

September 14th, 2021

BRIELLE PLANNING BOARD
TUESDAY, SEPTEMBER 14th, 2021

The Regular Meeting of the Brielle Planning Board was held on Tuesday, September 14th, 2021, at 6:00 p.m., virtually. Ms. Trainor read the OPMA compliance statement. Ms. Trainor announced it was time for the 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, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Absent: None

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

A motion was made to approve the Minutes of August 10th, 2021, this done by Jim Maclearie, seconded by Councilman Frank Garruzzo, and approved by unanimous vote, all aye.

CORRESPONDENCE:

Copy of notice to DEP regarding Block 106, Lots 1.04, 1.05, 1018 Quail Place, construction of pier, dock & boat Lift.

July/August issue of the NJ Planner.

OLD BUSINESS:

Approval of Resolution for Block 56, Lot 8, 105 Lake Avenue, owned by Michael & Lorraine Zimmermann, to allow construction of a garage & in-ground pool.

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 LORRAINE ZIMMERMANN SEEKING VARIANCE RELIEF FOR CONSTRUCTION OF A GARAGE AND AN IN-GROUND POOL ON THE PROPERTY LOCATED AT 105 LAKE AVENUE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 56, LOT 8

WHEREAS, Michael and Lorraine Zimmermann (the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to construct a garage and an in-ground pool on the property owned by the Applicants located

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at 105 Lake Avenue and identified on the tax map of the Borough of Brielle as Block 56, Lot 8 (the “**Property**”); and

WHEREAS, the Property is located within the Borough’s R-4 Residential Zone (the “R-4 Zone”); and

WHEREAS, the Property is currently developed with a single-family two-story dwelling with a paver porch, stone driveway, concrete patio, slate stepping stones, and a shed; and

WHEREAS, the Applicants are proposing to construct a garage and an in-ground swimming pool on the Property as described more fully within the plans submitted with this application (as amended); and

WHEREAS, the existing lot, the existing and proposed use, and the existing principal structure are all conforming with the zone, but the existing driveway and the proposed garage are not conforming to the zone and the proposed garage therefore requires variance relief; and

WHEREAS, the Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below):

- (a) Maximum lot coverage—20% allowed; 21.59% existing; **25.4% proposed**;

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

- (a) sketch of survey prepared by Stanley Hans Jr., P.L.S., P.P. dated January 22, 2021;
- (b) plot plan prepared by Robert C. Burdick, P.E., P.P. last revised May 4, 2021;
- (c) architectural plans (2 sheets) prepared by Christopher Rice, R.A., last revised April 12, 2021;
- (d) an application package signed by the Applicants’ counsel on behalf of the Applicants; and

(e) a Zoning Permit denial letter from the Zoning Officer dated May 10, 2021; and

WHEREAS, the Board was also provided with a letter dated June 21, 2021 prepared by the Board's Engineer and Planner Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Planning Board held a hearing on this application on August 10, 2021; and

WHEREAS, Board member Chris Siano recused himself from the hearing on this application and did not participate in the proceedings; and

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

Attorney Mark Aikins announced he would be appearing on behalf of applicants, Michael, and Lorraine Zimmermann. Mr. Aikins asked Mr. Clark to confirm the Board jurisdiction by accepting his service package. Mr. Clark answered that the Board would accept jurisdiction. Mr. Aikins stated that this was an application for the Zimmermann family home, 105 Lake Avenue, purchased in January 2021. Mr. Aikins stated that the Zimmermann had obtained a building permit, number 21-0099, from Brielle on April 20th, 2021, and then received an email from Brielle's Zoning Officer that she had made an error in her Zoning Permit Authorization in regard to the calculation of the lot coverage.

Mr. Aikins stated the applicant was here primarily for the lot coverage and approval of a detached garage. Mr. Aikins stated the proposed garage would be 18 x 22 foot, would meet the height requirement of 15 foot and would meet side and rear yard setbacks for the accessory structures in the R-4 Zone.

Mr. Aikins asked that Mr. Peter Burdick be sworn in. Mr. Burdick was sworn in by Mr. Clark. Mr. Burdick stated he was a principle at RC Burdick P.E., P.P., P.C in Point Pleasant, New Jersey, a Professional Engineer since 1979, Professional Planner since 1989, and had been before this Board before.

Ms. Trainor stated that the Board accepted Mr. Burdick's qualifications and recognized him as an expert planner and engineer.

Mr. Aikins asked Mr. Burdick if he were familiar with the Zimmermann residence and if he would tell the Board what the applicant was seeking to do. Mr. Burdick replied that he was familiar with the residence and that the project was for the construction of an 18 x 22-foot garage and a 12 x 24-foot inground swimming pool. Mr. Burdick stated that the applicant was requesting a variance for

additional building coverage for a garage and that the building coverage would be 25.4% where 20% is required.

Mr. Burdick referred to Mr. Hilla's letter and stated that Mr. Hilla's had questioned the door entry into the garage. Mr. Burdick stated that the door would be a side entry door which would not be used often, would be within 5-foot of the pool and that the pool coping, and sidewalk would provide access to that. Mr. Burdick stated that the main access to the garage would be through the main garage doors. Mr. Burdick stated that since they were at 50% maximum of impervious coverage, they would be taking up some paving stones to make sure that they did not exceed that coverage characteristic.

Mr. Burdick stated that in regard to the setbacks for the pool, Mr. Burdick stated that the pool complies with the Borough's Ordinance. Mr. Burdick stated they were 35-feet from the principal building. Mr. Burdick stated that the applicant had received approval from the Construction Code Official for the plan of the pool in that location.

