

December 14th, 2021

BRIELLE PLANNING BOARD
TUESDAY, DECEMBER 14th, 2021

The Regular Meeting of the Brielle Planning Board was held on Tuesday, December 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: Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice

Absent: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, and Stephanie Frith

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer, and Carol Baran, Recording Secretary. There were 22 people in the audience.

A motion was made to approve the Minutes of November 9th, 2021, this done by Jim Maclearie seconded by Karen Brisben, and approved by unanimous vote, all ayes.

OLD BUSINESS:

Announcement that the Application for Variance relief for Block 60, Lot 17, 9 Crescent Drive, owned by Peter & Katelyn Cappiello, to allow renovations & addition to a single-family dwelling is being postponed, by the applicant, to the Tuesday, January 11th meeting of the Planning/Zoning Board.

Mrs. Brisben asked Mr. Clark to explain the correspondences between the attorney for the applicant and himself. Mr. Clark stated that the application would be carried until January 11th with possible new plans which would need Borough Engineer Hilla's approval. The second issue, the applicant had received a "stop work order" from the construction department on the partial construction they had started on the site which caused them to file for a variance. The applicant asked Ms. Commins and the Construction Department for permission to winterize the structure and it was granted.

Ms. Trainor announced there would be a change to the order of the agenda, Mr. Michael Henderson attorney for the Burke application had been tied up in another meeting.

OTHER OLD BUSINESS:

Application for Use Variance for Block 66.01, Lot 2, 628 Higgins Avenue, owned by Anthony & Catherine Grieco (Applicant – M&D Two, LLC) to allow Multi-Family Use, townhouse units (not allowed in C-1A Zone). Note: this is a two-part application, applicant is asking for Use Variance first, then will submit detailed site plan for townhouse units if Use Variance is approved.

Ms. Trainor recapped at last meeting the applicant presented a civil engineer as their first witness and his testimony was complete. Ms. Trainor continued the second witness for the applicant had

been sworn in and after his qualifications were stated, Mr. Charles Heydt was accepted as an expert.

Mr. Adam Faiella, Sills Cummis & Gross, announced he was with the firm representing the applicant, M&D Two, LLC. Mr. Faiella introduced Charles Heydt with the firm Dresdner Robin, as the planner for the applicant who would testify why this was suited for the purposed multi-family townhouse use. Mr. Faiella reminded the Board the applicant was there for only the use variance. Mr. Faiella stated the applicant was not requesting the density variance at this time, they feel it is more appropriate to request the density variance when they come back for a site variance if the Board should grant the use variance. Mr. Faiella wanted to assure the applicant is not trying to “pull a bait and switch”, and that the Board could set a maximum but not minimum of 22 units if it so chooses.

Mr. Clark asked Mr. Faiella to confirm the proofs they were giving were for the D-1 variance and not the D-5 density variance. Mr. Faiella confirmed yes, they felt the D-5 density variance was more appropriate during the site plan application. Mr. Faiella said they would be presenting a traffic engineer and architect at a future meeting.

Mr. Charles Heydt, Land Use Planner, explained he would walk the Board through the particulars of the site and had pictures to share. Mr. Heydt labeled a group of pictures (5 pages with two pictures per page) of the property, the single-story building, and surrounding properties as Exhibit A-3. Mr. Heydt described the pictures of surrounding properties, Brielle Commons, a multi-family townhouse subdivision, Borough owned vacant property, a retail store and fitness gym, Brandywyne East, one story single-family development, Union Place seasonal residential apartments, and Whaler’s Quay similar to Union Place.

