

January 11<sup>th</sup>, 2022

BRIELLE PLANNING BOARD  
TUESDAY, JANUARY 11<sup>th</sup>, 2022

The Reorganizational Meeting of the Brielle Planning Board was held on Tuesday, January 11<sup>th</sup>, 2022, 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, Jim Maclearie, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones, Charlie Tice

Absent – None

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 11 people in the audience.

APPOINTMENTS TO PLANNING BOARD:	Mayor Thomas Nicol through 12/31/22 Councilman Frank Garruzzo through 12/31/22 Karen S. Brisben through 12/31/22 James Stenson through 12/31/25 Corrine Trainor through 12/31/25 Charlie Tice (Alternate) through 12/31/23
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NOMINATION &

ELECTION OF:	Chairperson, Vice-Chairperson
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Corinne Trainor was appointed as Chairperson and Jim Maclearie as Vice-Chairperson on a motion by Karen Brisben, seconded by James Stenson and then by roll call vote:

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

Noes: None

The following Resolutions were then presented for approval for 2022:

RESOLUTION FOR BOARD ATTORNEY & BOARD ENGINEER FOR 2022

WHEREAS, N.J.S.A. 40A:11-5(1)(a)(i) permits the Planning Board to award a professional services contract without public advertising for bids and bidding, and

WHEREAS, the Brielle Planning Board has determined that there is a need for legal services and engineering services during 2022; and

WHEREAS, the Brielle Planning Board has determined to provide the need to acquire legal services and engineering services as a non-fair and open contract pursuant to the provisions of N.J.S.A. 1:44A-20.5; and

WHEREAS, the Chief Finance Officer of the Borough of Brielle has determined to certify in writing that the value of the legal services and engineering services may exceed \$17,500; and

WHEREAS, the term of these contracts are one year (January 1, 2022 to December 31, 2022); and

WHEREAS, David Clark of Gluckwalrath, LLC has proposed to provide legal services and Alan Hilla, Jr. of H2M Architecture, LLC, has proposed to provide engineering services; and

WHEREAS, both Mr. Clark and Mr. Hilla have completed and submitted a Business Entity Disclosure Certification which certifies that they have not made any reportable contributions to any political or candidate committee in the Borough of Brielle in the previous year, and that the contracts will prohibit them from making any reportable contributions through the term of the contracts; and

WHEREAS, a certification as to the availability of funds executed by the Chief Finance Officer is attached to this Resolution pursuant to the provisions of N.J.A.C. 5:30-4;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle that:

1. The Business Disclosure Entity Certification of both Mr. Clark and Mr. Hilla as well as the Determination of Value Certification of the Chief Finance Officer shall be filed in the office of the Municipal Clerk and shall be available for public inspection.
2. The Planning Board is hereby authorized and directed to execute a contract with Mr. Clark to provide legal services and Mr. Hilla to provide engineering services for the 2022 contract year.
3. A notice stating the nature, duration, service and the amount of this contract shall be published in the Coast Star newspaper and this Resolution shall be maintained on file and available for public inspection in the office of the Board Secretary.
4. A certified copy of this Resolution shall be sent to Mr. Clark and Mr. Hilla.

#### MEETING DATES FOR BRIELLE PLANNING BOARD FOR 2022

WHEREAS, an act of the Legislature known as the "Open Public Meetings Act" enacted October 21, 1975, requires that advance notice be given of all regularly scheduled

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meetings of the Planning/Zoning Board of the Borough of Brielle, this act becoming effective January 19, 1976;

NOW, THEREFORE, BE IT RESOLVED by the Planning/Zoning Board of the Borough of Brielle that:

1. The regularly scheduled public business meetings of the Brielle Planning Board shall be held virtually at 6:00 p.m. on the second Tuesday of each month. Login Information as follows:  
<https://www.gotomeet.me/BrielleBorough/pb>  
access code: 794-656-477  
phone (if needed) 1-866-899-4679
2. A copy of this Resolution shall be posted on the public bulletin board in the Borough Hall and published in one of the official newspapers of the Borough.

#### OFFICIAL NEWSPAPERS OF THE BRIELLE PLANNING BOARD FOR 2022

NOW, THEREFORE, BE IT RESOLVED, that the Asbury Park Press and the Coast Star Newspaper are designated as the official newspapers for publishing legal notices of the Brielle Planning Board.

#### RESOLUTION FOR PLANNING/ZONING BOARD SECRETARIES FOR 2022

WHEREAS, there is a need for a Secretary of the Board and a Recording Secretary, and

WHEREAS, the Board has money in the Salary Ordinance to cover the expenses associated with these positions,

NOW, THEREFORE, BE IT RESOLVED that Karen S. Brisben be appointed Secretary of the Board for 2022 at a salary of \$5,000 annually and Denise Murphy be appointed as Recording Secretary for the year 2022 at a salary of \$5,000 annually.

A motion was made by Councilman Frank Garruzzo to approve the above Resolutions, this seconded by Chris Siano and approved unanimously by following vote, all aye.

A motion was made to approve the Minutes of December 14<sup>th</sup>, 2021, this done by Jim Maclearie, seconded by Karen Brisben, and then by the following roll call vote:

Ayes: Corinne Trainor, Jim Maclearie, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice

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Noes: None

Not eligible to vote: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Stephanie Frith

CORRESPONDENCE: Notice of DEP application for Block 107.01, Lots 11 & 11.01, 1112 Shore Drive, owned by Stephen & Nadiage Hittman, to allow reconstruction of two existing retaining walls, construction of a new retaining wall, in-ground pool, and a new fixed dock on the Manasquan River.

OLD BUSINESS: Request for postponement of application for variance relief for Block 60, Lot 17, 9 Crescent Drive, owned by Peter & Katelynn Capiello, to allow renovations & addition to a single-family dwelling. Hearing will be Tuesday, Feb. 8, 2022.

