and affecting not only the body of water but the siltation downstream.

Mr. Carr responded that the site is developed with one house already and is sure everyone is familiar with the lawn areas and vegetation there. Mr. Carr stated that as part of the NJDEP letter of interpretation permit, they will have a 50-foot buffer that will remain undisturbed. Mayor Nicol asked if this is between the development and the stream. Mr. Carr replied that this is correct and that there is a minimum of the 50-foot buffer and that they have certain stormwater controls that they will be implementing in there as well, a series of recharge infiltration system for runoff that is collected from the roadway. Mr. Carr stated that then it will go into a small forebay and then through the existing pond before reaching the stream, so it goes through three systems. Mr. Carr stated that they have an application into the Soil Conservation District, who will certify the plans and methods that will be utilized and implemented during construction. Mr. Carr stated that these are all included on the plan so Mr. Hilla will have the opportunity to see and make sure those are

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maintained during construction and inspections, as well as the Soil Conservations Districts, they will inspect during construction as well. Mayor Nicol had no further questions.

Ms. Brisben stated that the Board received a revised Stormwater Management Report on July 21st, 2020 and asked Mr. Carr if this is part of what he is referring to and can the Board refer to that report. Mr. Carr responded, yes, that this is part of the application package that was submitted to the Board. Ms. Brisben stated that it is on file at Borough Hall if anyone from the public would like to look at it. Ms. Brisben stated on page four of ten on the site plan, there is a grading and drainage plan that seems to have what Mr. Carr was referring to. Ms. Brisben asked Mr. Carr if this is correct. Mr. Carr responded, yes, that this is the actual construction and layout of the stormwater management systems that he spoke about earlier. Ms. Brisben had no further questions.

Mr. Hilla stated that he does corroborate with what Mr. Carr had said with the information that he did provide the soil borings that he received today. Mr. Hilla stated that this was straightforward and after last month's meeting he did receive the soil information that replied to paragraph one of Mr. Houseal's letter. Mr. Hilla stated that Mr. Houseal may have in referenced older material that in coming up with the soil type, but what Mr. Carr provided straightens that right out. Mr. Hilla stated that this is why he suggested it be provided to the Board as well. Ms. Trainor asked Mr. Clark if the Board moves forward tonight if they could condition that. Mr. Clark replied that yes, the Board could condition any approvals upon the submission, of any documents, including the confirming permits and approvals.

Ms. Trainor announced that there was one person who had entered their name but stated that it is 8:00 PM and that she had promised that the Board could revisit the issue with the Board. Ms. Trainor stated that she would leave it to the Board if anyone would like to make a motion to finish this witness and conclude the testimony or adjourn and carry the application to next month. Ms. Trainor asked for a motion either way.

Mr. Maclearie made a motion to carry the application to the next meeting, seconded by Mr. Stenson and then by roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, James Maclearie, Chris Siano, Andrew Chermak

Noes: Karen Brisben

The hearing for the evening was therefore concluded.

February 9, 2021 hearing

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. 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 an 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.

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.

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

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicant is the contract purchaser of the Property and has submitted this application with the owner's consent
- c. The Property is a 172,025 square foot lot which currently contains one (1) single family two-story residential dwelling with a detached garage, green house, various other accessory structures, and a pond
- d. The Applicant is seeking major subdivision approval and variance relief for the Property and is proposing to subdivide the Property into five (5) oversized lots to be known as Lots 18.01, 18.02, 18.03, 18.04, and 18.05;
- e. The Property is located within the R-2 Zone;
- f. The Applicant has stipulated and agreed that if its 5 lot subdivision application is granted, the Applicant shall retain and preserve the existing two-story residential dwelling on the Property and shall relocate it to one of the five (5) proposed lots within this subdivision;
- g. The Board finds that there is a public benefit to preserving the existing farmhouse building if possible as this would enhance the aesthetics and characteristics of this area of the municipality;
- h. The Applicant submitted testimony regarding the traffic which is likely to be generated by this subdivision which demonstrates, to the satisfaction of the Board, that the traffic is consistent with what was contemplated when the R-2 Zone was established and does not create any safety hazards, provided that "no parking" signs are installed along Rankin Road in locations and with wording as directed by the Brielle Police Department in order to restrict parking along the new intersection created by the road that will be constructed to provide ingress and egress into this proposed subdivision;;

- i. The proposed subdivision will result in 5 buildable lots which meet the development criteria for buildable residential lots located within the R-2 Zone but, as described herein, two of the lots have irregularly-shaped tail sections which require variance relief;
- j. The proposed subdivision creates conforming residential uses for the R-2 Zone, but the Applicant's plans propose non-conforming conditions that will require variance relief from the requirements of the Borough Code;
- k. The Applicant amended its plans a number of times while the application was pending to address concerns raised by the Board and the public and it represented that it entered into settlement agreements with a number of nearby property owners to resolve their concerns about this proposed development;
- l. As a result of these amendments to its plans, the Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type): (i) Minimum lot depth (proposed Lot 18.05)—125 feet required; **approximately 61.32 feet proposed**; and (ii) Maximum lot width (proposed Lot 18.01)—125 feet required; **approximately 100 feet proposed**;
- m. The Property's total lot area exceeds the lot area needed for 5 conforming residential lots, but due the layout of the road and cul-de-sac in the plans, two of the lots are irregularly-shaped and have small sections where either the lot depth (as to proposed Lot 18.05) or the lot width (as to proposed Lot 18.01) are not compliant with the requirements of the Borough Code;
- n. Each of the two lots with these non-conformities meets the minimum lot area requirements of the R-2 Zone and satisfies all other setback and development regulations for buildable residential lots, such as lot coverage, building coverage and building setbacks;
- o. N.J.S.A. 40:55D-70(c)(2) allows a planning board to grant variance relief without a showing of undue hardship where the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of such deviation would substantially outweigh any detriment and the variance will not substantially impair the intent of the zone plan and zoning ordinance;
- p. The Applicant herein has presented testimony demonstrating to the satisfaction of the Board that the purposes of the Municipal Land Use Law would be advanced by granting the variance relief requested by the Applicant because, among other things, (i) the residential development proposed is compatible with

existing development patterns and can be privately serviced by public roadways, utilities, and services, (ii) the Applicant is proposing a development that respects the use and density envisioned for the R-2 Zone and each of the parcels meets or exceeds minimum lot area requirements and only two parcel require a variance relief due to their irregularly-shaped “tails”, and (iii) the application presents a better zoning alternative as it brings the existing oversized lot into closer visual conformity to the surrounding neighborhood and requiring a subdivision with a smaller number of lots would create large “mega-lots” which would be inconsistent with the character of the surrounding neighborhood;