Mr. Heydt reminded the Board that the property is 57, 989 feet which equates to 1.33 acres, far exceeding the zoning standards for C-1 district with 297 ft. of frontage on Higgins Avenue. In Mr. Heydt’s opinion, he characterized it as an underutilized development for the liquor store and farmer’s market which are not in high quality condition. Mr. Heydt read from the zoning ordinance for the C-1 district, the purpose of the zone is to provide a multi-use overlay zone that dovetails with the “Main Street” theme of the reconstructed Higgins Avenue Corridor, it is intended to promote themes, retail professional use development with conditional residential aspects, sea shore colonial architectural features are recommended. In Mr. Heydt’s opinion the district was created to foster retail along this section of the avenue that was rezoned when the highway was redirected. Mr. Heydt explained they are trying to plan for a multi-family development on this property, currently proposing 22 units but are not locked into or requiring 22 units. Mr. Heydt shared a 3D rendering of the proposed concept of three-story structures attached townhouse dwellings. Mr. Faiella asked if the image should be marked as Exhibit A-4. Mr. Clark responded, “I think we should, because it's being shown now, and we want to again keep a record of anything that was shown and have a hard copy of it”.

Mr. Heydt explained all parking would be off-street parking, there would be garages and spaces for parking with the proposed 22 units. Mr. Heydt went on to say the contained parking would maintain the streetscape with only one curb cut.

Mr. Heydt stated they are meeting the alternate standard which is commonly referred to as the particular suitability test, there needs to be established certain aspects of the existing property, which would lend itself to being used for the proposed use, as opposed to anything permitted in the district. Mr. Heydt continued in terms of property size the site is a reasonable size to accommodate a multi-family townhouse development, referencing the design accommodates for appropriate setbacks, appropriate outdoor areas for stormwater, driveway, and circulation. Mr. Heydt added they do account for required parking and the concept plan will be able to accommodate a singular entry which reduces the number of curb cuts. Mr. Heydt referenced the lot depth of 144 feet which would allow for vehicular activity central to the site reducing impact to Higgins Avenue.

Mr. Heydt shared a prepared Land Use Analysis. Mr. Heydt marked the Exhibit A-5 with Mr. Clark's approval. They provided an aerial image with the added parcel layer and GIS layer as maintained by the State. They identified each property by use with different colors, Red is traditionally retail, commercial, yellow is traditionally residential in terms of increasing intensity, the light yellow is single family and darker yellow is multi-family, and blue publicly owned land.

Mr. Heydt stated their plan was considering 22 units which equates to a density of 16.5 units per acre compared to surrounding properties, Courtyard Lane with 16 units which is a density of eight units per acre, Whaler's Quay with approximately 29 units, which is a density of 40 units per acre, Union Place with 9 units which is a density of 29 units per acre, Brandywyne East with 69 units which has a 6.6 units per acre. In Mr. Heydt's opinion the proposed plan is consistent with the surrounding range of density. Mr. Heydt testified the intent was to maintain much of the existing landscape on the rear of the property. He mentioned they would be installing ADA accessible sidewalks with street trees that are envisioned along Higgins Avenue.

Mr. Heydt added the Board would hear more from the architect about the materials, design and scale which are consistent with the existing residential uses in the area.

Mr. Heydt stated based on the project engineer's layouts and dimensions, he was confident they would be able to provide and meet parking standards.

At this time, Mr. Heydt did not want to go into details about the bulk variances which they do have to formally request but did say there is flexibility in terms of bulk standards as it relates to a use variance.

Mr. Heydt continued with the second element of a particular suitability case is special reasons. Mr. Heydt reviewed appropriate use of land, Purpose A compatible with existing residential uses, Purpose C to provide adequate light, air and open space, Purpose E comparison of density and Purpose I design to promote a more desirable visual environment through creative development techniques.

Mr. Heydt shifted to the negative criteria, there can't be any finding of a substantial detriment to the public welfare and no substantial impairment to the Zone Plan or Zoning Ordinance. With respect to public welfare, Mr. Heydt reiterated his opinion that the property was large enough to accommodate appropriate setbacks making it a balanced use of the property. Mr. Heydt focused on the second part, the intent and purpose of the zone plan and zoning ordinance. Mr. Heydt stated

senior family living is a recognized use, but they are purposing market rate residential development. Mr. Heydt felt it would have more impact on the existing residential uses in terms if it was redeveloped with retail use.

Mr. Heydt reminded the Board of his earlier testimony the Zoning Ordinance does establish bulk standards in this district, and they will need relief from certain aspects. Mr. Heydt stated he felt they were able to meet the intent of the bulk standards for that site. Mr. Heydt told the Board parking is a balancing test for a site and they would meet RSI standards for appropriate amount of parking.