OLD BUSINESS: Consideration of Resolution of Approval of Minor Subdivision for Block 32.01, Lot 1, 409 Union Lane, owned by Estate of Charlotte Burke (Applicant – Daniel Burke).

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF DANIEL J. BURKE, EXECUTOR OF THE ESTATE OF CHARLOTTE BURKE, SEEKING MINOR SUBDIVISION APPROVAL AND VARIANCE RELIEF FOR PROPERTY LOCATED AT 409 UNION LANE WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 82.01, LOT 1**

**WHEREAS**, Daniel J. Burke, the Executor of the Estate of Charlotte Burke (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking minor subdivision approval and variance relief for the property located at 409 Union Lane in Brielle which is identified on the Borough tax map as Block 82.01, Lot 1 (the “Property”); and

**WHEREAS**, the Applicant is the owner of the Property; and

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

**WHEREAS**, the Property is a 34,612.67 square foot lot which currently contains one (1) single family three-story residential dwelling and a shed; and

**WHEREAS**, the Applicant is proposing to subdivide the Property into two (2) residential lots identified within the application as Lot A and Lot B, and to retain the existing three-story dwelling on Lot A and the existing shed on Lot B; and

**WHEREAS**, the existing lot, the existing and proposed use of Lot A, and the proposed dimensions of Lot A are all conforming to the zone, but the existing structures (on both lots), the proposed use on Lot B, and the proposed dimensions of Lot B are not conforming to the zone; and

**WHEREAS**, the Applicant was originally seeking the following variance relief through its application (the variance relief sought is shown in bold type):

(a) the proposed subdivision will create a new lot (Lot B) which will contain an accessory structure with no principal structure; **a use variance is required for this non-conforming condition;**

(b) Section 21-9.13 requires that all front yards face on a 50 foot right-of-way for at least 30 feet along said right-of-way line (for dead-end turn-around), but proposed Lot B only fronts along Melrose Avenue (a 40 foot right-of-way) for 26.92 feet; **variances are required for lack of adequate right-of-way width as well as for the deficiency of the proposed lot frontage;**

(c) Minimum Lot Depth (Proposed Lot B)—125 feet required; **86.63 feet proposed;**

(d) Minimum Accessory Side Yard (Proposed Lot B)—5 feet required; **2 feet existing and proposed;** and

**WHEREAS**, the Applicant was also seeking waivers from the requirements to include the requisite topographic information and information on water drainage on and surrounding the Property within its plans; and

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

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(a) Minor Subdivision Plan prepared by Daniel J. Burke, P.E. dated May 28, 2021, last revised September 8, 2021;

(b) Application package which includes a Zoning Permit denial letter dated July 12, 2021 from the Zoning Officer; and

**WHEREAS**, the Board was also provided with letters dated August 16, 2021 and October 27, 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 hearings on this application on November 9, 2021 and December 14, 2021 and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1 minor subdivision plan and location map;
- b. Exhibit O-1 power point collection of exhibits; and

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

**November 9, 2021 hearing**

Attorney Michael Henderson, Law Firm of Henderson and Henderson, Manasquan, New Jersey announced that he was representing the applicant, Dan Burke as the Executor of the Estate of Charlotte Burke. Mr. Henderson stated the application was for a minor subdivision with bulk and use variances and was located in the R-3 Zone.

Mr. Henderson stated he had only one witness to present, Mr. Dan Burke, owner, and applicant, who would also be testifying as a planner and engineer. Mr. Burke was sworn in by Mr. Clark. Mr. Burke stated that he was a Licensed Engineer and a Licensed Planner and was employed by the city of New Brunswick as the City Engineer and represents the Planning and Zoning Board in that capacity.

Mr. Henderson asked Mr. Burke when his family acquired the property and what he was proposing to do with the site. Mr. Burke responded that the property was acquired in 1962 and that he was proposing to subdivide the property to create an additional residential lot. Mr. Henderson asked Mr. Burke if there were any improvements currently on the property. Mr. Burke replied there was a shed that he characterized as historical based on the lumber that was

used to build it. Mr. Burke stated there was a principal structure on the property constructed around 1910 with 3 stories, 8 bedrooms, 4 bathrooms and a full basement.

Mr. Henderson asked Mr. Burke if he had testified before any Planning Boards. Mr. Burke replied that he had testified before the City of New Brunswick, Jackson Township and Point Pleasant Borough. Mr. Henderson asked if the Board would accept Mr. Burke's credentials as a professional. Ms. Trainor stated Mr. Burke's credentials were approved.

Mr. Henderson asked Mr. Burke if he prepared the site plan. Mr. Burke answered that he had prepared the site plan. Mr. Henderson displayed a document, marked as Exhibit A-1, and described it as a Minor Subdivision Plan. Mr. Henderson asked Mr. Burke if he would describe Exhibit A-1. Mr. Burke described the size of the property, property line, shed and the residential road, Melrose Avenue. Mr. Henderson asked Mr. Burke to describe to the Board where the subdivision line would be. Mr. Burke replied that the subdivision line would be off center of Melrose Avenue.

Mr. Henderson asked Mr. Burke to explain to the Board what variance relief was being sought in connection with the application. Mr. Burke stated that the bulk variance relief requested was for Lot Depth, Lot Frontage, and a Use Variance for the shed. Mr. Henderson asked Mr. Burke if there was any required relief for Lot A which was displayed on Exhibit A-1. Mr. Burke answered that Lot A would remain a conforming lot and stated all the relief that was being sought was in connection with Lot B.