- q. The Board has not identified any detriments caused by the variance relief proposed as the proposed lots in the subdivision meet all other setback and development regulations for buildable residential lots, such as lot coverage, building coverage and building setbacks, and the zoning anticipates the development of properties with lots of this size;
- r. The Board also finds that granting this variance relief will not impair, and rather will further, the intent of the zone plan and zoning ordinance for the reasons set forth herein; and
- s. For these reasons, the Board finds that the purposes of the Borough Code and the Municipal Land Use Law would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.

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

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

Noes: None

Not eligible to vote: Andrew Chermark

Absent: Chris Siano, Madeline Ferraro

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

- a. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- b. The Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- c. The Applicant shall retain and preserve the existing two-story residential dwelling on the Property and shall relocate it to one of the five (5) proposed lots within this subdivision;
- d. The deeds for the subdivided lots (i) shall contain language requiring that the owners of all of the lots in the subdivision shall be members of a homeowner's association homeowner's association that will be adequately funded and adequately insured in conformance with industry standards and that such homeowner's association will be responsible for insuring and maintaining all of the common areas of the Property, and (ii) shall be submitted by the Applicant to the Board Attorney for review and approval prior to being conveyed to any owners of the subdivided lots;
- e. Within forty-five (45) days of the date of the adoption of this resolution, the Applicant shall submit all settlement agreements which it entered into with nearby property owners to the Board Secretary for inclusion in the record of this approval;
- f. The Applicant shall comply with the stormwater requirements of the NJDEP and shall make any modifications to its stormwater management system as required by the Board Engineer;
- g. Within forty-five (45) days of the date of the adoption of this resolution, the Applicant shall submit all NJDEP permits and approvals that it has received for this project to the Board Secretary for inclusion in the record of this approval, and the Applicant shall have a continuing obligation to submit copies of any future NJDEP permits and approvals that it obtains for this project to the Board Secretary;

- h. The Applicant shall use commercially reasonable efforts to preserve the trees and vegetation on the Property as indicated on its plans and as represented during the hearings on this application;
- i. Within forty-five (45) days of the date of the adoption of this resolution, the Applicant shall submit five (5) sets of revised plans to the Board Secretary memorializing all of the final changes to the project described during the hearings on the application;
- j. The Applicant shall record and file a subdivision plat conforming to the requirements of the Municipal Land Use Law within the time period required under N.J.S.A. 40:55D-54, unless such time period is extended as authorized under N.J.S.A. 40:55D-52;
- k. The lot numbers to be assigned to the lots created through this subdivision may change and are subject to the final approval of the Borough Tax Assessor;
- l. Prior to the opening of the road providing ingress and egress into this subdivision for use by the public, the Applicant shall be responsible to install at its sole cost and expense, or at the option of the Township to reimburse the Township for the Township's costs of acquiring and installing, "no parking" signs along Rankin Road in locations and with wording as directed by the Brielle Police Department in order to restrict parking on Rankin Road near the intersection with the road providing ingress and egress to the subdivision; and
- m. All representations made under oath by the Applicant or its agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above resolution was made by Mr. Miller, seconded by Mr. Stenson and then by the following roll call vote:

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

Noes: None

Not eligible to vote: Chris Siano, Madeline Ferraro, Andrew Chermack

OTHER OLD BUSINESS

Approval of Resolution for Minor Subdivision for Block 61, lot 6.01, 22 Crescent Drive, owned by Michael Centrella, to create two buildable lots.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF MICHAEL AND LORI CENTRELLA FOR A MINOR SUBDDIVISION FOR PROPERTY LOCATED AT 22 CRESCENT DRIVE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 61, LOTS 6.01 AND 6.02

WHEREAS, Michael and Lori Centrella (the “**Applicants**”) applied to the Planning Board of the Borough of Brielle (the “**Board**”) for a minor subdivision approval and design waivers for the property located at 22 Crescent Drive identified on the tax map of the Borough of Brielle as Block 61, Lots 6.01 and 6.02 (the “**Property**”); and

WHEREAS, the Property is a waterfront lot located on the eastern side of Crescent Drive north of Donnelly Place; and

WHEREAS, the Property is located within the Borough’s Residential Zone 3 (the “R-3 Zone”); and

WHEREAS, the Property is 46,618 square feet in size and currently has a one-story residential dwelling on it, but the two lots comprising the Property are not dimensionally conforming and would not currently allow for the development of two homes; and

WHEREAS, the Applicants are proposing to demolish the existing structure on the Property and to subdivide the existing lots (i.e. Lots 6.01 and 6.02) into two dimensionally conforming building lots (proposed Lots 6.03 and 6.04) along with two associated riparian lots (Lots 6.05 and 6.06); and

WHEREAS, the new lots proposed through this application are conforming to the R-3 Zone and do not require any variance relief; and

WHEREAS, the Applicants are also seeking design waivers from the Board waiving the requirement in Section 24-9.2(d) of the Borough Code that “All streets shall not be less than fifty (50) feet wide between property lines, and waiving the requirement in Section 24-9.2(f) that “Subdivisions that adjoin or include existing streets that do not conform to width as shown on the Master Plan or the street width requirements of this Ordinance shall dedicate additional width along either one or both sides of said road. If the Subdivision is along one (1) side only, one-half (1/2) of the required extra width shall be conveyed to the municipality”; and

WHEREAS, the Applicants submitted the following documents in support of their application:

- a. Application form signed by Applicants attaching resolution from Board denying prior application for three (3) lot subdivision;
- b. Subdivision plans prepared by R.C. Burdick dated revised February 14, 2019
- c. A zoning permit denial letter from the Zoning Officer; and

WHEREAS, the Board was also provided with a letter dated August 23, 2019 prepared by the Board’s Engineer and Planner Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Board held a hearing on this application on February 9, 2021; and

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

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

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 12,5000 square feet is required.