Mr. Heydt explained the Zone Plan refers to the Master Plan. And he pointed out several specific goals from the Master Plan that apply. One, encouraging residential development in location at densities, which are compatible with existing development patterns, and can be properly serviced by public roadways utilities and services, to encourage the development pattern, which will protect and enhance long term economic, environmental, and social values present and future residents of great Brielle, and three, innovative development proposals, which would encourage development densities consistent with existing patterns of development. Mr. Heydt added two aspects from the re-examination report from 2016, promotion of a gateway commercial development along Higgins Avenue and modification of the gateway zone uses, to more closely reflect permitted C1 uses, while the creation of the C1-A zone began in earnest hopes to transform the Higgins Avenue Corridor.

Mr. Heydt spoke of the last aspect they investigated for the application which was raised at the last meeting, population, and school age children. Mr. Heydt stated they had done some research, and, in his opinion, there will be no substantial impact to the population.

Ms. Trainor announced it had been 45 minutes and asked Mr. Faiella if he had any “wrap up” questions of Mr. Heydt. Mr. Faiella had nothing further of Mr. Heydt. Ms. Trainor announced questions from the Board would be heard at the next meeting. Mr. Clark reminded Ms. Trainor the public would be able to ask questions of Mr. Heydt at the next meeting also.

OTHER OLD BUSINESS:

Application for Minor Subdivision for Block 82.01, Lot 1, 409 Union Lane, owned by Estate of Charlotte Burke (Applicant – Daniel Burke). Lot Frontage – 30 feet required, 27.11 feet proposed for Lot “B”. Lot Depth – 125 feet required, 122.40 proposed for east side of Lot “B” and 122.91 proposed for west side of Lot “B”.

Ms. Trainor recapped the events from the last meeting in reference to the application.

Ms. Nuccio said she had presented four specific reasons with their corresponding code references for opposing the subdivision and the variances being sought and tonight she would provide supporting evidence, exhibits, and expert testimony. Ms. Nuccio stated she would provide a list of negative and positive criteria.

Ms. Nuccio shared Exhibit O-1, a power point collection of exhibits. Ms. Nuccio started with slide one which was an aerial of the neighborhood. Ms. Nuccio stated she would go through her objections with the variances: frontage, row, lot depth and accessory structure. Ms. Nuccio said

with regards to the variance for frontage and right-of-way, 21-9.13, she believes the applicant misquoted or did not use the Brielle code. Ms. Nuccio read directly from the Brielle code and pointed out that 21-13.2 was not Brielle's code for frontage and Brielle's code did not reference 75 feet or dead ends.

Ms. Nuccio feels the distinction between dead-ends and dead-end turnarounds is very important. Ms. Nuccio described a dead-end street as a public way that has only one outlet for vehicular traffic and does not terminate in a vehicular turnaround. In slide three, Ms. Nuccio said a dead-end turnaround would take one of the five different forms, according to International Building Code. Ms. Nuccio referred to the applicant's testimony that Brielle has more than 20 dead-ends, dead-end turnarounds, and cul-de-sacs. Ms. Nuccio gave examples of cul-de-sacs or dead-end turnarounds that have bulbous ends: Post Road, Scott Road, Locust Road and Sandy Court. Ms. Nuccio displayed several slides which depicted a typical dead-end turnaround in Brielle.

Ms. Nuccio followed it up with a photo of the end of Melrose Avenue which is the site of the application. Ms. Nuccio explained the applicant is purposing two drives and a lot at the end of Melrose. Ms. Nuccio said Melrose Avenue is not a cul-de-sac or dead-end turnaround and there is no provision in the Brielle Ordinance for frontage or terminus of a dead-end street. Ms. Nuccio believes this is for good reason: snow removal, traffic control, parking, and emergency vehicles.