Mr. Henderson asked Mr. Burke if he was familiar with the criteria of C-2 Variances. Mr. Burke replied that he was familiar with it and stated that as to the variance relief on Lot B, it is regarding Lot Depth and Lot Frontage that the C Variances are required. Mr. Henderson asked Mr. Burke if he had the opportunity to review the density and the pattern of the development on his block. Mr. Burke replied that he had and stated that there were 6 developed properties along Melrose Avenue. Mr. Burke then referenced the upper left-hand corner of Exhibit A-1, titled Location Map. Mr. Burke stated that none of the Lots conform to the Bulk Zone requirements, and none of them meet the Lot Depth requirements. Mr. Burke stated that out of the 29 parcels that are shown on Exhibit A-1, there are only 5 that are conforming as to Lot Bulk Dimension requirements of the Zone.

Mr. Henderson asked Mr. Burke if it was his professional opinion that the approval of the application would be consistent with and promote the appropriate density of the block. Mr. Burke replied that he believed the density, and the size of the lot meet the neighboring required densities and is conforming in nature to what is found in the rest of the block along Melrose Avenue.

Mr. Henderson asked Mr. Burke if he had inquired if there was any other land available for purchase on either side of the Lot. Mr. Burke answered that he had asked the owners on the south face of the Lot if they would consider selling land but both of them said they would not. Mr. Henderson asked Mr. Burke if he would speak to the justification for variance relief for shed. Mr. Burke stated that the shed predates the Borough's Zoning Laws and the Municipal Land Use Laws and was a pre-existing non-conformance. Mr. Henderson asked Mr. Burke if the

application is approved, would he expect that the Lot would be developed shortly thereafter. Mr. Burke stated that there had been interest in the Lot and that it would be developed as a residential property.

Mr. Henderson asked Mr. Burke to comment on the variance being sought for the frontage on Lot B along Melrose Avenue. Mr. Burke stated that the objective of not going the full 30 feet would allow a point of egress from Lot A in the future. Mr. Henderson stated he did not have any further questions for Mr. Burke and then asked him if he had anything else he wanted to add. Mr. Burke referred to Mr. Hilla's letter in regard to access to utilities and pointed to connections marked on Exhibit A-1. Mr. Henderson referred to Mr. Hilla's letter, paragraph 4, and asked Mr. Burke if he would agree to comply with a property survey. Mr. Burke answered that he would comply. Mr. Henderson asked Mr. Burke if he would also depict the existing gravel driveway servicing Lot A. Mr. Burke stated he would comply and then gave the Board a description of the driveway, where it was located and where the driveway exited. Mr. Henderson asked Mr. Burke, if approved, would his updated plan depict the property addresses issued by the Tax Assessor. Mr. Burke answered that it would depict the addresses. Mr. Henderson referred to paragraph 6 of Mr. Hilla's letter and asked Mr. Burke if he would comment on the trees and foliage on the property. Mr. Burke stated it was not his intention to remove any trees. Mr. Henderson stated he had no other questions for Mr. Burke.

Ms. Trainor announced it was now time to hear questions from the Board for Mr. Burke.

Mr. Maclearie asked how snow plowing takes place currently. Mr. Burke answered that generally snow was plowed to the end of the road at the dead end. Mr. Burke stated he had a considerable amount of experience plowing and some dead ends and cul-de-sacs can be challenging but it was something plow operators learn to handle. Mr. Maclearie asked Mr. Burke if he was the owner of Lot 8. Mr. Burke replied that he was not. Mr. Maclearie asked Mr. Burke if that was there the gravel driveway was. Mr. Burke answered that was correct.

Mr. Siano asked Mr. Burke what the height of the shed was. Mr. Burke replied that he would estimate it to be 16 feet. Mr. Siano stated that he had heard Mr. Burke refer to the 50-foot right of way when he was referencing the property and that Melrose is a 40-foot right of way and asked Mr. Burke if this changes anything with the application because it is only a 40-foot, and the roads are around 30. Mr. Burke answered that the Code does not address a right of way of lesser than 50 feet, it addresses the requirement for 30 feet on a 50 foot right of way. Mr. Burke stated he had done a map survey of the Borough and noted some 21 other dead-end roads without cul-de-sacs with a number of them not even as wide. Mr. Siano asked Mr. Burke if Lot 8 was part of the parcel. Mr. Burke answered that it was but that it had been sold.

Ms. Brisben asked Mr. Burke if he would be building on Lot B or if he would be selling the Lot with a stipulation that the shed would have to stay. Mr. Burke replied that there had been some interest from family members but that had not been decided. Mr. Burke stated he did not plan on having a stipulation regarding the shed but one of the parties that expressed interest expressed a desire to retain the shed for use. Ms. Brisben asked Mr. Burke if he had considered moving the subdivision line and took the total part of Melrose Avenue for the new lot. Ms. Brisben stated that would help satisfy the right-of-way variance and make it more compliant. Mr. Burke



answered that the idea was to retain the exit, that historically there had been an exit from that Lot onto Melrose Avenue. Mr. Burke stated they left Lot A as large as it is because it is a large historical structure. Mr. Burke stated he did not want to diminish the rear lot any more than need be and stated that Lot B is conforming in lot area within the zone. Mr. Henderson stated that Brielle Zoning Code, section 21.13 does say that the R-3 zone is there to provide smaller Lot sizes.

Mr. Tice asked Mr. Burke if he had stated that the driveway, situation at the end where the two Lots come together, for Lot A there were 13 feet left which could possibly become consistent to what is already there. Mr. Burke answered that it could become a drive exit onto Melrose Avenue. Mr. Tice stated with regard to Lot B, that would leave another 27-feet, so 40-feet for essentially two driveways. Mr. Burke replied that was correct. Mr. Tice asked Mr. Burke if he was concerned about traffic patterns, in regard to trucks and other delivery situations making turnarounds with two driveways being next to each other. Mr. Burke answered it was not uncommon in developed cul-de-sacs and that he had seen as many as 5 driveways entering a cul-de-sac with minimal distance and stated this would be similar to that. Mr. Burke stated that there were 21 other streets in the Borough that were similarly situated where there was not a cul-de-sac at the end.

