

BRIELLE PLANNING/ZONING BOARD  
TUESDAY, MARCH 8, 2022

The Regular Meeting of the Brielle Planning/Zoning Board was held on Tuesday, March 8, 2022 at 6:00 p.m. virtually. Chairperson Trainor read the OPMA compliance statement and then announced it was time for the Salute to the Flag and then a moment of silent prayer.

Roll call was then taken:

Present - Mayor Thomas Nicol, Councilman Frank Garruzzo, Karen Brisben, Stephanie Frith, Jay Jones, James Maclearie, Corinne Trainor

Absent - Chris Siano, James Stenson, Charlie Tice

Also present were David Clark, Board Attorney and Alan Hilla, Board Engineer. Board Secretary Karen Brisben recorded the Minutes.

A motion to approve the Minutes of February 8, 2022 was made by Mrs. Brisben, seconded by Councilman Garruzzo and then by the following roll call vote:

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

OLD BUSINESS:

The first item was consideration of approval of a Resolution for Block 37.01, Lot 12, 615 Cedarcrest Drive, owned by Michael & Elizabeth Mehl, to allow construction of a new home. As there were no changes to the proposed Resolution the following was presented for approval:

**WHEREAS, Michael Mehl** (the "**Applicant**") filed an application with the Planning Board of the Borough of Brielle (the "**Board**") seeking variance relief to construct a single-family dwelling and certain other improvements as described more fully herein on the property owned by the Applicant located at 615 Cedarcrest Drive identified on the tax map of the Borough of Brielle as Block 37.01, Lot 12 (the "**Property**"); and

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

**WHEREAS**, the Property is currently the site of a 2-story dwelling, paver patio, asphalt driveway and detached garage; and

**WHEREAS**, the Applicant is proposing to demolish the existing structure while retaining the attached garage and to construct a new 2 ½ story single-family dwelling and a swimming pool, as described more fully within the plans submitted with this application; and

**WHEREAS**, the existing lot, the existing principal structure, and the proposed ultimate use are conforming to the zone, but the existing accessory structure and the proposed principal structure are not conforming to the zone; and

**WHEREAS**, the Applicant filed an application with the Board seeking the following variance relief (the variances sought are highlighted in bold type below):

(a) Minimum side yard setback—5 feet required; 4.1 feet existing (not being changed through proposed development of Property);

(b) Maximum building coverage—20% required; feet required; **24.37% proposed**;

(c) Driveway setback under Section 21-31 of Borough Code—5 feet required; **1 foot proposed**; and

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

(a) boundary and topographic survey prepared by William P. Schemel, P.L.S., dated August 9, 2021;

(b) site plan and architectural plans (4 sheets) prepared by John C. Alenchenko, R.A. dated October 20, 2021;

(c) grading plan prepared by Christopher P. Rosati, P.E. dated October 5, 2021;

(d) stormwater management report prepared by Christopher P. Rosati, P.E. dated October 15, 2021;

(e) an application package filed by the Applicant;

(f) a Zoning Permit denial letter from the Zoning Officer dated November 1, 2021; and

**WHEREAS**, the Board was also provided with a letter dated January 20, 2022 May 20, 2022 prepared by Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS**, the Planning Board held a hearings on this application on February 8, 2022; and

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

Mr. Clark stated that Mr. Hilla had identified a potential issue with a D variance in his technical review application which was that the applicants were proposing to knock down their house, replace it with a new house and leave an existing garage sitting on the property during the interim period of building the new house. Mr. Rubino had sent a research memo to Mr. Clark and Mr. Hilla

which stated what the Board would consider when looking at what variances are required is the final relief being sought, not interim things and in this application the final relief being sought was not a D variance relief but C variance relief. Mr. Clark stated that the Board could put restrictions on its approval and say the house needs to be built in a certain period of time or the applicant would have to come before the Board again for D variance relief.

Mr. Clark stated that the other issue that was flagged in Mr. Hilla's letter was that there were no calculations provided in the application regarding the half story on the property which made it hard to tell if the FAR (Floor Area Ratio) would be exceeded and if exceeded could it trigger the need for a D variance. Mr. Clark stated that the applicant represented in some emails to Mr. Hilla that they checked with their professionals and the half story calculations show that the house will be a conforming structure.

Mr. Clark stated that these were the preliminary issues that they worked on with Mr. Rubino and asked Mr. Rubino and Mr. Hilla if they had anything to add. Mr. Rubino stated he agreed with what Mr. Clark had said. Mr. Rubino stated that he believed his secretary, Lauren, had sent Ms. Brisben a letter from Aquatecture stating that both the half story calculation and the FAR comply with the code and that no variances were necessary for either of them. Mr. Rubino stated he felt very comfortable going ahead and making the representations that except for the variances identified tonight there would be no variances or use variances necessary for the FAR, the half story or for keeping the garage.

Mr. Rubino stated that the Mehls have owned the property since 2019 and because the home has structural issues, they would like to take down the existing house and replace it with a new one and keep the garage on the premises. Mr. Rubino stated that they would like a bedroom and bath on the first floor because both Mr. and Mrs. Mehl have some physical issues. Mr. Rubino stated they had three children still living at the home so the upstairs would be used for them.