Ms. Nuccio turned to the variance for lot depth. Ms. Nuccio's next slide displayed a tax map photo of Melrose Avenue with neighboring lot depths marked. Ms. Nuccio went through each lot on Melrose Avenue and read their lot depth, explaining that all are 100 feet or over. Ms. Nuccio clarified "that lot depth is measured between the street line and the nearest part of the rear lot line". Ms. Nuccio called attention to an expanded tax map of surrounding streets and pointed out that all are larger except one. Ms. Nuccio explained the only lot which has a lot depth of 74 feet had 200 feet of frontage and twice the area of the proposed lot. Ms. Nuccio believes there is nothing in the neighborhood to justify the depth that is proposed. Ms. Nuccio agreed with previous statements made by Ms. Trainor that this depth would cause a hardship on future owners forcing them to seek relief from the Board.

Ms. Nuccio's next slide was a photo of the accessory structure which the applicant calls a shed and is requesting a variance. Ms. Nuccio voiced her opinion that the structure was more substantial than a shed. Ms. Nuccio read 21-13.1 which states an accessory structure, without a primary structure, is not permitted.

Ms. Nuccio read her perceived list of negative criteria: impact to surrounding properties, development would require clear cutting, difficult for emergency vehicles to navigate roadway, snow removal and proposed lot will be non-conforming. Ms. Nuccio testified the applicant is taking a conforming lot and turning it into a non-conforming lot which is a self-created hardship. Ms. Nuccio testified that the application is incomplete, fraught with errors and inaccuracies and expert testimony is inherently biased because the expert witness is the applicant and owns the property. Ms. Nuccio added "leaving lot A the equivalent of two lots with access to Melrose, it looks like the intention is to allow for the flexibility of yet another subdivision, which would just exacerbate all these problems."

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Ms. Nuccio concluded her testimony by mentioning a letter from the Environmental Commission and asked whether she should read it at this time. Mr. Clark explained Ms. Trainor would read the letter before the application is complete.

Ms. Trainor announced it was time to hear questions from the Board. Mr. Maclearie, Mr. Siano and Mr. Tice had no questions.

Ms. Brisben told Ms. Nuccio she had driven by the site and noticed a man-made driveway which appeared to be created by cars riding back and forth over a piece of grass. Ms. Brisben asked Ms. Nuccio if she had an opinion about that driveway. Ms. Nuccio responded her understanding is that is not on the Burke property, but lots 8 & 9 and there is a question as to the legality of that driveway. Ms. Nuccio stated Mr. Burke mentioned a shared driveway and she wondered if there was an easement.

Mr. Jones asked what the egress was for the lot. Mr. Burke responded lot B would access the dead end of Melrose Avenue.

Ms. Trainor recapped Ms. Nuccio's statement that there is no Brielle ordinance that addresses the right-of-way on dead end street and asked Mr. Hilla if that is his understanding. Mr. Hilla responded typically the Borough tries to encourage the applicant to create the turn-around on their property and he believes there is nothing in the ordinance that necessarily mandates that there is a turnaround. Mr. Hilla continued he didn't think the ordinance that was written was necessarily envisioned for this sort of circumstance. Ms. Trainor asked Ms. Nuccio why they would need a variance if according to Ms. Nuccio's testimony, Brielle's ordinances do not apply, and variances are only needed if the proposal would deviate or not comply with an ordinance. Ms. Nuccio replied he would still need a variance because it was lacking frontage and right-of-way. Ms. Nuccio asked Mr. Hilla if in Brielle are there any conditions where a house fronts a dead-end as Mr. Burke is proposing. Mr. Hilla replied, Cherokee Lane. Ms. Nuccio added Cherokee Lane has a bulbous end.

Ms. Trainor asked if in Ms. Nuccio's opinion was the application incomplete. Ms. Nuccio said yes and referenced the Environmental Commission letter. Mr. Henderson objected to the reading of the letter stating he felt it was hearsay without Mr. Houseal to testify. Ms. Trainor explained the procedures announced every month and written on the agenda, due to Covid conditions, which currently exist for reading a letter mailed or emailed. Ms. Trainor said since the letter was received at least four hours before the meeting, there was no prejudice in Ms. Nuccio referencing the letter and overruled Mr. Henderson's objection.