Mr. Burdick stated that the only oddity is that the Applicants are 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 Applicants are 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 Applicants will obtain approval from the Tax Assessor for the numbers and the Applicants 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 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 perfect the subdivision by deed and that they will submit the deed to the Board Attorney for review and approval prior to being finalizing. 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 imperious 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.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified;
- b. The minor subdivision sought relates to a specific piece of property;
- c. The Property is 46,618 square feet in size and currently has a one-story residential dwelling on it, but the two lots comprising the Property are not dimensionally conforming and would not currently allow for the development of two homes;
- d. The Applicants are proposing to demolish the existing structure on the Property and to subdivide the existing lots (i.e. Lots 6.01 and 6.02) into two dimensionally conforming building lots (proposed Lots 6.03 and 6.04) along with two associated riparian lots (Lots 6.05 and 6.06);
- e. The new lots proposed through this application are conforming to the R-3 Zone and do not require any variance relief;

- f. The Applicants are also seeking design waivers from the Board waiving the requirement in Section 24-9.2(d) of the Borough Code that “All streets shall not be less than fifty (50) feet wide between property lines, and waiving the requirement in Section 24-9.2(f) that “Subdivisions that adjoin or include existing streets that do not conform to width as shown on the Master Plan or the street width requirements of this Ordinance shall dedicate additional width along either one or both sides of said road. If the Subdivision is along one (1) side only, one-half (1/2) of the required extra width shall be conveyed to the municipality”;
- g. The Board has concluded that it is appropriate to grant these design waivers because requiring strict compliance with the Borough Code requirements would not be in the public interest because (i) the Borough’s acquisition of the additional right of way contemplated under the Borough Code would create an irregularly-shaped lot rather than having two dimensionally-conforming lots, (ii) it would also increase the amount of impervious cover in an area which already has sufficient impervious coverage and would be deleterious to the drainage in the area, and (iii) there is already sufficient Borough right of way in this area to serve the adjoining properties;
- h. The purposes of the Municipal Land Use Law would be advanced by granting this subdivision application as the resulting lots created through the subdivision will be two developable building lots suitable for residential housing which are consistent with the R-3 zoning and do not require any variance relief;

- i. The proposed subdivision will not substantially impair the intent and purpose of the zone plan and zoning ordinance and can be granted without any substantial detriment to the public good.

WHEREAS, Councilman Garruzzo made a motion to approve the application with the design waivers; this motion was seconded by Mr. Stenson. A roll call vote was then taken on the motion as follows:

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

Noes: None

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applicants' application for minor subdivision approval with design waivers is hereby approved and granted subject to the following conditions:

- a. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- b. The Applicants shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- c. The Applicants shall submit copies of their CAFRA approvals and the riparian right approvals from the NJDEP to the Board Secretary;
- d. The Applicants shall perfect this subdivision within 190 days of the date of the adoption of this resolution by filing deeds in forms approved by the Board Attorney;

- e. Prior to perfecting this subdivision by filing a deed in a form approved by the Board Attorney, the Applicants shall demolish the structure on the Property and shall file proof of such demolition with the Board Secretary;
- f. The lot numbers to be assigned to the lots created through this subdivision may change and are subject to the final approval of the Borough Tax Assessor; and
- g. All representations made under oath by the Applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

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

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

Noes: None

Not eligible to vote: Chris Siano, Madeline Ferraro

OTHER OLD BUSINESS

Approval of Resolution for variance relief for Block 72, Lot 1, 836 Riverview Drive, owned by 836 Riverview Drive, LLC to allow construction of a 12-foot tennis fence.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF 836 RIVERVIEW DRIVE, LLC (RON DANA) SEEKING VARIANCE RELIEF FOR CONSTRUCTION OF A FENCE ALONG A PORTION OF THE PROPERTY LOCATED AT 836 RIVERVIEW DRIVE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 71, LOT 11

WHEREAS, 836 Riverview Drive, LLC (Ron Dana) (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance

March 9th, 2021

relief to construct a fence along a portion of the property owned by the Applicant located at 836 Riverview Drive identified on the tax map of the Borough of Brielle as Block 71, Lot 11 (the “Property”); and

WHEREAS, the Property is located within the Borough’s R-2 Residential Zone (the “R-2 Zone”); and

WHEREAS, the Property is located on the easterly side of Riverview Drive south of Kenli Lane and its southern boundary is adjacent to the Manasquan River Golf Club; and

WHEREAS, the Property is 6.2 acres in size and currently developed with a single-family dwelling, driveway, deck, patio, pool and poolhouse and

WHEREAS, due to the proximity of the Property to the Manasquan River Golf Club, the Applicant has experienced problems with golf balls entering his back yard and pool area; and

WHEREAS, to address these problems, the Applicant previously installed a golf net at the southern boundary of his Property which was 65 feet high and 130 feet wide (the “Golf Net”); and

WHEREAS, the Applicant received a violation notice from the Borough for the Golf Net and it thereafter filed an application with the Board seeking variance relief for the Golf Net; and

WHEREAS, the Board denied the Applicant’s variance application for the Golf Net and the Applicant thereafter filed an action entitled 836 Riverview Drive, LLC v. Planning Board of the Borough of Brielle, Docket No. MON-L-41-21 (the “Planning Board Action”) challenging the propriety of the Board’s denial of its variance application; and

WHEREAS, the Applicant was also involved in other lawsuits with the Borough of Brielle and the Manasquan River Golf Club regarding the Golf Net and other issues, including the action entitled Borough of Brielle v. 836 Riverview Drive, LLC and Ron Dana, Docket No. MON-C-146-19, which was subsequently the subject of an appeal under Docket No. A-002448-19 (the

“Borough Action”), and an action entitled 836 Riverview Drive, LLC. v. Manasquan River Golf Club and the Borough of Brielle, Docket No. MON-C-153-19 (the “Dana Action”)(collectively, the Borough Action and the Dana Action are collectively referred to herein as the “Litigation”); and