Ms. Trainor stated that Mr. Burke had spoken about a hardship that was required for the variance and then asked Mr. Burke if this were really a self-created hardship. Mr. Burke responded that the hardship was the roadway width which was created because it was at a dead-end road and the lot depth was created because of the way the lot depth was measured. Ms. Trainor asked Mr. Burke if he was compounding a problem where he was proposing the division of the property and, in that regard, self-creating a hardship with respect to the right-of-way that is required under the Ordinance. Mr. Burke replied that if the Lot were to be subdivided in any other way it could result in the same position.

Mr. Hilla stated to the point of the 50-foot right-of-way for at least 30-feet, that was really intended for creating 50-foot rights-of-ways where they are not presently but there was not the ability to do that on this lot, this configuration is not conducive to that because you could not create any greater width of right-of-way for Melrose Avenue from the applicant's Lot.

Ms. Trainor announced it was time to hear questions from the public for Mr. Burke.

Mr. Pete Donnelly, 411 Melrose Avenue, was sworn in by Mr. Clark. Mr. Donnelly stated he was challenging the width of the street of Melrose Avenue. Mr. Burke stated the Borough information provided that it is a 40-foot right-of-way, that he physically measured it and since there are no curbs, it varies a bit.

Hearing no other questions, Ms. Trainor announced that Ms. Nuccio was formally objecting to the application. Ms. Kim Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio stated she had some concerns about the variances required for the subdivision because there was no site plan accompanying the request. Ms. Nuccio stated that one of the concerns she had was frontage and referenced Borough Code Section 21.9-13. Ms. Nuccio stated that the end of Melrose is neither a dead end, turn around nor a cul-de-sac. Ms. Nuccio addressed the hardship

Mr. Burke had discussed and stated that it seemed to her that Mr. Burke was proposing to make a nonconforming Lot from an existing conforming Lot and creating a self-created hardship. Ms. Nuccio stated N.J.S.A 40:55D-70C does not allow for self-created hardships. Ms. Nuccio stated that another concern was for Lot Depth. Ms. Nuccio stated that the deficient Lot Depth would leave a very skinny building envelope for new development. Ms. Nuccio stated that all the properties on Melrose Avenue, except one, are 100-feet deep. Ms. Nuccio stated she wanted to talk about the accessory structure and thought the word shed was a mischaracterization of the existing structure. Ms. Nuccio stated she thought the structure was substantial, much like a garage. Ms. Nuccio referenced Section 21-13.1. Ms. Nuccio asked why the shed would be allowed to stay on a newly established Lot. Ms. Nuccio stated that she had concerns about the trees on Lot B and stated she felt that development of the Lot would require the clear cutting of all of the mature trees. Ms. Nuccio stated from an ecological and environmental perspective, the trees matter. Ms. Nuccio stated that the subdivision would negatively affect the surrounding property values.

Ms. Trainor announced that 45 minutes had passed and stated to Ms. Nuccio that any additional testimony she had to present would need to carry to next month.

#### **December 14, 2021 hearing**

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 reasons: 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."

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 that 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 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 Board's 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:

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 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.

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.

January 11<sup>th</sup>, 2022

Ms. Trainor announced it was time to hear questions from the Board for Mr. Tronco. Mr. Maclearie, Mr. Siano, Mr. 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-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.

**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 owner of the Property.



- c. The Property is located within the Borough's R-3 Residential Zone.
- d. The Property is a 34,612.67 square foot lot which currently contains one (1) single family three-story residential dwelling and a shed.
- e. The Applicant is proposing to subdivide the Property into two (2) residential lots identified within the application as Lot A and Lot B, and to retain the existing three-story dwelling on Lot A and the existing shed on Lot B.
- f. The existing lot, the existing and proposed use of Lot A, and the proposed dimensions of Lot A are all conforming to the zone, but the existing structures (on both lots), the proposed use on Lot B, and the proposed dimensions of Lot B are not conforming to the zone.
- g. The Applicant was originally seeking the following variance relief through its application (the variance relief sought is shown in bold type): (i) the proposed subdivision will create a new lot (Lot B) which will contain an accessory structure with no principal structure; **a D(1) use variance is required for this non-conforming condition**; (ii) Section 21-9.13 requires that all front yards face on a 50 foot right-of-way for at least 30 feet along said right-of-way line (for dead-end turn-around), but proposed Lot B only fronts along Melrose Avenue (a 40 foot right-of-way) for 26.92 feet; **variances are required for lack of adequate right-of-way width as well as for the deficiency of the proposed lot frontage**; (iii) Minimum Lot Depth (Proposed Lot B)—125 feet required; **86.63 feet proposed**; and (iv) Minimum Accessory Side Yard (Proposed Lot B)—5 feet required; **2 feet existing and proposed**.
- h. During the hearings on this application, and in response to concerns raised by an objector and from Board members, the Applicant agreed to stipulate that it would remove the structure on proposed Lot B as a condition of the approval of the application, thereby eliminating the need for a D(1) use variance for this structure and also eliminating the need for a C variance for minimum accessory side yard.
- i. During the hearings on this application, and in response to concerns raised by an objector and from Board members, the Applicant agreed to stipulate that it would move the lot line for proposed Lot B towards Union Lane so that the revised lot line is approximately even with the northerly boundary of Melrose Avenue. By making this revision to its plans, the Applicant is no longer proposing any improvements that will result in any changes to the right of way along Melrose Avenue, and instead the right of way will remain in its current dimensions.
- j. During the hearings on this application, and in response to concerns raised by an objector and from Board members, the Applicant agreed to stipulate that

there would no ingress or egress from Lot A to Melrose Avenue, thereby reducing the anticipated traffic to and from the subdivided lots onto Melrose Avenue.