Mr. Rubino stated he wanted to go through Mr. Hilla's letter and said that Mr. Hilla identifies that there is an existing condition for the garage with a setback requirement of 5 feet where 4.1 exists. Mr. Rubino stated that the maximum building coverage allowed is 20% and said the applicant was asking for 24.37%. Mr. Rubino referenced the height of the garage and stated that the height of the garage was properly measured and was submitted to Mr. Hilla. Mr. Rubino referenced the driveway and stated that the applicant would like to keep the driveway in the same location. Mr. Rubino stated his client would agree to any condition of approval for a connection of any sump lines to a recharge system and agree to eliminate the discharge of sump water to the street. Mr. Rubino stated that the plans do not show a fence around the swimming pool,

but the applicant would agree to provide, if approved, an amended plan with a fence around it.

Mr. Michael Mehl was sworn in by Mr. Clark. Mr. Rubino asked Mr. Mehl to tell the Board who currently resides in the house. Mr. Mehl answered that he, his wife, Elizabeth and three children live in the home. Mr. Rubino asked Mr. Mehl to describe the existing structural issues at the house. Mr. Mehl replied that there were issues with the main beam of the house, leaking roof, leaking windows, issues with the original subpanel, and the existing fireplace that is slowly pulling away in both foundation as well as separation from the permanent wall.

Mr. Rubino asked Mr. Mehl why he was proposing to keep the existing garage. Mr. Mehl answered that they like the layout of the garage and the foundation and structure are in good shape, and it is in a good location.

Mr. Rubino asked Mr. Mehl to describe the health issues he and his wife face. Mr. Mehl stated that his wife had been diagnosed with rheumatoid arthritis 10 years ago which has become more debilitating over the last few years and said that she recently had two discs replaced. Mr. Mehl stated he had a full hip replacement a year ago and has arthritis in his left hip. Mr. Mehl stated these are some of the major issues and this is why they were seeking this type of design.

Mr. Rubino stated that the first designs of the house were compliant and asked Mr. Mehl what he did not like about those compliant plans. Mr. Mehl answered that the plans could not accommodate the first-floor bedroom which was a big desire for them. Mr. Mehl stated that they wanted something a little more ADA compliant with wider hallways between the kitchen and a slightly wider circulation around the kitchen, kitchen island and into the family room.

Mr. Rubino asked Mr. Mehl why he would like to keep the existing driveway where it is located. Mr. Mehl replied that the existing driveway has a great alignment to the existing garage. Mr. Mehl stated they were hoping to gain more room on the one side to get access to the garage and allow better access in and out of their vehicles.

Mr. Rubino stated that although the applicant is asking for variance for the size of the footprint of the house, the impervious coverage is well under the 60% allowed and asked Mr. Mehl if that was correct. Mr. Mehl answered that was correct. Mr. Rubino stated he did not have any other questions for Mr. Mehl.

Ms. Trainor asked Mr. Hilla, regarding his letter, if he needed any clarification from Mr. Mehl. Mr. Hilla answered that he did not have any questions at this time.

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

Ms. Brisben asked Mr. Rubino what the building coverage for the house was. Mr. Rubino replied that it was 20.23%. Ms. Brisben asked Mr. Hilla if condensers must be at the rear of the house and pointed out that the proposed condensers were on the side of the house. Mr. Hilla replied that they must achieve the minimum side yard setback for accessory structures, it is encouraged that they be neighbor friendly and typically when placed on the sides of houses on smaller lots they end up being under someone's window somewhere. Mr. Hilla stated that condensers placed in the rear was preferred but there was not a specific Ordinance requiring that condensers be placed in the rear. Mr. Mehl stated, if challenged, it could be moved to the backyard. Mr. Mehl stated if put on the side, they would put a fence to disguise it and would also put their garbage containers there as well. Mr. Mehl stated that a lot of units are put to the side in the area they live in.

Mayor Nicol, Councilman Garruzzo, Ms. Trainor, Mr. Maclearie, Ms. Frith, Mr. Jones, and Mr. Tice stated they did not have any questions.

Ms. Trainor announced it was time to hear questions from the public for Mr. Mehl. Hearing none, Ms. Trainor asked Mr. Rubino if he had any other witnesses to present. Mr. Rubino stated he had no other witnesses.

Ms. Trainor announced it was time to hear comments from the public regarding the application.

Mr. Steven Heinz, 604 Brielle Avenue, was sworn in by Mr. Clark. Mr. Heinz stated his house was behind Mr. Mehl's garage and said he was concerned with the Lot coverage. Mr. Heinz stated that the Lots in this area are small and tight, and the neighbors are close together. Mr. Heinz stated that this was not a renovation, it is a new house that could meet the zoning requirements and said that his primary concern with the application was that it would be setting a precedent for getting a variance and exceeding lot coverage in this area. Mr. Heinz stated another concern was drainage from the garage and that it would be beneficial to have the garage included in the drainage plan. Mr. Rubino stated that the applicant would agree, if approved, as part of the overall drainage system, they would connect the garage and input whatever is needed on the existing garage. Ms. Trainor asked Mr. Heinz if that would satisfy his concern. Mr. Heinz answered yes if they were tied into the drainage system. Mr. Rubino stated the applicant would agree to tie it into the drainage system.

Ms. Trainor stated the Board had received a comment submitted pursuant to the Covid 19 procedures in writing and read the comment from Mr. Paul McGinty, 403 Bennett Place, into the record.

“Subject line, 615 Cedarcrest Avenue

I received correspondence requesting feedback, we are away next week, so am taking the opportunity to email comment.

We actually rented 615 Cedarcrest 20 years ago. We liked the area so much we moved around the corner .

My issues with the development as described.