WHEREAS, the Applicant, the Borough, and the Manasquan River Golf Club entered into a settlement of the Litigation which, among other things, required the Applicant’s dismissal of the Planning Board Action and its removal of the Golf Net, but allowed the Applicant to apply to the Board for variance relief seeking approval to install a 12 foot high open mesh fence along the boundary of the Property adjacent to the golf course; and

WHEREAS, the Borough Code generally restricts the height of fences on residentially-zoned lots to 6 feet in height, but allows open mesh fences around tennis courts to be up to 12 feet in height; and

WHEREAS, the Applicant is proposing to install a 12 foot high open mesh fence like those allowed for tennis courts along the boundary of the Property adjacent to the golf course and to screen the fence with trees and plantings as delineated on the plans submitted with its application; and

WHEREAS, the Applicant is seeking the following variance relief through this application (the variance relief is highlighted in bold type below):

(a) Maximum height for fence--6 feet (unless it is an open mesh fence for a tennis court in which case 12 feet); **12 foot high open mesh fence proposed**; and

WHEREAS, the Applicant submitted the following documents in support of this application:

(a) survey of the Property prepared by Charles O’Malley, P.L.S. dated March 12, 2015;

- (b) Landscape Plan of Property prepared by Melillo+Bauer dated July 28, 2020;
 - (c) an application package signed by the Applicant; and
 - (d) a Zoning Permit denial letter from the Zoning Officer dated November 23, 2020;
- and

WHEREAS, prior to the hearing on this application, Mayor Nicol, Councilman Garruzzo and Mr. Miller stated they were recusing themselves from this application and they did not participate in the hearing; and

WHEREAS, the Board held a hearing on this application on February 9, 2021 and considered the following documents presented at the hearing in connection with this application:

- (a) Exhibit A-1 Landscape Plan;
- (b) Exhibit A-2 photo showing before image of 65 foot fence;
- (c) Exhibit A-3 photoshop rendering showing how a 12-foot fence would be completely screened by vegetation;
- (d) Exhibit A-4 photo showing trees on golf course;
- (e) Exhibit A-5 photo showing trees along boundary of Property;
- (f) Exhibit A-6 another photo showing trees along boundary of Property;
- (g) Exhibit A-7 photo of existing vegetation; and
- (h) Exhibit A-8 photo showing where fence will be installed; and

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

Mr. Henderson stated that the Applicant previously submitted to the Board, the Zoning Violation Letter from Elissa Commins, 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.

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 Mr. Dana. 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 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 is 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.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Property is located within the Borough's R-2 residential zone.
- c. The Property is 6.2 acres in size and currently developed with a single-family dwelling, driveway, deck, patio and pool; and
- d. The Property's southerly boundary is adjacent to the Manasquan River Golf Club;
- e. Due to the proximity of the Property to the Manasquan River Golf Club, the Applicant has experienced problems with golf balls entering his back yard and pool area;
- f. To address these problems, the Applicant previously installed a golf net at the southern boundary of his Property which was 65 feet high and 130 feet wide (the "Golf Net");
- g. The Applicant received a violation notice from the Borough for the Golf Net and it thereafter filed an application with the Board seeking variance relief for the Golf Net;
- h. The Board denied the Applicant's variance application for the Golf Net and the Applicant thereafter filed an action entitled 836 Riverview Drive, LLC v.

Planning Board of the Borough of Brielle, Docket No. MON-L-41-21 (the “Planning Board Action”) challenging the propriety of the Board’s denial of its variance application; and

- i. The Applicant was also involved in other lawsuits with the Borough of Brielle and the Manasquan River Golf Club regarding the Golf Net and other issues, including the action entitled Borough of Brielle v. 836 Riverview Drive, LLC and Ron Dana, Docket No. MON-C-146-19, which was subsequently the subject of an appeal under Docket No. A-002448-19 (the “Borough Action”), and an action entitled 836 Riverview Drive, LLC. v. Manasquan River Golf Club and the Borough of Brielle, Docket No. MON-C-153-19 (the “Dana Action”)(collectively, the Borough Action and the Dana Action are collectively referred to herein as the “Litigation”);
- j. The Applicant, the Borough, and the Manasquan River Golf Club entered into a settlement of the Litigation which, among other things, required the Applicant’s dismissal of the Planning Board Action and its removal of the Golf Net, but allowed the Applicant to apply to the Board for variance relief seeking approval to install a 12 foot high open mesh fence along the boundary of the Property adjacent to the golf course;
- k. Section 21-40 of the Brielle Borough Code generally restricts the height of fences on residentially-zoned lots to 6 feet in height, but allows open mesh fences around tennis courts to be up to 12 feet in height;
- l. The Applicant is proposing to install a 12 foot high open mesh fence like those allowed for tennis courts along the boundary of the Property adjacent to the golf course and to screen the fence with trees and plantings as delineated on the plans submitted with its application
- m. Although the Applicant is not installing the fence for use with a tennis court, the fence proposed within by the Applicant is consistent with the height and materials that are permitted for tennis court fences in the Borough’s residential zones;
- n. While the Board is not bound by the settlement that was reached in the Litigation, the Board is aware of the fact that this application was filed as a result of that settlement and that the Borough and the Manasquan River Golf Club do not oppose the relief sought herein;
- o. The fence proposed by the Applicant will be heavily screened by vegetation and trees and will not be visible to anyone other than those on the Applicant’s Property and no members of the public have objected to the improvements proposed through this application;

- p. N.J.S.A. 40:55D-70(c)(2) allows a planning board to grant variance relief without a showing of undue hardship where the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of such deviation would substantially outweigh any detriment and the variance will not substantially impair the intent of the zone plan and zoning ordinance;
- q. The purposes of the Municipal Land Use Law would be advanced by the variance proposed herein as it will promote public health and safety and will improve the aesthetics of the area through the vegetation and trees that are proposed to be planted;
- r. There are no identifiable detriments to this deviation from the requirements of the Borough Code as the fence being proposed is consistent with the tennis court fences allowed under the Borough Code in residential zones and the screening and layout of the proposed fence means that it will not be readily visible to anyone other than those on the Property;
- s. Thus, the benefits of this deviation from the requirements of the Borough Code substantially outweigh any detriments;
- t. Additionally, for the same reasons already delineated above, the variance being sought by the Applicant herein will not substantially impair the intent of the zone plan and zoning ordinance.