Mr. Burdick stated that the other issue Mr. Hilla brought up in his letter was in regard to stormwater. Mr. Burdick stated that stormwater goes to the rear left, southwest corner of the property and that they were proposing a recharge facility there to capture and recharge stormwater, principally from the garage but added that the pool would also hold stormwater. Mr. Burdick stated that there were some periodic flooding and stated that the proposed recharge structure would mitigate that, and that the property was in the 100-year floodplain.

Mr. Burdick stated that the proposed plan does comply with impervious coverage. Mr. Burdick stated that they believed garages were a desirable amenity for single-family homes and that many of the adjacent homes in the area had garages in the rear yard, so the proposed structure would not be unusual for the area. Mr. Burdick stated the plan was designed to comply with the Borough's standards for impervious coverage so he felt the Board could be assured adequate air, light and open space would be provided. Mr. Burdick stated that the lot was surrounded by a 6-foot vinyl fence. Mr. Burdick stated that they believed that the proposed plan would be an appropriate use in an appropriate location and a significant aesthetic improvement to the property. Mr. Burdick stated they believed that the variances could be granted without substantial detriment to the Zoning Ordinance, the Borough's Master Plan or the public good.

Mr. Aikins stated that he had no further questions for Mr. Burdick. Ms. Trainor announced that it was now time to hear questions for Mr. Burdick from the Board.

Councilman Garruzzo asked Mr. Burdick if there were a way to make the bulk variance less than 25.4%. Mr. Burdick stated that it would be extremely difficult, that the existing home was 21.5, the proposed garage was 18 x 22 foot, which Mr. Burdick stated was relatively small for a garage. Mr. Burdick stated that he felt it was appropriate for the site.

Mr. Maclearie asked Mr. Hilla if the garage was too close to the pool. Mr. Hilla answered that he believed that Mr. Burdick characterized properly that it was 10-feet from the principal structure. Mr. Hilla stated that the real issue is the close proximity of a building to a pool which could lend itself to people jumping off the roof into the pool. Mr. Hilla stated it was a safety thing that the

former Building Official used to stress. Mr. Aikins stated that this would be a one store structure with no windows, no loft, and no access to the roof.

Ms. Brisben asked Mr. Burdick if the garage would be 15-foot high and what the purpose of the side door was. Mr. Burdick responded that the applicant would consider removing the side door. Ms. Brisben asked Mr. Hilla why he stated in his report that the driveway was not conforming. Mr. Hilla answered that the driveway is an existing condition but that there is a setback requirement for all accessory structures including driveways. Mr. Hilla stated that it appeared to be virtually right on the line.

Mr. Tice asked Mr. Burdick if there would be a fence tie in on the front, left side of the garage to the current fence to preclude people from walking around the garage to the pool. Mr. Burdick answered that the fences were from the porch back to the garage on the north side of the driveway and also at the rear of the house.

Ms. Trainor stated her question involved lot coverage and the recharge system that the applicant is proposing. Ms. Trainor asked Mr. Burdick why they chose that particular one and why they thought it would be adequate. Mr. Burdick replied that the 1 in 12 capacity was commonly used but that they could expand the system to the north side of the house to provide additional stormwater storage and then stated that the property was well below flood elevation. Ms. Trainor asked Mr. Hilla if he had any recommendations. Mr. Hilla answered that they could make the recharge system larger to accommodate additional water, so it was not maximized every time it rained given the proximity to the groundwater and the grading of the lot. Mr. Hilla stated enhancing it a little bit would not hurt and could help alleviate further discharge or overflow onto the neighboring property. Mr. Burdick stated that they would expand it throughout the rear yards and continued by saying that the existing roof leaders to the existing house would go to the front total recharge pit so the home would be taken care of as well.

Mr. Aikins asked Mr. Burdick if he would stipulate to working with Mr. Hilla to enhance the proposed recharged system so that the concerns as to the exceeding the current 21.5% lot coverage to the proposed 25.4% would be more adequately covered. Mr. Burdick stated that they would agree to work with Mr. Hilla.

Mr. Aikins stated that he was hopeful that if the applicant moved the door from the west side to the east side and stipulated to not having a pedestrian access door on the west side, that hopefully that would address the Board's concern. Mr. Hilla stated that having that door out of harm's way near the pool would achieve what he envisioned. Mr. Aikins thanked Mr. Hilla and stated that he thought that would be a good resolution to the issue.

Ms. Trainor announced it was now time to hear question for Mr. Burdick from the public. Hearing none, Ms. Trainor asked the Board if they had any comments with respect to the application.

Mayor Nicol stated he was happy with the application and the changes discussed between Mr. Hilla and Mr. Burdick and thought it would work out fine.

Councilman Garruzzo stated that it appeared there were no residents from the area that had any objections and although he thought the lot coverage was a little bit high, he did not see any issues with the application.

Mr. Stenson stated he had no problems with the application.

Mr. Maclearie stated that he felt moving the door to the other side was a great option.

Ms. Brisben stated she thought the garage was a little big, but it would be behind the house and would not be seen from the street. Ms. Brisben continued by saying that she felt moving the doorway was an excellent idea and liked that they had agreed to work on the recharge system. Ms. Brisben stated she was for the application.

Ms. Frith stated she though it looked great.

Mr. Tice stated he would support the application.

Ms. Trainor stated she appreciated the applicant's willingness to work to mitigate any issues that might be the cause of maximum lot coverage and that no member of the public had come and voices any concerns or had questions.

Ms. Trainor announced it was now time to hear comments from the public. Hearing none, Ms. Trainor asked Mr. Clark to go through any stipulations that had been made during the application.

Mr. Clark stated that the applicant had agreed to move the door from the west side to the east side of the garage and that the applicant had agreed to work with the Board Engineer to increase the recharge system in a manner acceptable by the Board Engineer. Mr. Clark stated that once those two things occurred, the applicant would need to submit revised plans showing those changes to the Board Secretary. Mr. Clark stated those were the only stipulations besides the standard conditions that would apply to any application.

Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had listed.

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-4 residential zone.

- c. The Property is currently developed with a single-family two-story dwelling with a paver porch, stone driveway, concrete patio, slate stepping stones, and a shed.
- d. The Applicants are proposing to construct a garage and an in-ground swimming pool on the Property as described more fully within the plans submitted with this application (as amended).
- e. The existing lot, the existing and proposed use, and the existing principal structure are all conforming with the zone, but the existing driveway and the proposed garage are not conforming to the zone and the proposed garage therefore requires variance relief.
- f. The Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Maximum lot coverage—20% allowed; 21.59% existing; **25.4% proposed**.
- g. The existing conditions on the Property already exceed the maximum lot coverage permitted under the Borough Code.
- h. A garage is a desirable amenity which is consistent with development in the neighborhood.
- i. The Applicants agreed during the hearing to mitigate the impact of its proposed deviation from the maximum lot coverage required under the Borough Code and to discourage stormwater runoff from the Property by revising its proposed stormwater recharge system in order to provide an oversized stormwater recharge system with an increased capacity from that which was originally proposed within its plans and to submit the plans for its revised stormwater recharge system to the Board Engineer for his review and approval prior to its installation.
- j. The Board Engineer and certain Board members also expressed concerns about the proposed location of the door from the garage and its proximity to the proposed in-ground pool.
- k. The Applicants' engineer testified that it was necessary to have a door from the garage as a safety measure so that if the power went out and the automatic garage door would not open, persons inside the garage have a way of exiting the garage.
- a. In order to address the concerns of the Board, however, the Applicants agreed to revise their plans in order to move the door from the garage from its proposed location at the west side of the garage (i.e. the side facing the pool) to a new location on the east side of the garage (i.e. the side facing the property boundary line with the neighboring property located at Block 56, Lot 11).

- l. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicants to comply with the requirements of the Borough Code, and the development being proposed by the Applicants is consistent with other development in the neighborhood.
- m. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.
- n. This application and the variance relief sought therein advances the purposes of the Municipal Land Use Law, does not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

WHEREAS, Mayor Thomas Nicol moved to approve the application; this motion was seconded by Councilman Frank Garruzzo. At that time the application was approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Jim Maclearie, Karen Brisben, Stephanie Frith, Charlie Tice

Noes: None

Not eligible to vote: Chris Siano

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

- b. The Applicants shall revise the stormwater recharge system proposed within its plans in order to provide an oversized stormwater recharge system with an increased capacity in order to mitigate the impact of its deviation from the maximum lot coverage required under the Borough Code and to discourage stormwater runoff from the Property. Prior to its installation, the plans for the revised stormwater recharge system shall be submitted to the Board Engineer for his review and approval, and the Applicants agree to comply with any revisions to the recharge system proposed by the Board Engineer.
- c. The Applicants shall move the door from the garage shown on its plans from its proposed location at the west side of the garage (i.e. the side facing the pool) to a new location on the east side of the garage (i.e. the side facing the property boundary line with the neighboring property located at Block 56, Lot 11);

- d. Within ninety (90) days of the date of the adoption of this resolution, the Applicants shall submit five (5) sets of revised plans to the Planning Board Secretary memorializing the revisions to its plans described within subsections (a) and (b), above;
- e. The Applicants shall pay all taxes and other applicable assessments, costs, and fees to date, as applicable;
- f. 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;
- 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 James Stenson, seconded by Councilman Frank Garruzzo and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Jim Maclearie, Karen Brisben, Stephanie Frith, Charlie Tice

Noes: None

Not eligible to vote: Jay Jones, Chris Siano

OTHER OLD BUSINESS:

Request of time extension for filing of a Minor Subdivision for Block 61, Lot 1.01, 22 Crescent Drive, owned by Michael & Lori Centrella.

Mr. Clark stated that a letter was received from attorney, Mr. Michael Rubino, who is now representing Mr. and Mrs. Centrella. In this letter, Mr. Rubino requested that the application be carried to the October meeting to allow time for him to prepare.

A motion to approve the letter request for an additional month extension of time was made by Karen Brisben, seconded by Stephanie Frith and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones

Noes: None

NEW BUSINESS: Application for Variance relief for Block 48.01, Lot 3, 339 Magnolia Avenue, owned by Nicholas & Emily Bilotti, to allow demolition of existing dwelling & construct a new one. Front Yard Setback – 30 feet required, 22 feet proposed. Rear Yard Setback – 35 feet required, 24 feet proposed. Maximum Building Coverage – 20% allowed, 21% proposed. Maximum Building Height – 35 feet allowed, actual height not provided (height of 34.33 feet was measured from the grade & has to be measured from the crown of the road).

Mr. Bilotti and Mr. Robert Dooley were sworn in by Mr. Clark. Mr. Dooley stated he was Mr. Bilotti's architect and had been a licensed architect in New Jersey for 20 years. Mr. Dooley stated that he had testified before Brielle's Planning Board as well as several other Planning Boards and had been part of the Long Branch, Board of Adjustment for eight years. Ms. Trainor stated that the Board found that Mr. Dooley was qualified in the field of architecture and accepted as an expert witness.

Mr. Dooley stated that he was asked by the applicants to design a home on their site that would be compact in nature. Mr. Dooley stated that the home he designed was a 2 ½ story dwelling and was 2200 square feet altogether. Mr. Dooley stated that the site was a corner property, irregularly shaped with a building area that was somewhat limited.