This is not an addition whereby the architect is trying to improve and add to an existing structure, so in designing a new house why did they not adhere to the max 20% lot coverage in the area???

I think there is a danger when and if this is approved, the doors are opened for and precedent given for the removal of more structures, and in their place larger dwellings which overwhelm the lot size, built and the character of the neighborhood changed in a detrimental way.

In this area , so close to the creek , I believe it's important that green spaces allowing drainage are present. In 30 Years, thankfully our basement has not flooded. I would obviously like that to continue,

I thank you for the opportunity to provide my feedback”

Mr. Rubino stated he would like to address the concerns of the neighbors and said the Board acts independently on every application, so certainly it is within the Board's discretion and that is why there is a Planning Board, to grant relief when deemed appropriate, so there is really nothing set as a precedent. Mr. Rubino stated that he believed that the testimony that had been provided certainly gives the Board adequate reasons to grant the relief.

Mr. Rubino asked Mr. Mehl to confirm that as it exists, there is no organized drainage system at the property. Mr. Mehl stated that there was no drainage system at this time. Mr. Rubino stated that though the applicant may be exceeding the coverage allowed, he would be improving the drainage out to property. Mr. Mehl stated that was his opinion.

Ms. Trainor stated she did not see any other public comments and announced it was time to hear comments from the Board.

Mayor Nicol stated he did not have any major issues with the application and that coordinating the drainage system with the garage and the house would be an improvement. Mayor Nicol stated he felt the concerns for more space on the ground floor were legitimate and thought the Board ought to be sympathetic.

Councilman Garruzzo stated he agreed with Mayor Nicol, said that the applicant was not asking for a lot of relief besides the lot coverage, and the applicant had agreed to maintain all the water and runoff on their property. Councilman Garruzzo stated he did not feel it would be detrimental to the neighborhood whatsoever, felt optimistic that it would improvement to the area and had no problems with the application.

Mr. Maclearie stated he thought it could be an asset to the community as long as they did the drainage as they described.

Ms. Brisben stated she was totally against going over that 20% of the lot coverage but after hearing the testimony that the home itself is only 20.23% and the reason for the calculation was due to the garage, she would approve it based on the testimony.

Mr. Jones stated he agreed with Ms. Brisben regarding the Lot coverage but said the home seemed reasonable in size and based on the testimony he felt it was a reasonable request.

Ms. Frith stated she agreed with everything the other Board members had to say.

Mr. Tice stated he agreed with the comments the Board members had made and felt that it was a reasonable request, good application and had no further comments.

Ms. Trainor stated she wanted to recognize that this is a R-4 Zone so the expectation is that the Lots are smaller as the testimony revealed and said she supported the application.

Ms. Trainor asked Mr. Clark if he could recite the stipulations that were agreed to and commented upon so far including those from Mr. Hilla's letter. Mr. Clark stated that the applicant had agreed to connect the sump lines to the recharge system. Mr. Clark stated the applicant agreed to hook the garage drains to the recharge system as proposed for the house and would put drains on the garage so that they would all go into the discharge system. Mr. Clark stated the applicant has agreed to start construction within a year with a replacement house to be completed in not more than three years.

Ms. Brisben asked Mr. Clark to add to the Resolution that the applicant would submit four sets of revised plans and if they could show some drainage on them, it would be helpful.

**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 Property is located within the Borough's R-4 residential zone.
- c. The Property is currently the site of a 2-story dwelling, paver patio, asphalt driveway and detached garage
- d. The Applicant is proposing to demolish the existing structure while retaining the attached garage and to construct a new 2 ½ story single-family dwelling and a swimming pool, as described more fully within the plans submitted with this application.
- e. The existing lot, the existing principal structure, and the proposed ultimate use are conforming to the zone, but the existing accessory structure and the proposed principal structure are not conforming to the zone.
- f. The Applicant filed an application with the Board seeking the following variance relief (the variances sought are highlighted in bold type below): (i) Minimum side yard setback—5 feet required; 4.1 feet existing (not being changed through proposed development of Property); (ii) Maximum building coverage—20% required; feet required; **24.37% proposed**; and (iii) Driveway setback under Section 21-31 of Borough Code—5 feet required; **1 foot proposed**.
- g. The Applicant has provided testimony indicating that his current house is pulling away from the foundations and needs to be replaced. He has also provided testimony indicating that due to physical infirmities, he and his wife need an ADA compliant home where they can live on the first floor.
- h. The lots in the area of the Property consist of smaller lots which are close together. Due to the small size of these lots, site

improvements are more likely to come closer to the maximum lot coverage requirements of the Borough Code.

- i. Although the Applicant is seeking a variance to exceed the maximum lot coverage requirements of the Borough Code, the lot coverage attributable to the proposed new house only slightly exceeds the maximum lot coverage requirement (by .23%), and the additional lot coverage (in the amount of approximately 4%) is due to an existing detached garage which testimony has indicated is structurally sound and which the Applicant seeks to retain on the Property.
- j. Any detriment caused by exceeding the lot coverage requirements of the Borough Code will be offset by the improvements that the Applicant has represented that it will make to the drainage at the Property, which include the installation of a drainage recharge system on the Property and the installation of drains for the garage and a sump for the basement which will connect to that recharge system. These drainage improvements would not be made without the other improvements proposed through this application
- k. The driveway already exists in its current location and the Applicant has provided testimony that moving the driveway would adversely alter its alignment with the existing detached garage.
- l. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicant to comply with the requirements of the Borough Code, and the development being proposed by the Applicant is consistent with other development in the neighborhood.
- m. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments. Moreover, the Applicant has mitigated and reduced the impact of any detriments caused by its deviation from the Borough Code requirements by proposing significant drainage improvements to the Property as part of this proposed project..
- n. This application and the variance relief sought therein advances the purposes of the Municipal Land Use Law, does not cause any substantial detriment to the public good, and will not

substantially impair the intent and purpose of the zone plan and zoning ordinance.