WHEREAS, Ms. Brisben moved to approve the application; this motion was seconded by Mr. Stenson. At that time the application was approved by the following roll call vote:

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

Noes: None

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

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

- a. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;

- b. The Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- c. Within fifteen (15) days of the date of the adoption of this resolution, the Applicant shall submit hard copies of all of the exhibits that it presented at the virtual hearing on this application to the Board Secretary;
- d. Within fifteen (15) days of the date of the adoption of this resolution, the Applicant shall submit the settlement agreement between the Applicant, the Borough, and the Manasquan River Golf Club to the Board Secretary;
- e. All representations made under oath by the Applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above resolution was made by Ms. Brisben, seconded by Mr. Miller and then by the following roll call vote:

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

Noes: None

Not eligible to vote: Mayor Thomas Nicol, Councilman Frank Garruzzo, Glenn Miller, Chris Siano, Madeline Ferraro

NEW BUSINESS:

Application for variance relief for Block 66.03, Lot 11, 704 Howell Drive, owned by Brian & Karin Finnegan, to allow extension to an existing front porch. Minimum Front Setback —30 feet required, 29 feet existing, 25.10 proposed.

Mr. Thomas Brennan announced that he was representing Brian and Karin Finnegan and that the Finnegans were in also in attendance too. Mr. Brennan stated that basically the applicant would like to extend the existing masonry porch 3.4 feet. Mr. Brennan stated that there is a very, very small violation of the 30-foot setback. Mr. Brennan stated that the Board should have frontals from the Architect which would show the new front porch with its roof.

Mr. Brennan then called Mr. Finnegan to testify. Mr. Finnegan, 704 Howell Drive, Brielle, was sworn in by Mr. Clark.

Mr. Brennan asked Mr. Finnegan how long he had lived in this home. Mr. Finnegan replied, approximately 15 years. Mr. Brennan asked Mr. Finnegan if he knew how old this house was. Mr. Finnegan responded that he believed that the house was built sometime in the early 1960's. Mr. Brennan asked Mr. Finnegan if what was being proposed is to only extend the existing front porch. Mr. Finnegan replied, correct. Mr. Brennan asked Mr. Finnegan to explain the door configuration on the proposed new construction. Mr. Finnegan responded that the door that is currently there is off centered and kind of on the side of the porch. Mr. Finnegan continued by saying the door would be moved to the center, facing the street. Mr. Finnegan stated that there is one door currently and that once the proposed work is done, there will still be one entrance. Mr. Brennan asked Mr. Finnegan if he has had the opportunity to discuss this application with his neighbors. Mr. Finnegan answered that he had discussed this with several of the neighbors, including both next door neighbors and that they have all indicated support. Mr. Brennan asked Mr. Finnegan if his house's setback is consistent with the two houses on either side of the street. Mr. Finnegan replied that the current setback of 29 feet is consistent along the whole street.

Mr. Brennan stated that this application is more of a cosmetic amenity to the existing structure, an enhanced look from the curb and it is very nice. Mr. Brennan stated that this is not really a structure but more of a covered entryway, there is no extension or addition to the existing foundation of structure. Mr. Brennan stated that he did not think it violates the Zoning Ordinance except for the 3.4 feet which he suggested is a very de minimis intrusion into 30 foot setback. Mr. Brennan stated that from the conversations that he had with his clients, there does not seem to be any objection to this and that the neighbors are in favor of it.

Ms. Trainor announced that it was time to hear questions from the Board for Mr. Finnegan.

Mayor Nicol, Councilman Garruzzo, Mr. Stenson. Mr. Miller, Mr. Maclearie and Mr. Siano stated they did not have any questions but did not have any issues with this application.

Ms. Brisben asked Mr. Brennan on the architectural plans, where it states, "existing to remain", is this an existing window because it was the door. Mr. Finnegan answered where it says, "existing

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to remain”, this is referencing the outer wall, that is going to stay. Ms. Brisben stated that she thought the porch is lovely.

Mr. Chermark stated that he had no questions but stated that he thought this will be an enhancement to the community.

Ms. Trainor stated she had no questions and then asked if there was anyone from the public that had questions for Mr. Finnegan. Ms. Trainor stated if there was anyone from the public that wished to participate, to please type their name in the chat box, and they would be taken in the order in which they entered their appearance. Ms. Trainor stated there was no one from the public that had questions for Mr. Finnegan.

Ms. Trainor stated that it was time to hear comments from the Board about this application. Hearing none, Ms. Trainor asked if anyone from the public had any comments about the application. Hearing none, Ms. Trainor asked Mr. Brennan if he had any final words or could she put this to the Board for a vote. Mr. Brennan responded that he thought a vote would be nice and stated that the applicant appreciates the time spent by the Board on the application.

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

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

Noes: None

NEW BUSINESS:

Application for variance relief for Block 92.01, Lot 2, 868 Riverview Drive, owned by Lorraine Lamb (Applicant — Robert McGirr) to allow demolition of a 2-story home and construction of a 2 1/2 story home. Minimum Side Yard Setback — 12 feet required, 9 feet proposed. Building Coverage — 20% maximum allowed, 25.5% proposed. County Planning Board approval required.

Attorney Michael Rubino announced he is appearing for the applicant and stated that Mr. Robert McGirr is with him. Mr. Rubino stated that he wanted to note for the Record that Mr. McGirr and Ms. Lamb are married, are both applicants and own the home. Mr. Rubino stated that they did

receive a letter of no interest from the County because this is a single-family residence. Mr. Rubino stated that he thought the letter had been sent to the Board. Mr. Rubino continued by saying that this is an application to allow his clients to take down the existing house and put a new 2-story house on the premises. Mr. Rubino stated that the existing house is old and has had several different additions added making the house somewhat disjointed.

Mr. Rubino stated that the applicant is requesting two variances.

Mr. Rubino stated that the first is for building coverage, 25% proposed where 20% is allowed. Mr. Rubino continued by saying this is driven by two items, his client collects cars and wants to have a two-car garage attached to the house and would also like to have a detached garage that he will use to store cars as well as some pool equipment. Mr. Rubino stated that there is a rear patio on the premises that is covered that does count towards coverage so between the two, that is what drives the 25% number.