Mr. Dooley referred to a document he referenced as A-100.0 which was marked by Mr. Clark as Exhibit A-1. Mr. Dooley also referenced a document he described as A-100.1 which was marked as Exhibit A-2. Mr. Clark asked Mr. Dooley if he was correct that both of the Exhibits were in the application package. Mr. Dooley replied that each member should have the Exhibits. Mr. Dooley held up Exhibit A-1 and described a yellow area that he stated indicated the buildable area on the lot. Mr. Dooley stated that the base flood elevation from the F.E.M.A site was 7 foot and that the basement/garage floor would be at 6.6 foot, a little bit below the base flood elevation. Mr. Dooley stated that they would be able to keep the side yard and one of the front yards within the Ordinance but the front yard to Magnolia Avenue and the rear yard would be deficient based on the Zoning table. Mr. Dooley stated they would meet the building height and that the Lot coverage would also be a little deficient. Mr. Dooley referenced Exhibit A-2 and stated that in the upper right-hand corner there was a ½ story plan which the applicant was requesting a variance for.

Ms. Trainor announced it was time to hear any questions for Mr. Dooley from the Board.

Councilman Garruzzo referenced Exhibit A-2 and asked Mr. Dooley if where it said front elevation on both sides of the car if there was a 2-car garage underneath. Mr. Dooley answered that it did show a 2-car garage underneath the residence. Councilman Garruzzo asked if there was another garage door depicted on the backside. Mr. Dooley answered yes, that in the future the applicant would like to build a pool and would use the back part of the garage for pool furniture and a hang out.

Mr. Stenson asked Mr. Dooley to comment on Mr. Hilla's letter, item number 3, regarding drainage. Mr. Dooley answered that when they received Mr. Hilla's letter the applicant hired Charles O'Malley to do a drainage plan and stated that they would be happy to submit it to the Board when they receive it. Mr. Stenson asked Mr. Dooley if they would be providing a grading plan. Mr. Dooley replied that they would be providing one.

Mr. Maclearie asked Mr. Dooley when the grading plan would be submitted to the Board. Mr. Dooley answered that Mr. O'Malley would prepare the plan and then the applicant would give it to the Board and Mr. Hilla. Mr. Maclearie asked Mr. Hilla if he would then check it out and decide if anything else was needed. Mr. Hilla replied that he would.

Mr. Siano asked Mr. Dooley what the elevation of the first floor was. Mr. Dooley responded that it was 9 foot 2 inches from grade. Mr. Siano asked Mr. Dooley if the proposed generator would be under the proposed front porch on a platform at an elevation of 8 foot. Mr. Dooley replied yes, that was correct. Mr. Siano asked Mr. Dooley if they were proposing any soundproofing for the generator being underneath the enclosed structure. Mr. Dooley answered that there would be a transfer switch inside the garage and a thimble to the exterior air intake.

Ms. Brisben asked Mr. Dooley if the garage elevation would be under the Flood Elevation. Mr. Dooley replied yes, the slab in the garage would be at 6.6 feet. Ms. Brisben asked Mr. Hilla if he had a comment on that. Mr. Hilla stated that it was not uncommon and that the flood vents would be key because the finished floor would be below the Flood Elevation. Ms. Brisben asked Mr. Dooley if it would be possible to put the air conditioning units under the front porch or behind the stairs in the rear. Mr. Dooley replied that they would be behind the setback line and that they would screen them with plantings.

Mr. Tice referenced Exhibit A-1 and asked Mr. Dooley how far the steps would be from the pool and if there would be a bump out at the top of the steps. Mr. Dooley answered that the bump out at the top of the steps would be for a grill with no roof over it. Mr. Dooley stated that the bump out would come out exactly 2 feet from the back of the house and that the steps to the pool would be 3 feet, 6 inches.

Mayor Nicol asked Mr. Dooley if the generator would be natural gas powered. Mr. Dooley answered that it would be and that it would be underneath the front porch where they would have break away walls in a ventilated space. Mayor Nicol stated he thought a generator was required to be 8 feet from a house and asked Mr. Dooley if it would meet Code. Mr. Dooley responded that he had never heard of that requirement and stated that a generator had to have good air intake, good exhaust and be well ventilated. Mr. Hilla stated that the Building Code would establish if the generator could be there or not.

Mr. Hilla asked Mr. Dooley if there was something that could be done to make the front steps less protruding into the front yard and more like the other raised structures in Brielle. Mr. Dooley responded that it was a difficult situation, if they turned the steps sideways with a landing, the design would protrude into the yard almost as far. Mr. Bilotti stated that they tried a lot of different ways, and if it wasn't approved by the Board, they would have to change it but aesthetically it was the best way to do it.

Ms. Trainor asked Mr. Dooley what the neighbor's setbacks were. Mr. Bilotti answered that it was different for the corner and that the setbacks are all different. Mr. Dooley answered that he did not know what the neighbor's setbacks were. Ms. Trainor asked if any of the Board members had been over to see what the neighborhood was like. Ms. Brisben stated that she had been, that there was

one house next to this one, one catty corner and right across the street was the old Brielle Beach. Ms. Brisben stated the house right next door was very similar to the house that is there now, a one story, stucco type home.

Mr. Siano stated when looking at the back of the house, the way they are dropping down the backstairs would be similar to the front, which would not be as intrusive in the yard. Mr. Siano stated that they could build a landing and even make the stairs go down in each direction, which would be aesthetically more pleasing. Mr. Siano stated that if the applicant dropped one step of the landing in the front it would significantly reduce the front yard impact and not push them so far into the front yard. Mr. Dooley stated that they would consider doing that, but he did not feel that it would look as nice. Mr. Bilotti stated he would agree to change them if he was required to but stated that he was in a tough position because the property is small, and the house is not very big.

Mr. Siano expressed concerns with respect to the distance between the pool and the foundation of the house. Mr. Bilotti stated that if they moved the pool then it may be close to the street. Mr. Dooley stated he did not think it would be an issue, it was a small pool, 24 x 10 foot, there would be a 10-foot setback on two sides, and it would not affect foundations or would cause any structural issue.