- k. Consequently, with these revisions, the Applicant sought the following variances variance relief through its application (the variance relief sought is shown in bold type): (i) Minimum Lot Depth (Proposed Lot B)—125 feet required; **86.63 feet proposed**.
- l. The Applicant's lot is irregularly shaped and already had dimensions which did not comply with the Lot Depth requirements of the Borough Code
- m. The improvements proposed by the Applicant are not changing the Lot Depth of this lot, which was always 86.63 feet at its narrowest point, and instead are just subdividing the lot into two non-conforming lots (with Lot A having a Lot Depth of 97.34 acres at its narrowest point, and Lot B having a Lot Depth of 86.63 feet at its narrowest point).
- n. Each of these two proposed lots meets all other requirements of the R-3 Zone and they are otherwise of an adequate size for residential lots in this zone.
- 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 serviced by public roadways, utilities, and services, (ii) the Applicant is proposing a development that respects the use and density envisioned for the R-3 Zone and which does not change the existing depth of the lot, and (iii) the application presents a better zoning alternative as it brings the existing oversized lot into closer visual conformity to 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, and the Applicant has mitigated any potential negative impacts of its subdivision by agreeing to the stipulations and modifications to its plans described herein.

- 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: 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

**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. This approval is conditioned upon (i) the Applicant's agreement to move the lot line between proposed Lots A and B towards Union Lane so that the revised lot line is approximately even with the northern boundary of Melrose Avenue, and (ii) the Applicant's agreement that there shall be no ingress or egress from Lot A of the subdivided Property onto Melrose Avenue.
- d. Within forty-five (45) days of the date of the adoption of this resolution, the Applicant shall submit the Property survey referenced on its Minor Subdivision

Plan to the Board Secretary (with a copy to the Board Engineer for his review as to its sufficiency).

- e. Within forty-five (45) days of the date of the adoption of this resolution, the Applicant shall submit revised Minor Subdivision Plans to the Board Secretary (with a copy to the Board Engineer for his review as to their sufficiency). These revised plans must include and address (i) the revised lot line between Lots A and B of the property, (ii) the existing and proposed water and sanitary sewer services, (iii) the limits of the existing gravel driveway serving proposed Lot A, and (iv) the proposed lot numbers as assigned by the Tax Assessor.
- f. The Applicant shall remove the structure on Lot B of the subdivided Property and shall provide proof of such removal to the Board Secretary prior to the deadline to record and file the subdivision deed established under N.J.S.A. 40:55D-54.
- g. 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. The Applicant has also agreed and stipulated that if Lot B is sold, the deed of sale will require that if a tree is removed to develop Lot B with a residential use an equivalent replacement tree will be planted.
- h. The Applicant shall record and file a subdivision deed 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.
- i. 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.
- j. 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.
- k. The Board grants the Applicant's waiver requests seeking relief from the requirement to include the requisite topographic information and information on water drainage on and surrounding the Property.

A motion to approve the above Resolution was made by Karen Brisben, seconded by Jim Maclearie and then by the following roll call vote:

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

Noes: None

Not eligible to vote: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Chris Siano, Stephanie Frith, Charlie Tice

NEW BUSINESS: Application for Minor Subdivision for Block 51, Lots 10.01 & 11, 319 & 401 Leslie Avenue, 319 Leslie Avenue owned by Robin & Kelly Delgado and 401 Leslie Avenue owned by Diana Hamilton. Application is to move lot lines.

Mr. Clark stated he was notified earlier in the day by Karen Brisben, Planning Board Secretary, that there was a notice issue with the application. Mr. Clark stated the applicant had filed an affidavit stating they had noticed all the individuals within 200 feet of the property but had not issued notice to the utility companies, which is also a legal requirement. Mr. Clark stated that since the utility companies were not properly noticed, his recommendation was to carry the application to the next meeting. Mr. Clark announced to those who were attending for this application that the application would be carried to the next meeting so the applicant would not have to renotice the people who were already properly noticed.

Ms. Delgado stated that she felt Mr. Clark's recommendation was fair and thanked the Board. Ms. Trainor asked Ms. Hamilton if she had any questions or comments. Ms. Hamilton was experiencing technical difficulties. Ms. Trainor stated that the adjournment might also help with the technical challenges as well. Ms. Brisben asked Mr. Clark if the applicant would need to renotice in the newspaper. Mr. Clark stated all the applicant would need to do is to cure the deficiency which is to notice the utility companies and then file an amended affidavit indicating that had been completed.

OLD BUSINESS: Continuation of hearing 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 granted.

Councilman Garruzzo announced that he and Mayor Nicol would be recusing themselves from this application. Mr. Clark stated that Mayor Nicol and Councilman Garruzzo were recusing themselves because the Board was hearing this application as a Zoning Board and Councilman Garruzzo and Mayor Nicol do not sit when the Board hears a Use Variance.

Ms. Trainor stated she believed that Mr. Heydt had finished his testimony at the last meeting and that it was now time for questions from the Board. Mr. Posada agreed and then asked how many voting members were present at this meeting. Ms. Brisben stated that James Stenson and Stephanie Frith would not be able to vote due to their absence at the December meeting. Mr. Clark stated that if the application went beyond this meeting and they choose to listen to the missed meeting and then filed the appropriate certification, they would then be able to participate. Mr. Clark also stated that if Mr. Stenson and Ms. Frith had intentions to review the December meeting, they could participate in this meeting. Mr. Stenson and Ms. Frith stated they would review the December meeting.