Mr. Rubino stated that the other variance the applicant is requesting is a 9-foot side yard on the north side of the premises, off the 12th hole of the Golf Course. Mr. Rubino stated the applicant would like to build 9-feet rather than the permitted 12-feet to help balance out the look of the house.

Mr. Rubino stated that there was a question in Mr. Hilla's report about the driveway easement. Mr. Rubino stated that this is an easement that at one time was dedicated to go all the way back to one of the last lots along the 12th hole and that only his clients lots uses this easement, the rest of the houses that were developed use a side street to the south of the applicant's house. Mr. Rubino stated there will be testimony that if the easement area is included the application meets the coverage in the setbacks.

Mr. Rubino asked Mr. Clark if all the items submitted had been formerly marked. Mr. Clark stated that they had not been yet but that he was aware that Mr. Rubino had sent an email with some photos. Ms. Trainor said the Board did have the title search and the photos and that Mr. Rubino could mark them as he goes if he would like. Mr. Clark stated that all of the photos would be Exhibit A-1, the Title Search, Exhibit A-2, Architectural Drawings, Exhibit A-3 and the Engineering Drawing by Mr. William Kurtz, Exhibit A-4.

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Mr. Rubino stated that Mr. Kurtz is on vacation, and not available tonight, so Mr. Joseph Kociuba would be testifying as an Engineer and Planner on this project.

Mr. Rubino called Mr. McGirr to testify. Mr. Robert Charles McGirr, 100 Elton Adelphia Road, Freehold, NJ was sworn in by Mr. Clark.

Mr. Rubino asked Mr. McGirr how long he and his wife had owned this property. Mr. McGirr replied, approximately three years. Mr. Rubino asked Mr. McGirr to describe what is currently on the property. Mr. McGirr responded that there is a single-family home with a detached, three car garage. Mr. McGirr stated that the home had been added on to and is not in very good shape.

Mr. Rubino asked Mr. McGirr if he could explain to the Board why he was asking for an extra 5% and extra 3-feet. Mr. McGirr responded that the side yard setback is for a chimney and a small balcony off one of the upstairs bedrooms. Mr. McGirr stated that as far as the impervious coverage is concerned, half of it has to do with the covered back patio. Mr. McGirr stated that the roof for the back patio will act as a deck for the second floor. Mr. McGirr stated that the remaining percentage has to do with a detached 2-car garage.

Mr. Rubino asked Mr. McGirr if the garage that is attached to the house would be used for his and his wife's personal cars. Mr. McGirr replied, yes. Mr. Rubino asked Mr. McGirr if he would like an area to store the cars he collects. Mr. McGirr answered he has a small collection of cars that he would like to keep on the premises.

Mr. Rubino stated there was an issue raised in Mr. Hilla's report regarding drainage on the back of the property. Mr. McGirr replied that he met numerous times with his neighbor, Marion Ward, and they have agreed to work out these issues together. Mr. Rubino stated he had no further questions for Mr. McGirr.

Ms. Trainor announced it was time for questions from the Board for Mr. McGirr.

Mayor Nicol stated he had no questions but commented that he thought it was a good project and would be an enhancement to the neighborhood.

Councilman Garruzzo stated he had no questions but commented that he did like the proposal and that it looked like a very attractive new home.

Mr. Maclearie stated he had no questions but commented that he thought it would be a nice improvement to the neighborhood and to the house.

Ms. Brisben stated that Mr. Hilla had made a comment in his report that there is going to be a full bath in the basement with a private exterior entrance. Ms. Brisben asked Mr. Hilla if it was correct and stated that there could not be a living space in a basement. Mr. McGirr responded that there would not be a living space nor a full bath in the basement. Ms. Brisben asked Mr. Clark if it could be stated in the Resolution that the basement could not be separate living quarters. Mr. Clark replied, yes.

Ms. Brisben asked Mr. McGirr how many cars he was planning to have on this property. Mr. McGirr replied that he intended to have two personal cars and one or two cars that he collects.

Ms. Brisben asked Mr. McGirr what his disposition was regarding the trees on Riverview Drive. Mr. McGirr stated that their intent was to save everything that they could. Ms. Brisben stated she would like this to be in the Resolution also.

Mr. Chermark asked Mr. McGirr if they are knocking down the house, why could they not make it conform and asked what the 9-foot setback for the balance of the house meant. Mr. McGirr answered that the side yard setback with the 9-feet means there is a plan for a fireplace in the bedroom and the chimney would encroach into the 12-foot setback. Mr. McGirr stated that this side of the house is 42-feet from the property line because of the private road that runs along the driveway. Mr. McGirr stated that they are 39-feet from the side yard on the golf course side. Mr. McGirr stated that they did angle the house a little towards the river.

Mr. Hilla asked Mr. McGirr if it is correct that he did not own the northern end of the easement, just the southern side of the easement. Mr. McGirr replied, correct. Mr. Rubino stated that there is one driveway that is part of the easement and that is the driveway that serves this house.

Mr. Miller asked if the existing driveway is coming out. Mr. McGirr answered that the driveway would remain. Mr. Hilla stated that now that the garage is going to be removed in the back, is there a purpose for it to remain beyond the first 30 or 40 feet. Mr. McGirr answered that it is going to be removed when it gets to the side of the house and that it is going to be a circular drive.

Mr. Hilla stated that on page A-1 of Architectural Plan, it shows a full bath in the basement. Mr. McGirr stated that this was not the intention. Mr. Rubino stated that would be amended. Mr. Clark asked Mr. McGirr if it is supposed to be a half-bath. Mr. McGirr responded, yes, a half-bath.

Mr. Chermark asked Mr. McGirr why they did not keep the house parallel to the road. Mr. McGirr stated it might be a foot or two angled.

Ms. Brisben asked Mr. Rubino if he had testified that if the easement were included, it would be with a 20% lot coverage. Mr. Rubino responded that Mr. Kociuba would testify to that.

Ms. Trainor asked if there were any other questions from the Board. Hearing none, Ms. Trainor asked if there were any questions from the public either by chat or phone. Hearing none, Ms. Trainor thanked Mr. McGirr for his testimony and asked Mr. Rubino to call his next witness.