Mr. Dooley then announced that he would like to ask for a variance for the pool setback at the side yard. Ms. Trainor asked Mr. Clark if Mr. Dooley could make that part of his application now. Mr. Clark replied that he thought there were two concerns, a notice issue, and an analytical issue. Councilman Garruzzo stated that he believed that the pool was not being built now and at the present time they are just building a home. Councilman Garruzzo stated he felt that Mr. Siano was expressing a concern and was simply trying to help and save the applicant some time. Mr. Clark stated that Councilman Garruzzo was correct in that the applicant is entitled to get an opinion on what is being submitted now. Mr. Clark stated the pool was not being proposed now and is not part of this application. Mr. Dooley stated that he realized he had been using his eight-inch scale and that the pool was actually closer to 9-feet off the back of the house so they would only have to move the pool a foot to make it compliant if 10-feet is required.

Ms. Trainor announced that 45 minutes had been reached with respect to the application and the application would have to carry to next month.

OTHER BUSINESS: Continuation of variance relief hearing for Block 43.01, Lot 17, 623 Green Avenue, owned by Ryan Burlew, to allow construction of a new home. Minimum Lot Width – 75 feet required, 58 feet existing. Front Setback (principal to Homestead Road) – 25 feet required, 15 feet proposed. Front Setback (accessory garage to Green Avenue) – 25 feet required, 14.0 feet proposed. Front Setback (accessory pool to Green Avenue) – 25 feet required, 13.2 feet proposed. Front Setback (principal/deck to Green Avenue) – 25 feet required, 16.3 feet proposed. Rear Setback (accessory garage) 16 feet required, 12.1 feet proposed. Accessory Building Height (garage) – 18 feet maximum allowable, 24 feet proposed. Building Coverage – 20% maximum allowed, 20.9% proposed. Two-car Garage – 600 square feet allowable, 1,500 square feet proposed.

Mr. John Giunco announced that he was appearing on behalf of the applicant. Mr. Giunco began by saying that at the last meeting, they had finished their presentation and discussion and that there had been two recommendations, that the driveway width be reduced to 12 feet and to try to reduce the size of the garage. Mr. Giunco stated that the plans had been revised and resubmitted and that the driveway was now at 12-feet, the garage had been reduced from 24-feet to 20-feet and the length had been reduced from 50-feet to 40-feet. Mr. Giunco stated that the applicant is now under the 20% requirement which would eliminate the variance for building coverage.

Mr. Giunco began questioning Michael Millemann, Architect, who had been sworn in at a previous meeting. Mr. Clark stated that Mr. Millemann was still under oath and could testify about the revised plans.

Mr. Giunco asked Mr. Millemann if he would describe to the Board the amendments and how they changed the site. Mr. Millemann referred to drawing, SKS, last dated August 26th, 2021, and stated that the concrete paver driveway was reduced from 14-feet to 12-feet, that the size of the garage was reduced from 30 x 50 feet to 30 x 40 feet, eliminating the variance for coverage.

Mr. Millemann presented and displayed to the Board a drawing he referred to as SK5, dated August 26th, 2021. Mr. Clark marked the whole plan set as Exhibit A-7. Mr. Millemann stated that this Exhibit showed the reduction of height and length of the structure and stated that they kept all of the architectural components and materials the same as originally proposed. Mr. Giunco asked Mr. Millemann if the building was still in the same design, consistent with the house. Mr. Millemann replied that was correct. Mr. Giunco asked Mr. Millemann if there were any other amendments made to the plans. Mr. Millemann replied that only the driveway and the height and length of the garage were changed. Mr. Giunco stated he thought that those were the issues raised by the Board at the previous meeting and their intent was to meet their request.

Ms. Trainor asked Mr. Millemann if by reducing the size of the garage, did the setback or the footprint change. Mr. Millemann stated that they eliminated the square footage in the north-east corner of the building and took footage off of that area, allowing more room around the pool. Mr. Millemann stated that it would also help to allow a little bit more line of sight across the property to the waterline.

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

Mr. Maclearie asked Mr. Millemann what the percentage of impervious coverage was now. Mr. Millemann answered it was 19.6%. Mr. Maclearie asked Mr. Millemann if there would be grass along the front Homestead Road. Mr. Millemann replied that was correct.

Mr. Siano asked Mr. Millemann how large the boats were that were being proposed to be stored in the garage. Mr. Giunco answered that the larger of the two boats, 34-feet, would not be stored on the property and the other boat was 24-feet. Mr. Siano asked Mr. Millemann if he thought there was still a need for a 1200 square foot detached structure on the property. Mr. Giunco replied yes that it would permit that all vehicles would be stored inside the garage. Mr. Siano asked Mr. Millemann if it was ever considered to possibly build a 900 square foot, 30 x 30 garage which would fall within the setbacks and not require a variance for the garage structure, other than height.

Mr. Millemann answered that based on the meetings with the owners, they had done a few layouts with the vehicles, and this was the size that would permit the parking of the cars, and different watercraft that the owner had. Mr. Millemann stated they were trying to keep as many of the vehicles inside the enclosed structure. Mr. Siano asked if there were any commercial vehicles. Mr. Giunco answered there was one commercial vehicle which by ordinance would have to be kept in the garage.

Ms. Brisben asked Mr. Millemann if he would explain why the garage door was 14-feet high. Mr. Millemann replied that it was to permit the boat on a trailer and to eliminate the boat being damaged. Ms. Brisben asked Mr. Millemann if it was true that the driveway from Green Avenue would be one way. Mr. Millemann stated that the intent was to make it a one way from Green Avenue.