- o. For all of these reasons, the revised application satisfies the requirements for a N.J.S.A. 40:55D-70(c)(1) variance.
- p. N.J.S.A. 40:55D-70(c)(2) allows a planning board to grant variance relief without a showing of undue hardship where the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of such deviation would substantially outweigh any detriment and the variance will not substantially impair the intent of the zone plan and zoning ordinance;
- q. The 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, the application promotes the construction of an ADA compliant home and the significant improvement of the drainage on the Property, both of which promotes the goals of the Municipal Land Use Law.
- r. The Board finds that the Applicant has mitigated and reduced the impact of any detriments caused by its deviation from the Borough Code requirements by the significant site drainage improvements which it is proposing which will offset any detriment caused by the project exceeding the maximum lot coverage requirements.
- s. 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
- t. For these reasons, the Board also finds that the requirements for a N.J.S.A. 40:55D-70(c)(2) variance have also been satisfied by the Applicant as 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**, Councilman Frank Garruzzo moved to approve the application; this motion was seconded by Stephanie Frith. At that time the application was approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Jim Maclearie, Stephanie Frith, Jay Jones, Charlie Tice,

Noes: Karen Brisben

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

- a. The Applicant shall install a recharge system on the Property and shall install drains on the garage which connect to the recharge system. The Applicant shall also install a sump in the basement of the new home and shall connect the sump to its recharge system in order to eliminate the discharge of sump water to the street. Prior to installing any of these drainage improvements, the Applicant shall submit its proposed drainage plan to the Board Engineer for review and approval and shall incorporate any changes to the plans requested by the Board Engineer.
- b. The Applicant shall install a fence around its proposed swimming pool that is compliance with all applicable Borough Code requirements and will amend its site plan to show the location and details of the fence.
- c. The Applicant shall begin construction of this project no later than one year from the date of the adoption of this resolution and shall complete construction of the proposed new home on the Property no later than three years from the date of adoption of this resolution. If it fails to meet these deadlines, the Applicant shall be responsible to file the appropriate application with this Board seeking "D" variance relief for having an accessory structure on the Property (the detached garage) with no principal structure.
- d. The Applicant shall place the condensers for the new house either on the back or the side of the house. If the Applicant

chooses to place the condensers on the side of the house, then it must screen these condensers from neighboring properties with either a fence or shrubbery in a manner acceptable to and approved by the Board Engineer.

- e. Within sixty (60) days of the date of the adoption of this resolution, the Applicant shall submit five (5) sets of revised plans to the Board Secretary showing the location and details of the fence to be installed around the pool and of the drainage improvements that it intends to construct on the Property pursuant to this approval. If the Applicant is unable to file the revised plans because it is still preparing drainage plans, then those drainage plans can be submitted later so long as they are reviewed and approved by the Board Engineer and they are submitted prior to starting any construction on the Property;
- f. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- g. 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;
- h. All representations made under oath by the Applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

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

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Stephanie Frith, Jay Jones, James Maclearie, Corinne Trainor

Noes: None

Not Eligible to Vote: Karen Brisben

Absent: Chris Siano, Charlie Tice, James Stenson

The next item was consideration of a Resolution denying a Use Variance application for M&D, LLC, 628 Higgins Avenue. As there were no changes to be made the following was presented for approval:

**WHEREAS**, M & D Two, LLC (the “Applicant”) filed a bifurcated application with the Planning Board of the Borough of Brielle (the “Board”) seeking certain use variance relief as described more specifically in this resolution below for the property located at 628 Higgins Avenue in Brielle which is identified on the Borough tax map as Block 66.01, Lot 2 (the “Property”); and

**WHEREAS**, the Applicant is the contract purchaser of the Property; and

**WHEREAS**, the Property is an approximately 57,989 square foot (1.33 acre) lot which currently contains a one-story commercial liquor store and associated seasonal garden center; and

**WHEREAS**, the Applicant is proposing to demolish the structures on the Property and to construct a three-story multi-family development consisting of twenty-two (22) townhouse units (sixteen (16) of which will be two-bedroom units, and six (6) of which will be three-bedroom units) and fifty-two parking spaces with related improvements (as described more fully within the application, the “Project”); and

**WHEREAS**, the Property is located within the Borough’s Gateway Zone (the “C-1A Zone”); and

**WHEREAS**, the C-1A Zone is primarily a commercial zone but it does allow one residential use (i.e. age-restricted townhomes) as a conditional use within the zone; and

**WHEREAS**, the Applicant is not seeking to develop the Property with a permitted or conditional use authorized under the C-1A zone, and instead is seeking to develop the Property with unrestricted (i.e. non age-restricted) townhomes, which is a change of use requiring a use variance under N.J.S.A. 40:55D-70d(1); and

**WHEREAS**, the Applicant has filed a bifurcated land use application as authorized within N.J.S.A. 40:55D-76b in order to seek a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1); and