Mr. Joseph Kociuba, KPA Engineering Services, Manasquan, NJ, was sworn in by Mr. Clark.

Mr. Rubino asked Mr. Kociuba if he was here to testify as a Planner and an Engineer. Mr. Kociuba replied, yes. Mr. Rubino asked Mr. Kociuba if he was licensed in both and if his credentials had been accepted by this Board and other Boards. Mr. Kociuba answered, yes. Mr. Rubino asked the Board to accept Mr. Kociuba's credentials as a Planner and an Engineer. Ms. Trainor replied that the Board accepts them.

Mr. Rubino asked Mr. Kociuba if Mr. William Kurtz did the engineering on this project. Mr. Kociuba replied, yes. Mr. Rubino stated that Mr. Kurtz was not available tonight and asked Mr. Kociuba if he had been asked to fill in as a Planner and Engineer. Mr. Kociuba responded, correct. Mr. Rubino asked Mr. Kociuba if he had gone over some of the issues with Mr. Kurtz, and if he had looked at the plans and if he was familiar with the plans from an engineer standpoint. Mr. Kociuba replied, yes.

Mr. Rubino asked Mr. Kociuba to discuss the existing drainage problem and what is going to be done to correct that. Mr. Kociuba stated that currently there are no drainage facilities on the property, so, as a result, there has been a drywell designed for the back of the property. Mr. Kociuba continued by saying that the intention is to address stormwater. Mr. Kociuba stated it will collect the runoff from the roof portion of the dwelling and put it into the drywell in the back left north-east corner of the property. Mr. Kociuba stated that Mr. Kurtz had prepared engineering

calculations, which he had looked at, which demonstrate that the system is designed to store the 100-year storm from the roof area. Mr. Kociuba stated this will result in substantial improvement to the drainage conditions on this lot. Mr. Kociuba stated that currently all the runoff blows off the site and now with the addition of this drywell, it will reduce the amount of runoff leaving the site through all desirable storms, 2, 10, 100-year storms. Mr. Rubino asked Mr. Kociuba if he believed that this would help eliminate the proposed condition Mr. Hilla listed as item 5 of his report. Mr. Kociuba responded that his opinion was that the proposed system will certainly improve the stormwater conditions and will certainly reduce the amount of runoff leaving the site. Mr. Kociuba stated that they would certainly agree that any sump pump would be connected and from an engineering standpoint this would not be difficult to do.

Mr. Rubino addressed item number 6 and asked Mr. Kociuba if he agrees that there would be no problem amending the plans to show the sewer pipe, et cetera. Mr. Kociuba answered that if a cleanout is required in the driveway, they would have no problem with the DC4 Box or equal.

Mr. Rubino stated that the applicant agrees to item number 7 and that the plans would be amended to show that. Mr. Kociuba responded that the corporation stop and water service would be appropriately sized and will match inside, once determined by the Architect and Plumbing Subcode Official.

Mr. Rubino addressed item number 8 by stating that the Board was shown the letter from the County which showed they had no interest in the application.

Mr. Rubino asked Mr. Kociuba if they would agree to show landscaping plans and to save as many trees as possible. Mr. Kociuba stated there would be some disturbance but as the applicant had testified, they would limit the disturbance as much as they could.

Mr. Rubino asked Mr. Kociuba if he would give some Planning testimony. Mr. Kociuba began by saying that there had been some discussion about the easement on the north side of the property and that the easement was created when the subdivision was created. Mr. Kociuba stated that the only property that benefits from the easement is the applicant's property. Mr. Kociuba stated that they had looked at the impact of this property but inclusive of this land that has been utilized and maintained by the applicant, this land has acted as part of the applicant's property. Mr. Kociuba stated they are not contending that the applicant owns this land, but it has operated, kind of, as a

portion of his property, maintained by him for a substantial amount of time. Mr. Kociuba stated that if this area were included, that 30-feet wide by the length of the lot, the coverage there reduces from 25.5% to 19.9%, so there is a 30-foot by 191-foot area that if it were included in the land area, the applicant would be commensurate with the required coverages.

Mr. Kociuba stated that the setback that the applicant identified as 9-feet off the property line, which is adjacent to the easement, but 39-feet from the golf course and that obviously there are no structures anywhere north of the property for a substantial distance. Mr. Kociuba continued by saying that although there is a side setback variance required, it is really de minimis, given the benefit of that adjacent area. Mr. Kociuba stated that the lot is not square so Riverview Drive and the side property lines are not perpendicular to each other and if the home was placed parallel with the side lines the home would be skewed to the road. Mr. Kociuba stated the side setback would be substantially less, the house itself at 89-feet wide, the buildable envelope is 88.68, so it would be approximately 4 inches into the side setback. Mr. Kociuba stated that because the road is not square to the side lines, they tried to make it as parallel as possible, which is appropriate for the area, a more desirable visual environment looks better, presents better to the street and this causes this to kind of skew over that line a little more, so as a result, they have more relief required than if perfectly parallel. Mr. Kociuba stated that in his professional opinion, this is proper planning to do it this way, rotated slightly and request the relief. Mr. Kociuba stated there is no impact to open space, no impact to adjacent property, it is proper planning to do this rather than have it not be parallel to the street. Mr. Kociuba stated if the proposed house were not parallel with the street, he thought it would look odd for the area and have more of a detrimental impact. Mr. Kociuba stated that based upon this, he believed that variances can be granted to allow the side yard setback as well as the coverage that is being requested.

Mr. Rubino stated he had no further questions for Mr. Kociuba.

Ms. Trainor asked Mr. Hilla if he any questions for Mr. Kociuba.

Mr. Hilla asked Mr. Kociuba if he could address the drainage in the south-east corner. Mr. Kociuba stated that they have a roof drain that is proposed in this area and could extend a yard drain from the roof drain in the corner and put drains in the back two corners, so they are capturing as much runoff as possible.

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Mr. Rubino stated that Mr. McGirr has indicated in conversations that even after construction, he would be willing to meet with Mr. Hilla to resolve any problems if they should arise.

Ms. Trainor announced it was time for questions from the Board for Mr. Kociuba.

Mr. Miller asked Mr. Kociuba asked for some clarification on the existing driveway.