Mr. Posada asked if Mr. Stenson and Ms. Frith would listen to the missed meeting before going to a vote because being a D variance, the applicant would need at least 5 affirmative votes and they would like as many eligible members to vote as possible.

Mr. Posada called Mr. Heydt, Professional Planner to testify. Mr. Clark stated that Mr. Heydt had previously been sworn and did not need to be sworn in again. Ms. Trainor announced it was time to hear questions for Mr. Heydt from the Board.

Mr. Maclearie asked Mr. Heydt if they had ever given the Board a 3-D drawing that showed what it would look like in between the two rows of buildings and if not, could they. Mr. Heydt replied that the rendering was from Higgins Avenue and stated that they could give an additional rendering from the angle in between. Mr. Maclearie asked Mr. Heydt to confirm that they are requesting three stories and not two and a half. Mr. Heydt responded that the way they are using the ground floor for parking to provide the appropriate amount of spaces, they wanted to fully utilize the residential floors above. Mr. Maclearie asked how many units per acre they were proposing. Mr. Heydt replied 16.5 units. Mr. Maclearie stated that next door, Brielle Commons, it was only 8 units per acre. Mr. Heydt answered that Brielle Commons were less dense but further east, the two residential developments are denser, so it is varied and there is a range there.

Mr. Siano asked Mr. Heydt if through their study, did they find a deficiency for this type of housing in the Borough. Mr. Heydt answered that as part of their analysis, when they looked at Use Variances, in this scenario, it does not require an evaluation of this type of use in the town. Mr. Heydt stated that other types of Use Variances do have to address that in terms of what they call inherently beneficial which would be called a needs assessment or a lack of a certain type of use but there is no lack of residential uses and that is what they are proposing.

Ms. Brisben asked Mr. Heydt why they were proposing putting in 22 units when Brielle Commons townhouses, right next to the property, has 16 units and more land. Mr. Heydt answered that the application was about residential use as opposed to the number and said that they found in their study that they have a very strong established pattern of residential uses. Mr. Heydt stated that in terms of density, they found a range of density and all different forms of residential uses. Mr. Heydt stated that there is usually a happy balance to the number of units and his testimony was for the justification for the residential component, for the residential use variance.

Mr. Clark stated he may be able to clarify and asked Mr. Heydt to confirm that the applicant is seeking a D(1) Use Variance which would allow residential use of this property rather than commercial use and the issue of density, which would require a variance is not an issue the applicant is seeking a ruling on at this time. Mr. Heydt responded that Mr. Clark was correct. Mr. Posada stated that this application is only for the Use Variance and as far as setbacks and density, none of that relief is being sought at this time.

Mr. Jones asked Mr. Heydt to address the affordable housing units. Mr. Heydt stated that he believed that would be in the application concept and that they were only focused on the use at this time. Mr. Posada stated that they had been advised that there is a Borough Ordinance and that it is the applicant's intention to satisfy the affordable housing requirement within their

proposed development. Mr. Posada stated that the requisite density percentage dedicated to affordable housing would be part of the site plan application. Mr. Clark stated that it was his understanding that the Ordinance regarding affordable housing had been adopted by the Borough of Brielle.

Ms. Trainor asked Mr. Heydt why the Board should consider their Use Variance application in a separate phase than the actual site plan. Mr. Posada answered that they intentionally exposed themselves to discuss the density of the site with the understanding that again they were only moving forward with the D(1) Use Variance. Mr. Posada stated that the reason being is that it is a Zoning Board application, they do not have an opportunity to do typical “TRC” meetings, because the Board sits as a quasi-judicial Board. Mr. Posada stated they were also here to hear questions, concerns and comments related to density and answer those for the Board. Ms. Trainor asked Mr. Heydt if he had an opinion. Mr. Heydt answered that whether they were proposing a single-family home on the property or a 10-story apartment building, they would still need the same justification for the D(1) Use Variance. Mr. Heydt stated they would need to establish that there is some rationale for why the property is suitable for either one of those forms. Mr. Heydt stated that in terms of the number of units, it can go both ways, it obviously could influence the use variance application but could also be an influence on the civil design, architectural layouts, so that is why they thought it would be more appropriate to look into all the details as to what the precise number of units is when looking into civil plans in terms of parking, layout, and architectural plans. Mr. Heydt stated that based on input from their civil engineer and architect they believe 22 units is balanced and said as it relates to the Use Variance, he was making more of an argument in terms of contextual compatibility with adjacent uses to establish that there were residential uses adjacent to the property and further east. Mr. Heydt stated that those residential uses have a range of densities that they fall within and that is where he relayed on the number of units, more of a context to establish that they were in characteristic with the surrounding land uses.

Ms. Trainor asked Mr. Heydt to list the specific bullet points of why he thought this particular site is suitable for the proposed use. Mr. Heydt stated there are attributes about the law that would lend itself to a very balanced and efficient use of the land in terms of lot size, lot frontage, and lot depth. Mr. Heydt stated the site is 58,000 square feet and said that he would not be proposing a single-family home because that would be a very inefficient wasteful use of land and he would not be proposing a 10-story apartment building because he would not see another one for miles. Mr. Heydt stated in his opinion, they have a balanced proposal that could fit on this size of property. Mr. Heydt stated that another aspect is in terms of existing land uses in the neighborhood and the densities of those residential land uses. Mr. Heydt said he offered a consistent scale and design and presented the vision of what the townhouse concept in this type of use would be. Mr. Heydt stated they were proposing landscaping, and would comply with parking, providing 52 on-site parking spaces.

Ms. Trainor asked Mr. Heydt if he was familiar with the definition and purpose of the C-1A Zone in Brielle. Mr. Heydt responded that he was familiar and thought that he presented it to the Board in his opening. Mr. Heydt then read the Ordinance that Ms. Trainor was referencing. Ms.