Mr. Hilla asked Mr. Giunco if the Planner was available for questions. Mr. Giunco stated that Mr. Andrew Janiw, Planner, was available. Mr. Hilla stated the Ordinance only allows, in the Zone, two spaces in private garages and asked Mr. Janiw if he could explain how the storage of a boat in a building was a customary accessory. Mr. Hilla stated that Brielle is a marine municipality and that besides marinas, he wasn't aware of many sizable boats being stored inside buildings. Mr. Hilla also asked Mr. Janiw if he had any testimony for the exceedance of the typical two car garage. Mr. Janiw answered that while the Ordinance was limited to a two-car garage, it did not have a square footage limitation. Mr. Janiw stated that he had testified prior that the intent was to store both boats and because they have reduced the size, it really only accommodates the one smaller boat. Mr. Janiw continued by saying they believed visually given that this was an oversized lot, it was a better Zoning alternative. Mr. Janiw stated that there was a question as to whether they could resolve the setback issue by a 30 x 30 garage and stated that the answer was that it would not resolve the issue because 30 is the width and the width is creating the setback issue to the rear property line.

Mr. Hilla stated he was under the impression that there was talk of sliding the building further away from Union Lane, keeping the same setback to the property to the west but getting it further away from the Union Lane, Green Avenue corner. Mr. Janiw stated that they were compliant there and by leaving it there, they would create the appropriate space around the pool. Mr. Hilla stated that they would not achieve the front setback to Green Avenue but if it slid to the north-east, where the front of the garage was going to be before they took off 10-feet, it would come pretty close to achieving front setback to Green Avenue as well.

Mr. Janiw stated that with speaking to their clients, Mr. Burlew was willing to slide the garage forward to provide a greater setback to Union Lane and Green Avenue but was asking to keep the 30 x 40 dimension, which was critical to the storage of the boat, the trailer and hitch. Mr. Janiw stated that their engineer explained to him that it would not be a problem moving it 5-feet forward towards Homestead Road.

Ms. Trainor asked if any Board members had any questions based on the conversation that Mr. Hilla just had. Hearing none, Ms. Trainor announced it was now time for the public to ask questions of the witnesses. Hearing none, Ms. Trainor asked Mr. Giunco if he had any additional testimony to which Mr. Giunco replied he did not. Mr. Giunco stated he felt that the application was well

prepared, well designed and was aesthetically very appealing and based on the comments they received, they tried to react to them and make the site more accommodating. Mr. Giunco stated he felt that they provided adequate justification to each of the requested variances and that the plans were well thought out and compliant. Mr. Giunco asked the Board to approve the application and stated he thought it would be a very nice addition to the community.

Ms. Trainor announced it was time to hear comments from the public in regard to the application. Mr. Dan Burke, 1013 Cedar Lane, Brielle, NJ, was sworn in by Mr. Clark. Mr. Burke stated he thought the garage should be pulled away as far as possible from the intersection at Green Avenue and Union Lane. Mr. Burke stated that the intersection is extremely busy and that sight distance around the intersection is critical to traffic safety. Mr. Burke stated that anything that could be done to reduce the size of the garage to the normal size of 600 square feet and that even perhaps 900 square feet would accommodate three units.

Ms. Trainor asked if anyone else had any comments in respect to the application.

Mayor Nicol stated that he did not have a problem with the application if the garage were moved 5 feet further from Union Lane. Mayor Nicol added he felt it would be a great improvement to the Lot.

Councilman Garruzzo stated he thought this would be an improvement and an asset to the community but that the garage had always been his concern.

Mr. Stenson stated he agree with Mayor Nicol and that the garage should be moved another 5 feet.

Mr. Maclearie stated he also agreed with Mayor Nicol that moving the garage 5 feet from Union Lane would help and also lowering the roof height would definitely help too.

Mr. Siano stated he agreed with his fellow Board members and would like to see the garage pushed back to where it originally started on the old Plan.

Ms. Brisben stated that she was not for the large size of the garage, agreed with Mr. Burke and thought there might be a sight triangle issue. Ms. Brisben stated that the street was heavily travelled and also had a problem with the driveway being a one way. Ms. Brisben stated she would not be in favor of the application.

Mr. Jones stated he was opposed to the size of the garage.

Ms. Trainor stated she did not think there had been testimony that she was willing to accept that there was a hardship or some other unique condition of the Lot that would require or allow a variance that she would be willing to grant for a garage of that size. Ms. Trainor stated she agreed with Ms. Brisben and also had not heard anything other than a personal reason that would only strictly benefit the owner that would allow a second curb cut with respect to the driveway.

Ms. Trainor stated that there were a number of conditions or issues raised and asked Mr. Clark if he would go through them and then see if someone would be willing to make a motion with respect to those conditions and what conditions the applicant was prepared to accept.

Mr. Clark stated he would summarize some of the conditions that were discussed during the last three meetings. Mr. Clark stated a condition agreed to by the applicant was having a one-way driveway with two curb cuts, and the applicant agreed that there would be screening for the pool equipment in a manner satisfactory to the Board Engineer. Mr. Clark stated there was testimony and also within Mr. Hilla's letter a dedication of a right-of-way, or easement in one area of the property and talk in Mr. Hilla's letter about getting that dedication to be able to extend the sidewalk across the property. Mr. Clark stated he believed that the applicant had agreed to this.

Mr. Clark stated he thought the Board needed to consider if they wanted to make a motion to approve the application with the revised garage in its now revised size but moved 5 feet away from Union Lane which was agreed to by the applicant or whether the Board would prefer something else.

Ms. Trainor asked Mr. Giunco, based on what Mr. Clark had said, what his thoughts were and what he would suggest the Board do.