Mr. Kociuba responded that there is a substantial amount of driveway that is coming out, which is hard to see on the Plot Plan, but the driveway does extend and traverse the property line and extend into the property up to the existing 2 car garage. Mr. Miller asked Mr. Kociuba to confirm that the driveway is not coming around the back of the house from the left side. Mr. Kociuba responded, correct, they are pulling that back.

Mr. Maclearie asked Mr. Hilla and Mr. Clark if the Planning Board allows the property to be built on the easement, are they okay with this. Mr. Hilla asked Mr. Rubino if the applicant has legal access to use the easement if the Planning Board consents to a new driveway. Mr. Rubino responded the Title Company stated that the applicant has a right to use that easement. Mr. Rubino stated they are not building any buildings on it; they are using it as a driveway. Mr. Maclearie asked Mr. Hilla and Mr. Clark if they are okay with this. Mr. Hilla responded that the Board is taking it at face value that they have legal access to use it. Mr. Clark stated he did not read the title information himself but if that is the representation, and if the easement is there for that purpose, then that is fine. Mr. Clark continued by saying that it would be a problem if something that would block the easement was built, a house, shed or something like that, but this is not happening, it is being used for the purpose that the easement is there for.

Ms. Brisben asked Mr. Kociuba to clarify a statement made by Mr. Rubino in which he stated, if they were to include the easement, then they would not need the 25% lot coverage. Mr. Kociuba replied that he indicated that the easement is 30-feet wide and if you were to include the depth of the lot, 191.52 feet, the area of that section, if you calculate coverage across that area, the additional area is 5,745 square feet and you did the math, you will come up with a coverage of 19.9%. Mr. Kociuba continued by saying that by virtue of that, the existence of that and when looking at it from the street, any lay person would look at it and believe that this is a part of the property, so it is his testimony that from a visible standpoint, it does not appear to be excessive in coverage because that area is currently being used by this property as their access.

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Ms. Trainor asked if there were any questions from the public either by chat or phone. Hearing none, Ms. Trainor thanked Mr. Kociuba for his testimony and asked Mr. Rubino to call his next witness.

Mr. Rubino stated that Mr. Vanderhoof, the Architect for the application was present to testify if the Board had any questions. Ms. Trainor stated that if there were any architectural question for Mr. Vanderhoof, he would be sworn in. Ms. Trainor asked the Board if there were any questions.

Ms. Brisben asked Mr. Hilla, regarding the testimony in which it was stated that the bathroom in the basement was a half bath and not a full bath, should the Board get revised plans and revised architectural plans. Mr. Rubino stated that they would provide those. Ms. Brisben stated to Mr. Rubino that she would need revisions for the Plot Plan and Architectural Plans.

Ms. Trainor asked if there was any other architectural business to address from the Board. Hearing none, Ms. Trainor asked if there were any questions from the public. Ms. Trainor announced she did not hear or see any questions from the public and then asked Mr. Rubino if he had any closing comments to make before receiving any comments from the Board.

Mr. Rubino stated that he believed that they had covered all the questions that were raised by the Board Members and Mr. Hilla's report. Mr. Rubino stated that it seemed to him that this would be a very nice house and replacement of what is there and thinks it will be a credit to the community once it is done. Mr. Rubino stated that he thought the requests are actually small considering the nature of the law, so he would ask the Board to look favorably on the project.

Ms. Trainor thanked Mr. Rubino and asked if anyone from the Board had any final comments before any motion with respect to the application.

Mayor Nicol stated that he felt it was a good application, a great improvement and that he would be in favor of it.

Councilman Garruzzo stated that he agreed with Mayor Nicol and thought it would be a wonderful home there, a great improvement and that McGirr had addressed the water runoff issue and has a resolution to that, so he had no objections to this application at all.

Mr. Stenson stated that he had no objection to this project, all the questions in Mr. Hilla's report had been answered and he was satisfied with it.

Mr. Miller stated that he thought everything looked good and that his only question was whether there had been any discussion or contact with the golf course. Mr. McGirr responded that he spoke with the golf course and that he is a member of the golf course. Mr. Miller stated it all looked good to him.

Mr. Maclearie stated that he thought it was a nice improvement to the property.

Mr. Siano stated he agreed with the rest of the Boards comments.

Ms. Brisben stated that in the beginning she was not for this, it is an oversized lot and going over the coverage on an oversized lot but after hearing the testimony that includes the easement, which does look like part of the property, it is actually under 20%, so she would be in favor of this application.

Mr. Chermark stated he had no comment and thinks it is fine.

Ms. Trainor stated she accepted Mr. Kociuba's testimony and opinion with respect to the planning and the not perfectly perpendicular placement of the new structure based on the angle of the road and the not perfect straight property line on Riverview Drive. Ms. Trainor continued by saying that this looks like a big improvement and a good application.

Ms. Trainor stated that there were several conditions and stipulations that have been discussed so far and asked Mr. Clark to read through them.

Mr. Clark announced that he would go through the list of what he thought the conditions were and if anyone had any others, he could add them. Mr. Clark began by stating there will be a prohibition, in terms of the basement, that it will not be a separate apartment or separate living area, the drainage will be done in a way that is acceptable to the Mr. Hilla, Board Engineer, the sump pumps in the basement will be connected to the drywell system so that everything is connected to the stormwater discharge systems, number 6 in Mr. Hilla's letter which will show the DC4 box, or equal, on the driveway on the amended plans, the water surface detail will be amended in the plans and will be appropriately sized in a way that is consistent, the applicant has agreed that they will preserve trees to the extent possible and if needed will submit a landscape plan is to the satisfaction of Mr. Hilla, Board Engineer, maintain and keep safe the access easement in the area next to their

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property, make the half bath in the basement shown on amended plans, provide four sets of amended plans within 30 days to Ms. Brisben, Board Secretary.

Ms. Trainor asked if anyone from the Board had any other conditions to add and make part of this application. Hearing none, Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had just listed.

Mr. Siano made a motion to approve, seconded by Councilman Garruzzo and followed by a roll call:

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

Noes: None

Ms. Trainor congratulated Mr. McGirr and asked if there was any other business that anyone would like to present to the Board, there was no response.

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

Ms. Denise Murphy, Recording Secretary

Approved: April 13th, 2021