Trainor asked Mr. Heydt how he was suggesting that the purposed plan would not substantially impair that intent and purpose. Mr. Heydt replied that is the very reason they are requesting a Use Variance that recognizes residential uses. Mr. Heydt stated that the only reason they were not a conditional residential was because they were not proposing any limit to age.

Mr. Hilla stated that even though the applicant is coming for a straight D(1) Variance, it seemed to him that a blind eye had been turned to the conditional criteria that was set forth in the Ordinance. Mr. Hilla asked Mr. Heydt if there was a reason for that or if he could explain to the Board the rationale behind that. Mr. Heydt replied that they were not turning a blind eye and that they fully know the conversation about site planning, site design and setbacks which would be presented if the Board would want to move forward with this use portion. Mr. Heydt stated they believed they were providing a creative and efficient use of space for the property. Mr. Heydt stated that based on the Boards comments, they might further reduce the proposed unit counts and are prepared to have that conversation with the Board. Mr. Heydt stated that they are still early in establishing a final site plan that the Board would be reviewing.

Mr. Hilla asked Mr. Heydt how appropriate he thought it was to use the density of the trailer park and, with the exception of Brielle Commons, the other adjacent properties as a guidepost of density. Mr. Heydt replied that it is good to recognize that the density exists and stated his point was that there is a range of densities, and they fall within that range.

Mr. Siano asked Mr. Heydt if the applicant ever considered designing a project that would meet the design criteria so they would not have to seek the D(1) variance and if they had considered retail on the ground floor with residential units above. Mr. Heydt answered that they had considered it and stated that they could build it, but could they rent it. Mr. Heydt stated that their traffic engineer had looked into the impacts that additional retail might bring to the location.

Ms. Trainor asked Mr. Heydt what his reaction would be if the Board decided it was not possible to consider the use variances issues separately from the proposed development. Mr. Heydt responded that as a Planner, the Board could certainly ask for more information to become more comfortable with the site plan. Mr. Heydt stated it was his opinion that they are prepared to present additional conceptual information to the Board so they understand the site design that would accomplish the 22-unit townhouse residential use so the Board could decide about the use variance without and still withholding a decision on a site plan and any other variances.

Ms. Trainor stated that this particular lot is the first lot that one would see when driving into town from Route 35 so to deviate so significantly from the intended purpose of the zone is concerning to her.

Mr. Stenson, Ms. Frith and Mr. Tice stated they had no questions for Mr. Heydt. Ms. Trainor announced it was now time to hear questions from the public for Mr. Heydt.

Ms. Trainor stated that the Board usually limits applications to 45 minutes but since this is the only application of substance tonight asked the Board if there were any objections to going forward to 7:30pm. Ms. Brisben stated she thought it was a good idea because the agenda is



getting backed up so anything to move it along would be great. Ms. Trainor heard no objections from the Board and asked Mr. Posada if he had anyone else to present.

Mr. Posada called Mr. Daniel Condatore, Mode Architects, Asbury Park, New Jersey. Mr. Condatore was sworn in by Mr. Clark. Mr. Posada asked Mr. Condatore to provide the Board his educational credentials, any licenses he possesses and three Land Use Boards where he has been qualified as an expert witness. Mr. Condatore stated he graduated from Roger Williams University in 2001 with a Bachelor of Architecture, received his initial license in New Jersey in 2008 and is currently licensed in New York, Pennsylvania, and Florida. Mr. Condatore stated he has presented before this Board, Asbury Park and Oceanport. Mr. Posada asked Ms. Trainor if the Board accepted Mr. Condatore as an expert in architecture. Ms. Trainor stated that the Board did accept Mr. Condatore as an expert.

Mr. Posada asked Mr. Condatore if he was familiar with the Zoning district and the Master Plan for the Borough of Brielle and asked if he took this into consideration when designing his proposed rendering. Mr. Condatore replied that he was familiar and did take that into consideration. Mr. Posada asked Mr. Condatore if when designing the rendering if he took in consideration that the Master Plan says that it should have a seashore type theme. Mr. Condatore answered that he did.

Mr. Posada asked Mr. Condatore to discuss his rendering with the Board. Mr. Condatore shared his screen and presented what he described as sheet A-2 from the original submission package, labeled Floor Plans. Mr. Condatore explained that this is a schematic concept plan and elevation he put together, not knowing exactly what the final site layout and density will be so he did not want to go too far into the design because things may change. Mr. Condatore explained the ground floor layout, a 6-unit cluster, garage space, small foyer area, and flex space in the back. Mr. Condatore stated that all units would be 18 feet wide with two different depths, 34 feet deep and 44 feet deep. Mr. Condatore described living spaces between 1600-2000 square feet. Mr. Condatore then described the second level. Mr. Condatore described this space as the living level, with a large open floor plan, closet storage, great room, kitchen with an island, powder room with a small deck in the rear.

Mr. Posada presented sheet A-3, also part as the original submission package which he described as the upper level, 3<sup>rd</sup> floor, bedroom level, with bathrooms and closets. Mr. Condatore stated that from a planning standpoint, these are the general layout of the townhouses that are not final with room for flexibility and change as they further develop the plans based on approvals.

Mr. Condatore presented Exhibit A-6 which he described as sheet SK8, sketches of the exterior elevations. Mr. Condatore described this Exhibit as a hand sketch rendering of what they were proposing as the architectural theme or style. Mr. Condatore stated he had worked on projects in Brielle before and understands the architectural detail and style that is present within the community. Mr. Condatore stated that the ridge height would be between 33-35 feet to the top which is common in townhouse design.