**WHEREAS**, the Applicant has represented to the Board that if the Applicant is successful in obtaining a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1), the Applicant will thereafter file another application seeking site plan approval for its Project and that this other application will seek all additional variance relief required for the Project (which, if the Project remains as described within the application, would include a density variance under N.J.S.A. 40:55D-70d(5) as well as a number of bulk variances under N.J.S.A. 40:55D-70c); and

**WHEREAS**, the existing use is conforming to the zone, but the existing lot, the existing structures, the proposed use, and the proposed structures are not conforming to the zone; and

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

(a) the proposed principal use (i.e. non age-restricted residential townhomes) is non-conforming to the zone and the conditions of the

conditional use of “age-restricted townhouse developments” are not satisfied by this proposed Project; **therefore, the Applicant is seeking a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1);** and

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

(a) Conceptual site plan (4 sheets) prepared by Joshua M. Sewald, P.E., dated June 25, 2021;

(b) architectural drawings depicting floor plans and elevation views (4 sheets) prepared by Daniel M. Contadore, R.A.;

(c) traffic impact and parking assessment prepared by Dynamic Traffic dated June 25, 2021;

(d) Zoning Board Application package (including the addendum for zoning variance) for bifurcated application;

(e) Zoning Permit denial letter dated August 17, 2021 from the Zoning Officer; and

**WHEREAS,** the Board was also provided with a letter dated September 27, 2021 prepared by the Alan Hilla of H2M Associates, Inc. providing a technical review of phase 1 of the bifurcated application; and

**WHEREAS,** the Planning Board held hearings on this application on November 9, 2021, December 14, 2021, January 11, 2022, and February 8, 2022, and considered the following documents presented at the hearings in connection with this application:

a. Exhibit A-1 colored aerial of the subject site and

- surrounding properties
- b. Exhibit A-2 Site Plan Rendering;
  - c. Exhibit A-3 group of pictures (5 pages with two pictures per page) of the property, the single-story building, and surrounding properties;
  - d. Exhibit A-4 3D rendering of the proposed concept of three-story structures attached townhouse dwellings;
  - e. Exhibit A-5 Land Use Analysis;
  - f. Exhibit A-6 (sheet SK8) sketches of the exterior elevations; and

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

**November 9, 2021 hearing**

Mr. Matthew Posada, Esq. of Sills Cummis & Gross, announced he was representing the applicant, M&D Two, LLC.

Ms. Trainor stated she understood there might be a threshold issue noted in the agenda that this was a bifurcated application and asked Mr. Clark to address the issue or if it would have to be addressed as the application proceeded. Mr. Clark stated the Municipal Land Use Law discusses the right of an applicant to bifurcate an application which is what this applicant was seeking to do since they are only seeking Use Variance relief now. Mr. Clark stated the applicant was seeking to get rulings on the Use Variance issues first and, if approved, then it would move forward with the site plan application. Mr. Clark stated that ultimately it is the Board's decision whether it feels it has sufficient information necessary to make the decisions that it needs to make or whether information was missing, such as things in the site plan that it feels it needs in order to make those decisions. Mr. Clark stated that since this application is seeking a Use Variance, there needs to be an affirmative vote of at least 5 Board members to grant the variance or it would be denied. Mr. Clark asked Mr. Posada if he would generally agree that was a fair statement of the legal process. Mr. Posada replied that he agreed. Mr. Posada stated he would provide some background in his opening statement why the applicant decided to pursue the Use Variance first.

Ms. Trainor stated the Board had received correspondence on the issue from the Brielle Environmental Commission. Ms. Trainor read the letter into the Record. Ms. Trainor stated that the edition of the New Jersey Planner was attached to the letter and would also be part of the Record but would not be

read at length. Mr. Posada stated the applicant had received the correspondence on November 8<sup>th</sup>, 2021.

Mr. Posada stated that the Use Variance application is a D-1 Use Variance, pursuant to the Municipal Land Use Law and case law it requires the applicant to go through both the positive and negative criteria so they would make sure to satisfy the criteria requirements in order to educate the Board on what was being proposed. Mr. Posada stated the applicant was seeking Use Variance relief for 22 multi-family townhomes. Mr. Posada stated that the applicant would address all the same issues that would be seen in an ordinary site plan application, civil plans, lighting, landscaping, storm water, site circulation, proposed rendering, the facade, elevation, and height. Mr. Posada stated that the best way to move forward was to work with the Board and if any Board member or professional requested further detailed information they would be happy to provide it.

Mr. Posada stated Mr. Kyle Kavinsky would be providing the civil engineering testimony. Mr. Kyle Kavinski, Dynamic Engineering, was sworn in by Mr. Clark. Mr. Posada asked Mr. Kavinsky to provide to the Board his educational credentials and list at least three Boards that had qualified him as an expert in Engineering. Mr. Kavinski stated he was a partner with Dynamic Engineering with over 12 years of experience, held a bachelor's degree in Engineer Technology from the University of Delaware and was a Licensed Engineer in New Jersey. Mr. Kavinski stated he had appeared before numerous Board in New Jersey including Toms River, Union, Metuchen, and Red Bank. Mr. Posada asked the Board if Mr. Kavinski was accepted as an expert in Civil Engineering. Ms. Trainor answered yes, the Board found Mr. Kavinski qualified.