Ms. Nuccio read the applicant requested waivers of two critical plot details, topography, and the proposed grading plan at two-foot intervals and water drainage on and off the property and stated both waivers should be denied by the board. Mr. Henderson asked Ms. Nuccio if her position was the application was incomplete because waivers were requested. Ms. Nuccio responded she was referencing the letter that states the application was incomplete with a list of reasons. Mr. Hilla interjected the application can be deemed substantially complete by the Board, even though there is a waiver request.

Mr. Hilla asked if the Board could go back to the variance issue and Ms. Trainor agreed. Mr. Hilla explained that if the Board were to determine that it is neither a cul-de-sac or turnaround then the

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first part of the sentence in that section governs and that would be for all other instances, front yards, must face on 50 feet right, of way, for at least 40 feet. Mr. Clark clarified that Mr. Hilla was saying they need a variance either way. Ms. Trainor asked Mr. Hilla, if the Board agrees with the ordinance, then the notice should read lot frontage 40 required, 27.11 feet proposed. Mr. Hilla agreed.

Ms. Trainor asked Ms. Nuccio do emergency vehicles already have a hardship on Melrose Avenue. Ms. Nuccio responded she would agree and increasing the activity would exacerbate the situation.

Ms. Trainor asked if Mr. Hilla had any further questions and he responded no.

Ms. Trainor asked Mr. Henderson if he had any questions for Ms. Nuccio before she opened it to public questions. Mr. Henderson asked Ms. Nuccio how the access was made worse if the street is not changing. Ms. Nuccio responded, "I would argue that adding another two driveways and the cars associated with development and parking, would add congestion to an already tight space and that congestion in and of itself would add to the difficulty of emergency vehicles, getting down Melrose". Mr. Henderson added he felt by adding extra turnarounds, it would reduce the hardship. Mr. Henderson asked Ms. Nuccio where she had gotten her definitions for dead ends. Ms. Nuccio responded, "International Building Code". Mr. Henderson asked if they appeared in the Brielle Code and Ms. Nuccio responded dead end turnaround does appear several times and is referenced. Mr. Henderson asked to Ms. Nuccio's knowledge is there any differentiation between dead-end turnaround and dead-end in the Brielle Zoning code. Ms. Nuccio responded in the Brielle code there are no references to dead-ends but there are dead-end turnarounds. Mr. Henderson asked Ms. Nuccio if she analyzed the area of the lots. Ms. Nuccio explained there was not a variance being sought for lot area, so her study was on lot depth. Mr. Henderson asked Ms. Nuccio if she was arguing that this was an inappropriate subdivision for the neighborhood scheme. Ms. Nuccio responded no she was arguing no justification for the variances being sought. Mr. Henderson asked Ms. Nuccio if she was testifying as a professional on her own behalf as she argued the applicant was doing. Ms. Nuccio responded she was not sworn in as a professional, she would be presenting an expert and she was there as a neighbor with neighboring property that will be affected.

Ms. Trainor announced that 45 minutes was approaching. Mr. Henderson agreed to defer to the Boards decision for carrying until the next meeting. Ms. Trainor asked the Board for their thoughts. Ms. Brisben asked if they could continue as several applications were backing up the Board's agendas and other pending applications. The Board agreed to continue.

Ms. Trainor announced it was time to hear questions from the public for Ms. Nuccio. Ms. Trainor announced there were no questions from the public.

As per the Board's covid policy, Ms. Trainor read into the record the letter from Mr. Houseal, secretary for the Environmental Commission.

"Date: 13 December 2021

Planning Board Chairperson & Members

Brielle Planning Board Tuesday, 14 December 2021:

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Ref: Old Business Block 82.01, Lot 1, 409 Union Lane, Estate of Charlotte Burke (Burke Estate), Minor Subdivision/ Use variance. Continuation of Hearing.

COMMENTS TO BE READ INTO THE OFFICIAL RECORD of the above referenced application: In our advisory capacity to the Board the following comments:

The application for the above referenced Burke Estate is incomplete.

The proposed Lot B will be "landlocked" with proposed non-conforming access from Melrose Ave. (40-foot row.) of 26.92 feet, where a minimum of 30 feet is required.