Mr. Giunco stated that he would like to remind the Board that on June 1st, the Police Department issued a letter regarding the driveway, that stated the Traffic Safety Unit did not see a safety concern. Mr. Giunco read the letter into the Record. Mr. Giunco stated it was the Board's preference that the garage be moved 5 feet towards Homestead Road, then the applicant would agree to do that. Mr. Giunco stated he would like the Board to approve the application and thought that the applicant worked hard to meet each of the comments that were made.

Ms. Trainor asked if there were a member of the Board willing to make a motion of the kind that Mr. Giunco advocated for. Mr. Clark stated that the motion would be to approve the application with moving the garage 5 feet over and with the other conditions listed.

Mayor Thomas Nicol made a motion. Ms. Trainor asked if any member of the Board wanted to second the motion. Hearing none, Ms. Trainor announced no one had seconded the motion and asked Mr. Giunco if there were a secondary motion he would advocate for. Mr. Giunco asked the Board for a moment to confer with his client. Mr. Giunco stated the applicant would like some time to consider it and would like an opportunity to speak further with the Board Engineer, Mr. Hilla about his comments. Mr. Giunco asked the Board to carry the application for a vote at the next meeting.

Ms. Trainor asked for a motion to carry the application for one meeting. James Maclearie made a motion to carry the application, seconded by Councilman Frank Garruzzo, and followed by the roll call vote.

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones

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Noes: None

OTHER BUSINESS:

Zoning Officer's Appeal for Block 60, Lot 17, 9 Crescent Drive, owned by Peter & Katelyn Cappiello, to allow construction to continue on a single-family dwelling.

Councilman Garruzzo announced that he and Mayor Nicol needed to recuse themselves from this administrative appeal. Mr. Clark explained that there were certain members that were not on the Zoning Board and would need to step away. Mr. Clark stated that Mr. Siano had a conflict because he lives within 200 feet and would not be participating in the hearing but could observe if he chose to do so.

Attorney Evan Zimmerman, Giordano, Halleran & Ciesla, announced he was stepping in for Mr. Giunco and would be appearing on behalf of Peter and Kaitlyn Cappiello.

Ms. Trainor stated that she had a question for Mr. Zimmerman about the contours of the appeal and asked him to go through that process so it could be framed properly for the Board. Mr. Clark suggested he give a quick review of what was going on and then Mr. Zimmerman could weigh in if he would like to do so.

Mr. Clark referred to and explained statute NJSA 40:55D-70(a) to the Board. Mr. Clark stated that what the Zoning Board does when it hears an administrative appeal is that it hears testimony or argument on the appeal, and then it decides whether the action taken by the administrative officer was in error. Mr. Clark stated that in this case the appeal is from an action taken by the Zoning Officer. Mr. Clark stated that after all of the testimony was heard on the appeal, there would be a vote by the Zoning Board where they would either affirm the decision of the Zoning Officer or grant the appeal and reverse the Zoning Officer's decision.

Mr. Clark stated there was a permit issued by the Zoning Officer on January 28th, 2021, which authorized construction on this property. Mr. Clark stated some construction had begun and then the Zoning Officer issued a revocation of the Zoning Permit. Mr. Clark stated he believed that the letter of revocation was part of the package that the Board members had received and then described the details of that letter.

Mr. Clark explained that one issue raised by the applicant within its appeal was whether the applicant exceeded the scope of the approved plans. Additionally, the applicant has also raised arguments regarding equitable estoppel and detrimental reliance. Mr. Clark then explained to the Board the meanings of those two terms.

Mr. Clark stated he had spoken to Mr. Giunco earlier and told him that to the extent that this applicant is raising arguments based upon equitable estoppel and detrimental reliance, it would have to file a lawsuit and ask a judge to rule on those arguments because a Zoning Board sitting on an administrative appeal does not have jurisdiction to decide those legal principles. Mr. Clark stated that the only cases regarding equitable estoppel and detrimental reliance that he was aware

of were cases that have been argued to a court where the court had ruled on these equitable arguments.

Mr. Zimmermann stated that there are two separate applications before the Board—an administrative appeal and an application for variance relief. He asked that the Board table the administrative appeal and instead hear the variance application first. Mr. Zimmerman stated they would like to put their proofs on the record as to the basis of the administrative appeal, but in the interest of time and expediency, they would like to start with testimony regarding the variances at issue. Mr. Zimmerman stated that if the Board is satisfied with what the applicant presents with regard to its variance application, then the administrative appeal would become moot and would not need to be heard.

Ms. Trainor asked Mr. Clark if he had thoughts on how to proceed. Mr. Clark stated that the applicant would only need variance relief if the applicant's appeal was denied. Mr. Clark stated that if the appeal was granted and the decision of the Zoning Officer was overturned, then there would be no need for variance relief. Mr. Clark stated that he was not aware of any law regarding the order for hearing these applications other than law saying that they could be filed simultaneously, but that he felt that it would be logical to hear the appeal first since there would be no need for variance relief if the appeal was granted and the Zoning Officer's decision was overturned. Mr. Clark stated he did not have a definitive answer but those were his thoughts.

Mr. Zimmermann stated they were not willing to concede the point that the Zoning Board cannot hear the applicant's equitable estoppel and detrimental reliance arguments, but that applicant would like to present the variance application first. Mr. Zimmerman stated they would like to do this to streamline the issues before the Board and also based on the fact that the applicant can apply for variances whether or not there is a Zoning Officer's determination in place.

Ms. Trainor asked Mr. Zimmerman to confirm that the only evidence that the applicant intends to present on the administrative appeal is its arguments regarding equitable estoppel and detrimental reliance or whether there is additional evidence or arguments that it will present. Mr. Zimmerman answered that the only evidence that it intends to present on the appeal is evidence supporting its arguments of equitable estoppel and detrimental reliance. Mr. Zimmerman summarized that once the permits were issued and the applicant relied on the permits to their detriment, the case law in New Jersey was that after a substantial expenditure of time and funds, the applicant was entitled to rely on the approvals. Mr. Zimmerman stated that was the basis for their appeal and that these are the issues that it is not willing to concede.