Mr. Posada asked Mr. Kavinski if he was familiar with the Gateway Zone and if the property was located in the Gateway Zone. Mr. Kavinsky answered that he was familiar with the Gateway Zone and stated that the property was in the Gateway Zone. Mr. Posada asked Mr. Kavinski if he was familiar with the Borough's Zoning Ordinances and Master Plan. Mr. Kavinsky replied yes, he was familiar with them. Mr. Posada asked Mr. Kavinski if he and his team drafted the proposed concept civil plans. Mr. Kavinski answered that they did. Mr. Posada asked Mr. Kavinski when drafting the plans, did they take into consideration the Borough's Zoning Ordinances and Master Plan. Mr. Kavinski responded that they had.

Mr. Posada asked Mr. Kavinski to describe to the Board what was being proposed. Mr. Kavinski displayed a document he described as an aerial exhibit, dated November 9<sup>th</sup>, 2021, which was marked as A-1. Mr. Kavinski stated the exhibit was a colored aerial of the subject site and surrounding properties. Mr. Clark asked Mr. Kavinski if this exhibit was part of the application package. Mr. Kavinski answered that the exhibit was a separate exhibit. Mr. Clark stated that

since there were exhibits being marked that were not part of the package, a hardcopy would need to be sent to the Planning Board Secretary to be kept in the Borough's files.

Mr. Kavinski described Exhibit A-1 to the Board. Mr. Kavinski shared an exhibit, described as a Site Plan Rendering, dated November 9<sup>th</sup>, 2021, prepared by his office, which was marked as Exhibit A-2. Mr. Kavinski described Exhibit A-2 to the Board.

Mr. Kavinski stated that they were before the Board for a Bifurcated Variance Application to redevelop the site into a multi-family development with 22 3-story units which is a non-permitted use with the Zone. Mr. Kavinski stated that townhomes would include 16 2-bedroom units and 6 3-bedroom units. Mr. Kavinski stated access to the site would be on Higgins Avenue, provided by a driveway, which would be 24-feet wide with two-way circulation. Mr. Kavinski stated there would be 30 surface parking spaces and 22 garage spaces for a total of 52 parking spaces provided. Mr. Kavinski stated there would be a playground and sitting area on the northern portion of the parcel with access to the parking lot. Mr. Kavinski stated that a screened enclosed and covered refuse and recycling area would be provided for use by the residences which would be picked up by a private hauler as needed. Mr. Kavinski stated that utilities for the site are anticipated to be connected through Higgins Avenue. Mr. Kavinski stated that the applicant had obtained "will serve" letters from all of the applicable utility companies for the proposed project. Mr. Kavinski stated typical residential lighting would be provided throughout the parking lot and access points. Mr. Kavinski stated that landscaping would be provided by 12 ornamental trees, 19 evergreen trees and 336 shrubs and ground covers throughout the site. Mr. Kavinski stated that there was a significant existing tree buffer on the eastern portion of the property. Mr. Kavinski stated that they would be providing some additional supplemental trees in that location as well as where the existing buffering is on Route 35 and along Higgins Avenue.

Mr. Posada asked Mr. Kavinski to describe to the Board what type of stormwater improvements could be used for capturing stormwater. Mr. Kavinski answered that they would provide inlets located in the parking lot area and driveway area which would then tie them into a bio-retention system and an infiltration basin and treat the water that would go into that area and would provide a recharge of any pavement they would be putting down as part of the development. Mr. Kavinski stated that currently there were no stormwater facilities on the site.

Mr. Posada asked Mr. Kavinski if the existing and proposed vegetation would shield the proposed lighting from any kind of spillage onto the adjacent properties. Mr. Kavinski replied yes and stated that the lighting would be lower light fixtures which would be downward facing.

Mr. Posada stated he had no further questions for Mr. Kavinski.

Ms. Trainor asked Mr. Hilla if he had any comments and if the applicant's engineer had addressed any of his concerns detailed in his letter. Mr. Hilla stated he did not expect the applicant to start with the site plan as this was a bifurcated case. Mr. Hilla stated that there were not many things in his review letter that related to the site plan because that was not the thrust of how the application was being presented. Ms. Trainor stated that it might be difficult to understand or ask questions without Mr. Hilla's ability to have provided the Board with his advice.

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

Mr. Stenson stated he had no questions about the site plan, that the applicant is proposing 22 3-story units not permitted in the Gateway Zone and stated that is what should be discussed.

Mr. Maclearie stated he felt there was a lot going on with a small piece of property and asked why they are proposing so many homes. Mr. Posada responded that the Planner would be going into more detail. Mr. Maclearie asked what the height of the building would be. Mr. Posada responded that the Architect would have to answer that question.

Mr. Siano stated he agreed with Mr. Stenson, and he did not understand why if this was being considered a two-part application, why it was being presented like it was moving forward.

Ms. Brisben asked if the project would be age restricted. Mr. Posada answered that it was not. Ms. Brisben asked if there would be an affordable housing element. Mr. Posada replied that they would comply with whatever the affordable housing obligation is at the time of approval. Ms. Brisben stated she agreed with the other Board members about the Use Variance part and would like to hear more of that.

Mr. Jones stated he agreed with the other Board members and asked how this proposed development compares to other multi-family developments in Brielle. Mr. Kavinski answered that the Planner would be able to answer that question.

Ms. Frith stated she felt she would need more information before having any questions.

Mr. Tice stated he agreed with the other Board members and had no questions.

Ms. Trainor stated that it sounded to her that the Board may have questions for Mr. Kavinski at a later time and would reserve the right to ask those questions if the application moves forward.