Brielle's Land Use Ordinance 24-7.2 (Included in this report by reference) Minor Subdivision (a.) Plat details lists 19 specific plat items be submitted to the Board. The Applicant requested waivers of two critical Plat details: #17 Topography (and a proposed grading plan) at 2 ft. interval and #18 Water Drainage, on and off the property. Both waivers should be denied by the Board. More information is needed to make informed decisions

Stormwater calculations based on maximum allowed impervious cover should be required to determine the quantity of water leaving the site. On site retention or detention structures are likely to be required due to excessive stormwater runoff.

Existing mature trees of various species should be located on Plat detail #17. These trees should be evaluated for viability by a licensed Arborist with report provided to the Board.

This property is one lot away from highly congested State Highway 35. Mature trees buffer residential areas from traffic noise and exhaust pollution. The Board should consider requiring the planting of one (or more) large caliper immature tree for each existing large tree removed.

The newly created lot will be nonconforming. Lot depth required is 125 feet; proposed is 122.40 feet and 122.91 feet. The impact of all requested variances should be evaluated after the above Information is provided.”

Mr. Henderson asked Ms. Trainor if he would be able to comment on the letter since he is unable to cross examine Mr. Houseal. Ms. Trainor explained that Mr. Henderson had the ability at the end of the application to provide any closing arguments. Mr. Clark agreed the better way to do it was to wait until the closing argument.

Ms. Trainor asked Ms. Nuccio if she had an expert witness that she would like to call.

Ms. Nuccio stated she had only one witness to present, Mr. Jason Tronco, from Melillo, Bauer, Carman Landscape Architecture who would be testifying as a professional planner. Mr. Tronco was sworn in by Mr. Clark. Mr. Tronco listed his qualifications and the Board accepted him as an expert witness.

Mr. Tronco felt the hardship variance they were seeking was self-created. Mr. Tronco listed the negative criteria in his opinion: restricting the light, air, and space for the community, will need future relief from the Board to develop the lot, and is not consistent with the Zone plan. Mr. Tronco said he did not feel any of the negative or positive criteria for either C-1 or C-2 variances was presented.

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Ms. Trainor ask Mr. Henderson if he had any questions of Mr. Tronco. Mr. Henderson asked Mr. Tronco if he was in attendance at the last meeting. Mr. Tronco responded yes; he was. Mr. Henderson asked Mr. Tronco what he meant by “future development would be sub-standard”. Mr. Tronco responded development of future lot, if sub-division is granted, would need relief due to ordinance requirements. Mr. Henderson asked why Mr. Tronco feels any development would need relief. Mr. Tronco responded it would be need for a standard home, otherwise the home would be very narrow.

Ms. Trainor announced it was time to hear questions from the Board for Mr. Tronco. Mr. Maclearie, Mr. Siano, Ms. Brisben, Mr. Jones, Mr. Tice, and Ms. Trainor had no questions for Mr. Tronco.

Ms. Trainor asked the public if there were any questions of Mr. Tronco. Ms. Trainor heard none and excused Mr. Tronco.

Ms. Trainor asked Ms. Nuccio if she had any additional evidence. Ms. Nuccio responded she did not and thanked the Board for their time.

Ms. Trainor asked Mr. Henderson if he had any rebuttal evidence to present. Mr. Henderson responded no.

Ms. Trainor opened the meeting to any comments about the application from the public. Ms. Trainor announced no member of the public had a comment.

Ms. Trainor announced it was time to hear comments from the Board. Mr. Maclearie felt the application was creating a hardship at the dead end for snow plowing and emergency vehicles. Mr. Siano agreed with Mr. Maclearie, and stated he felt development on the lot would need relief from the Board based on setbacks. Ms. Brisben had a problem with the depth of the lot, and she felt it is self-created. Mr. Jones, Mr. Tice, and Ms. Trainor had no comments.

Mr. Henderson asked for several minutes to talk with his client before giving his closing statements. Ms. Trainor granted Mr. Henderson his request.