Ms. Trainor asked Mr. Zimmermann if what he was saying was the two points that they have on appeal, the estoppel argument and detrimental reliance argument, that they were not making any argument on appeal that the Zoning Officer made a mistake in revoking the permit and determining that variance relief is required. Ms. Trainor asked Mr. Zimmermann if it was correct that he was not making that argument. Mr. Zimmerman stated that was correct.

Ms. Trainor stated that based on what Mr. Zimmerman had just said and based on the advice of the Planning Board Attorney, Mr. Clark, it was her understanding that the Board did not have jurisdiction to consider the two equitable arguments that the applicant is raising on appeal, so

they would not be able to table it. Mr. Zimmerman stated he disagreed with Ms. Trainor's conclusion and that he believes that the Board was given authority under the Municipal Land Use Law and local Ordinances and was confined to apply the law as it is given. Mr. Zimmermann stated he believes that the Board does have jurisdiction to consider all relevant legal principles in addition to the Ordinances, Municipal Land Use Law, and state regulations.

Ms. Trainor asked Mr. Clark if his advice to the Board had changed. Mr. Clark replied that his advice to the Board has not changed. Mr. Clark stated when he looked at the statute that talks about administrative appeals, it talked about appeals made in the enforcement of the Zoning Ordinance, and whether there was an error under the provisions of the Zoning Ordinance. Mr. Clark continued by saying that he reads that to mean that the Board's expertise is in the interpretation of the Zoning Ordinance and the provisions in it and not in applying legal principles of equity.

Mr. Clark stated that another issue he wanted to raise was that only the Zoning Board of Adjustment could hear this appeal which is why Councilman Garruzzo and Mayor Nicol left. Mr. Clark stated that if these applications were two separate things, as Mr. Zimmerman said when he indicated that the variance application could be heard regardless of whether the appeal was filed or not, it is possible that the variance relief application could be heard by the Planning Board, including the members that stepped away because they are not Zoning Board members. Mr. Clark stated that the applicant could decide to proceed with the remaining Board members but in his view, he believed that the variance relief being sought is within the jurisdiction of the full Planning Board. Mr. Clark asked Mr. Zimmerman if he had any thoughts on that.

Mr. Zimmerman stated that it was his understanding that a single-family residence, that just required variance relief, did not require site plan approval and in most towns would be heard by the Zoning Board of Adjustment as a plain bulk variance application. Mr. Zimmermann asked Mr. Clark if when the Board has an application for variances for a home, is the Board convened in its capacity as a Planning Board or a Zoning Board. Mr. Clark asked Mr. Hilla if he had any thoughts on that question. Mr. Hilla replied that it was his experience with combined Boards that Class 1 and Class 3 Board members would hear C variance applications but would have to step down for a D variance. Mr. Clark stated that if all that is being requested is C variances for a single-family home, this would be something that the full Planning Board could hear.

Ms. Trainor stated that she understood that Mr. Zimmerman was requesting that the Board table the appeal but based on the advice from the Board's attorney that the Zoning Board did not have the power to grant equitable relief, tabling the appeal would be illogical and she had not heard any support that Mr. Clark was willing to accept that Mr. Zimmermann had provided that would change his advice to the Board. Ms. Trainor stated that the Board needed to address the appeal first and Mr. Clark had advised the Board that it does not have jurisdiction to consider the equitable arguments being raised by the applicant in support of the appeal.

Ms. Trainor asked the Board if they had any questions for Mr. Clark. Hearing none, Ms. Trainor asked the Board if they had any comments with respect to this specific issue. Hearing none, Ms. Trainor asked if a member of the Board would make a motion to deny the appeal on the legal basis that Mr. Clark had explained. Mr. Clark clarified it would be a motion to deny the appeal

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and to affirm the Zoning Officer's revocation of the Zoning Permit, based on the fact that the appellant is relying upon equitable legal arguments which are beyond the scope of the Board's jurisdiction.

Mr. Zimmerman asked permission to address the Board and stated that they had not put on any testimony from their professionals which he thought was appropriate before the Board voted on the appeal. Ms. Trainor stated to Mr. Zimmermann that the Board did not have jurisdiction to hear this specific issue. Ms. Trainor stated that the Board could hear the variance application if Mr. Zimmerman was prepared to move forward, notwithstanding the fact that Councilman Garruzzo and Mayor Nicol had perhaps recused themselves as they are not Zoning Board members.

Mr. Zimmerman stated he would like time to confer with his client before the Board acted on the appeal. Mr. Zimmermann then stated that he had conferred with his client and would request the opportunity to be able to brief these issues because it was their position that the Board does have jurisdiction to hear the appeal. Mr. Zimmerman requested to come back next month and if the Board was inclined to either deny the appeal or not move forward with it on the basis of jurisdiction, the applicant would accept that determination and would go forward with its variance application. Mr. Zimmermann asked the Board to carry both the appeal and the application for variance relief for his clients.

Ms. Trainor asked if any member from the Board would be willing to make a motion as requested by Mr. Zimmerman, to carry the administrative appeal and the variance application to the next meeting. Mr. Maclearie made the motion, seconded by Ms. Brisben.

Ayes: James Stenson, Corinne Trainor, Jim Maclearie, Karen Brisben, Stephanie Frith, Jay Jones
Charlie Tice

Noes: None

Recused: Mayor Thomas Nicol, Councilman Frank Garruzzo, Chris Siano

Ms. Trainor stated if there were no other business, she would ask for a motion to adjourn. Jim Maclearie made the motion, seconded by Jay Jones, and unanimously approved by the Board, all aye.

Denise Murphy, Recording Secretary
Approved: October 12th, 2021