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

Hearing none, Ms. Trainor asked Mr. Posada if he had any further remarks. Mr. Posada stated that it was clear from the Board that they are looking to hear the details of the Use Variance application and the negative and positive criteria before moving onto the improvements. Mr. Posada stated to provide some clarity, their original intention was to provide testimony regarding the civil architectural next so the Board would be able to understand the totality of the project, how it would be configured and used on the property itself before going into the planning testimony, but that he would present the planning testimony next in order to respond to the Board's questions.

Mr. Posada called Mr. Charles Heydt with the firm Dresdner Robin. Mr. Heydt was sworn in by Mr. Clark. Mr. Posada asked Mr. Heydt to provide to the Board his educational credentials, licensure, and list three Boards he had been previously qualified as an expert in Planning. Mr. Heydt stated that he was the Director of Planning at Dresdner Robin, held a Professional Planner license in New Jersey for about 10 years, had obtained his American Institute of Certified Trainer Certificate, had been practicing for about 12 years and had appeared before Boards in Long Branch, Jersey City, New Brunswick, and Camden and all the way out to Atlantic County. Mr. Heydt stated he held a master's degree in Regional and City Planning from Rutgers University. Mr. Posada asked the Board if they accepted Mr. Heydt as an expert in Planning. Ms. Trainor responded that the Board did accept Mr. Heydt as an expert.

Mr. Posada asked Mr. Heydt is he was familiar with the Gateway Zone and if the subject property was in the Gateway Zone. Mr. Heydt responded that he was familiar and that the property is in the Gateway Zone. Mr. Posada asked Mr. Heydt if he was familiar with the Borough's Ordinances and Master Plan. Mr. Heydt replied that he was.

Mr. Posada asked Mr. Heydt to describe the project to the Board, how it relates to the variance relief and how they believe it would satisfy both positive and negative criteria. Mr. Heydt stated they were proposing a multi-family use in the district which is not permitted. Mr. Heydt stated they had done a thorough evaluation of land uses in the area as well as density and that they have a photo log as an additional exhibit.

Ms. Trainor announced it had been 45 minutes and that the application would be carried to the meeting next month. Mr. Posada asked if it would be posted on the Record that the application was being carried with no need to re-notice. Mr. Clark stated that it would be noted on the Record.

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

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 that 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 and that they are 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.

### **January 11, 2022 hearing**

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 from the Planning Board 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 this 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 relied on the number of units to provide some 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 property 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 requirements by 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 proposed 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 Board's 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 engineer's 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.

### **February 8, 2022 hearing**

Mr. Posada began by recapping the prior meeting for the Board and announced that he would be presenting Mr. Daniel Condatore so the public could have an opportunity to ask questions and then he would present his last witness, Mr. Joseph Staigar. Mr. Posada stated that before starting he wanted to re-iterate that the application, before this Board is only for the D(1) Use Variance application for multi-family usage itself and that any proposed architectural plans, civil plans, stormwater, or landscape details, the proposed traffic study and planning testimony as it relates to both height and density are for conceptual purposes only. Mr. Posada stated that it was asked by the Board if the site would comply with the affordable housing requirements and said that if the units were for sale, 20% would be dedicated affordable housing and if they were for rent, it would be 15% dedicated to affordable housing.

Mr. Posada called Mr. Joseph Staigar to testify. Mr. Staigar, Dynamic Traffic, Lake Como, NJ, was sworn in by Mr. Clark. Mr. Clark asked Mr. Staigar if he held any licenses to which Mr. Staigar replied that he has a Professional Engineer License and a Professional Planners License and was appearing here as a Professional Traffic Engineer. Mr. Staigar stated he had a bachelor's and a master's Science Degree in Civil Engineering from New Jersey Institute of Technology, has been an adjunct Professor of Traffic Engineer courses at NJIT, has been testifying for over 35 years as a Professional Engineer specializing in traffic engineering and has appeared in just about every municipality in the state of New Jersey on over 1000 occasions in that capacity. Mr. Posada asked Ms. Trainor if the Board accepted Mr. Staigar as a qualified expert Traffic Engineer. Ms. Trainor stated that the Board did accept Mr. Staigar as an expert.

Mr. Posada asked Mr. Staigar if he was familiar with the Gateway Zone and if the property was located in that zone. Mr. Staigar stated he was familiar, and the property was in that zone. Mr. Posada asked Mr. Staigar if he conducted the traffic impact study for this property. Mr. Staigar answered yes and then began to discuss his findings. Mr. Staigar stated that this was a rather simple traffic analysis because it is in comparison to what you have and what you would get if the proposed application was approved. Mr. Staigar stated that there would be 22 residential units that were being redeveloped for this property that had a liquor store and a garden type nursery. Mr. Staigar detailed the trip generation rates for the former use as compared to the proposed use at different times of day, night, weekday, and weekend hours and stated the differences in number of trips when compared to the former use. Mr. Staigar stated that this proposed redevelopment would generate much less traffic than

the former use which would lead to the conclusion that it would have a lesser impact on traffic since it is a lesser trip generator. Mr. Staigar stated he did look at the site plan and said it is satisfactorily designed and would operate safer. Mr. Staigar stated the proposed use has two driveways and they would be eliminating one and would have a standard design geometry of the driveway, good sight visibility, particularly around the corner as cars come off of Route 35. Mr. Posada asked Mr. Staigar if it was his expert opinion that the conceptual site plan itself would actually improve sight visibility for the new proposed driveway and that it will also be a substantial reduction in intensive impact on traffic on municipal roads. Mr. Staigar replied that a land use that generates less traffic would have a beneficial effect on at this location and said less traffic means less impact. Mr. Posada stated he had no further questions.