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

Mr. Maclearie stated that the SK8 sketch was included in the plans that had been submitted. Mr. Maclearie wanted to confirm that the Board was not being asked to approve plans at this time. Mr. Posada answered that was correct, not approving plans, only the use itself, everything is conceptual in nature. Mr. Posada stated they were open to any comments the Board may have on what they were proposing, conceptually. Mr. Maclearie stated he wanted to see with a 3-D drawing how two buildings at 33 feet high would look on both sides. Mr. Maclearie asked why the ridge height would go from 33 to 35 feet. Mr. Condatore answered that it is a matter of the sloping of the architecture of the roof and that traditionally a steeper pitch is seen in colonial architecture, so they try not to flatten it out because it changes the style. Mr. Condatore stated that until they finalize the actual footprint the slope may drive the ridge to change a little bit.

Mr. Siano asked if there would be accessible attics in the units. Mr. Condatore replied that the attics would not be habitable but would be accessible for mechanicals. Mr. Siano stated he felt they did a nice job laying everything out but sees a lack of storage in all of the units and asked if that had been considered. Mr. Condatore replied that they would take the comment and look into providing more storage. Mr. Condatore stated that on the ground floor there is flex space that could be used for additional storage.

Ms. Brisben asked if the buildings would be taller than the Route 35 overpass. Mr. Condatore stated he did not have a definitive answer to the question but said the road is higher than adjacent property and there is a huge buffer of trees there which would be maintained.

Mr. Jones asked Mr. Condatore where recycling and refuse would be located. Mr. Condatore answered that he thought they could carve out some room in the garage area for that. Mr. Jones asked if they were proposing a sidewalk off of Higgins Avenue. Mr. Condatore replied that they are proposing a sidewalk.

Mr. Tice referred to sheet SK1 from the site plan and asked Mr. Condatore if only the units closest to Route 35 would have elevated decks in the back and if so, would units 7 and 8 have a deck. Mr. Condatore replied that units 7 and 8 may not have a deck but believed the civil engineer had a plan that superseded this plan. Mr. Condatore stated he would defer to the civil engineers submission as a site layout as opposed to that one. Mr. Tice asked Mr. Condatore if he knew how many feet units 7 and 8 would be off Route 35. Mr. Condatore stated that he thought they were 30 feet but could not say with certainty. Mr. Tice asked if it was true that units 1 through 17 would not have elevated decks. Mr. Condatore stated that on concept they would like to address the street and thought there was some things that could be done on those units. Mr. Condatore stated those developments needed further work to determine how to make that work. Mr. Tice asked Mr. Condatore if he had an understanding conceptually how far those front units would be from Higgins Avenue. Mr. Posada replied that the answer is 10.8 feet to the parking.

Mr. Hilla asked Mr. Condatore why they are proposing three stories and stated there is not anything on Higgins Avenue that is 3 stories. Mr. Condatore answered that he thought the way they laid it out with the garage below and then 2 stories of living seem more prevalent now than in years past. Mr. Condatore stated that they have been successful with this concept along the shore community. Mr. Hilla stated that while the parking proposed partially fills the parking

requirement there is nothing to say that those garages do not become storage areas for lack of anywhere else and then the onsite parking is perhaps inadequate. Mr. Condatore said he understood what Mr. Hilla was saying and adequate storage for the size of a unit could be discussed but stated that they could provide storage that everyone would agree to, but they cannot control what people do with their garages.

Mr. Hilla asked Mr. Condatore to explain how a 3 story, very boxy building would fit into the seashore colonial theme. Mr. Condatore answered that seashore colonial could be used in many different facets. Mr. Condatore stated that when you look at the entire elevation as a whole, if there is a 4- or 6-unit block, they would break down the scale to fit in the proportions of colonial architecture. Mr. Hilla referred to the units that have balconies both overlooking Route 35 and Higgins Avenue and stated they are not typically the most desirable looks for such things as grills and drying towels and asked Mr. Condatore how that is conducive with the gateway zone being the first things people see. Mr. Condatore stated that the way they address the street is something they need to address and said they are sensitive how they appear. Mr. Condatore stated they are at a concept stage so there is development they still need to refine as they move forward.

Mr. Stenson did not have any questions for Mr. Condatore. Ms. Frith stated she had the same concerns about storage as other Board members and said her questions had already been asked.

Ms. Trainor announced it was time for questions from the public for Mr. Condatore. Ms. Cyndi Farley stated she did not have any questions for Mr. Condatore but did have comments about the application. Ms. Trainor explained to Ms. Farley that it was time for questions for Mr. Condatore and that there would be a different portion of the meeting when comments would be heard.

Ms. Trainor asked Mr. Posada if he had anyone else to put before the Board before asking them to vote. Mr. Posada stated he wanted to, for clarification purposes, respond to a question Mr. Tice had asked in regard to the setback. Mr. Posada stated that the actual setback itself, from the property line to the improvement being the multi-family is 16.3 feet and with that being said, there is considerable buffer between the actual property line and Higgins Avenue, enough so there could be a sidewalk and other vegetation. Mr. Posada stated he would be presenting Mr. Joe Stager, Traffic Engineer, and then he would be finished.

Ms. Trainor stated the Board will adjourn this application to next meeting, February 8<sup>th</sup>, 2022. Mr. Posada asked to confirm that the notice would be carried to the next determined meeting date. Mr. Clark responded that they have already noticed all who was interested, and they are on notice by virtue of this announcement that this application is not being re-noticed but carried to the February meeting.

Ms. Trainor stated if there were no other business, she would ask for a motion to adjourn. Chris Siano made the motion, seconded by Stephanie Frith, and unanimously approved by the Board, all ayes. The meeting was adjourned at 7:37 pm.

January 11<sup>th</sup>, 2022

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Denise Murphy, Recording Secretary

Approved: February 8<sup>th</sup>, 2022