Mr. Henderson announced after discussing with his client, they are willing to stipulate to several things: agree to move proposed lot line increasing the area for lot B. Ms. Trainor asked Mr. Henderson if what they were agreeing to change was the subdivision line would be continuation to the north side of Melrose Avenue. Mr. Henderson responded yes that would eliminate their request for a variance for frontage along a right-of-way. Ms. Trainor asked Mr. Hilla if that would eliminate the need for a variance. Mr. Hilla asked Mr. Henderson if they were suggesting the entire end of the right-of-way (40ft) would be the continuation of the northern most end. Mr. Hilla said he believes it eliminates the need for that variance.

Mr. Henderson continued with their stipulations: there would be no ingress or egress on proposed lot A on Melrose Avenue and finally the shed, after two years if lot is not developed, it would be eliminated.

Ms. Trainor asked Mr. Clark if they should ask questions of Mr. Henderson due to the new stipulations. Mr. Clark said yes, he felt that the Board should hear Ms. Nuccio’s position on the new stipulations. Ms. Nuccio read 21-9.13 which requires all front yards must face on a 50 ft right-

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of-way for 40ft. Mr. Hilla explained the applicant does not have the ability to make the right-of-way wider. Ms. Nuccio asked if a variance is still needed. Mr. Hilla said he was unsure and asked Mr. Clark if he had an opinion. Mr. Clark stated his general opinion is that it doesn't sound like the development being proposed is creating anything that is causing variances to be needed because they aren't changing the property size, length, or depth. Mr. Hilla stated they are achieving the 40 foot which is the higher standard in the ordinance. Ms. Nuccio felt they should have to extend the road into the property, or it can't be developed. Ms. Trainor stated Ms. Nuccio believes a variance is required and Mr. Henderson believes there is no variance required. Ms. Trainor asked Mr. Clark if the application should be granted, does the issue need to be resolved. Mr. Clark stated that normally the Board does not tell the applicant what variances they need to present evidence. Ms. Trainor asked Mr. Clark if she had heard him say he agrees with Mr. Henderson's reading of the ordinance. Mr. Clark said yes. Ms. Nuccio also questioned the legality of the driveway and felt that the "barn" should be removed immediately.

Ms. Trainor asked for comments from the Board. Mr. Maclearie felt the shed should come down immediately. Mr. Siano stated he felt the same as before the stipulations. Ms. Brisben appreciated the willingness to compromise, and she was glad the driveway would go away. Mr. Jones agreed with Ms. Brisben. Ms. Trainor appreciated the changes but did not support the shed remaining for two years.

Ms. Trainor informally polled all the Board members and asked if they were willing to move forward with the closing remarks and vote.

Mr. Henderson stated his client is willing to demolish the shed. Mr. Henderson disagreed with the self-created hardship. Mr. Henderson stated the subdivision was compatible with the existing developments and in line with the neighborhood density. Mr. Henderson feels they are showing good faith with the changes.

Ms. Trainor asked Mr. Clark to recite the provisions necessary for the vote. Mr. Clark reviewed the stipulations: to amend the plans to show sanitary sewer services, limits of existing gravel driveway already serving proposed lot, and lot numbers, issued by the tax assessor, need to be shown, good faith effort to not remove trees on lot or replace, survey would be submitted and in addition moving lot line to north, Lot A no ingress or egress to Melrose Avenue and demolish the shed as a condition of approval.

Ms. Brisben asked if the waivers could be put in the resolutions. Mr. Clark agreed to put them in there. Ms. Brisben asked for a stipulation that if lot B is sold, if a tree is taken down a new tree would be planted. Mr. Henderson stated his client would agree to the stipulation.

Ms. Trainor asked if there was a motion for the application with the conditions Mr. Clark had listed. Karen Brisben made a motion, seconded by Jim Maclearie, and followed by the roll call vote.

Ayes: Corinne Trainor, Jim Maclearie, Karen Brisben and Jay Jones

Nos: Chris Siano and Charlie Tice

Absent: Mayor Thomas Nicol, Councilman Frank Garruzzo, Jim Stenson, and Stephanie Frith

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Ms. Trainor stated if there was no other business, she would ask for a motion to adjourn. Karen Brisben made the motion, seconded by Jim Maclearie, and unanimously approved by the Board, all ayes. The meeting was adjourned at 8:43 pm.

Carol Baran, Alternate Recording Secretary

Approved: January 11th, 2022