Ms. Trainor announced it was time to hear questions from the board for Mr. Staiger.

Mr. Maclearie stated he realized the plans were preliminary and asked if they had decided if there would be one or two entrances and then asked to confirm that the applicant was only looking for a Land Use decision now. Mr. Posada answered that Mr. Maclearie was correct.

Ms. Brisben asked when at the light at Route 35 and Higgins Avenue, would someone be able to see down to the proposed driveway. Mr. Staiger replied that you could not from the intersection but could see it for the required sight distance for the speed limit of the roadway which is 30 miles per hour which would equate to 250 feet of sight distance with the conceptual plan proposed.

Ms. Trainor asked Mr. Staigar if in his professional opinion, did he think there was enough parking proposed. Mr. Staigar answered that the standard that this design needs to be based on is the residential site improvement standards, utilizing those parking generation or maximum parking rates that the RSIS implements, they would need 51 spaces and they were proposing 52 spaces.

Mr. Siano asked Mr. Staigar out of the 51 spaces, how many would be considered garages and if they were included in the parking calculations. Mr. Staigar replied that there is one garage for every unit, and they were included in the calculation.

Ms. Trainor, Ms. Frith, Mr. Jones, and Mr. Tice did not have questions for Mr. Staigar.

Mr. Hilla stated he did not know a lot about the IT trip generation, or the categories offered but said that what was there was not a traditional liquor

store and he did not know if that would make a difference. Mr. Hilla asked if there was an appreciable difference in the characterization that might change or modify the calculations. Mr. Staigar stated that the key is that it sells the same type of product that the majority of patrons may come into purchase and that the numbers are so far different, the 22 units versus the liquor store, even if it did half, or a third of the business it would generate more traffic than the 22 units. Mr. Hilla asked Mr. Staigar where the overflow parking would be. Mr. Staigar answered that the RSIS has a standard of .5 parking spaces for guests per unit and that would equate to 11 guests parking. Mr. Staigar stated that there were only 8 spaces proposed but said it is a minor deficiency that could be remedied in the overall redevelopment of the site if need be. Mr. Hilla stated he had no further questions.

Ms. Trainor announced it was time to hear questions from the public for Mr. Staigar. Hearing none, Ms. Trainor stated it was time to hear comments from the Board regarding the application.

Mr. Maclearie stated he was not against the change of use but stated he thought the plan needed to start fresh because of the height, deficiency of parking, and number of units. Mr. Maclearie stated he could see something more in the lines of the Brielle Commons.

Mr. Siano stated he is opposed to the Use Variance because the applicant is only proposing multi-family town houses and felt without including a retail professional component along with residential, the applicants proposal is too much of a deviation from the intent of the Zone which becomes a detriment to the Ordinance. Ms. Siano stated he would like to see more of a mixed-use component there that would work better with the Gateway Zone.

Ms. Brisben stated she did not have an issue with the D variance but did have a problem with the density and parking. Ms. Brisben stated she would like to see less density but would be in favor of allowing the D variance.

Mr. Jones stated he agreed with Mr. Siano and felt that a retail/commercial component is definitely needed at that site and that the density proposed is too much.

Ms. Frith stated she agree with Mr. Siano and stated there are a lot of residential areas there and thought it was a great reason to keep it multi-use and have some retail property there too.

Mr. Tice stated he agreed with Mr. Siano, Ms. Frith and Mr. Jones and said the Gateway Zone was originally created to maintain a Main Street theme when entering the Borough and felt the testimony did not illustrate anything specific

to that outside the townhome type of theme. Mr. Tice stated he also had concerns with the density of 22 units per acre.

Ms. Trainor stated she agreed with the consensus that it was important to respect the purpose of the Gateway Zone and did not think she had heard any testimony that would meet the criteria for the type of variance that the applicant was seeking in this bifurcated application. Ms. Trainor stated to the extent that she would consider it, she could not consider it in a bifurcated way and thought most of the testimony that had been provided goes directly to the site plan and for what it is worth that is exactly what the Board members have pushed back upon. Ms. Trainor stated she took issue with the bifurcated nature to the extent that she would consider it in a single package.

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

Ms. Linda Lembo, 10 Capt. Bailey Court, was sworn in by Mr. Clark. Ms. Lembo stated she came to know of the application through the Coast Star, drives by the parcel often, said it is an eyesore in its current state and a poor representation of Brielle. Ms. Lembo stated she is in favor of the proposed development of the townhomes.

Mr. Bill Skala, 629 Higgins Avenue, was sworn in by Mr. Clark. Mr. Skala stated he is the owner of the Brielle Sports Club, across the street from the site. Mr. Skala stated he completely agreed with Ms. Lembo, the lot is a complete eyesore, the building is dilapidated, and the existing billboard looks like it is about to fall off the building and needs to be developed into something similar to what is being proposed. Mr. Skala stated he wanted to voice his support for the project.

Ms. Cynthia Farley, 16 Courtyard Lane, was sworn in by Mr. Clark. Ms. Farley stated she had been a resident of Brielle Commons for 15 years and is the president of the Homeowners Association, said she thought she could speak for the majority of the residents who are in favor of the proposed development of the townhouses. Ms. Farley stated she felt that adding anything commercial would create more of a traffic hazard on Higgins Avenue, which she said is bad enough already. Ms. Farley stated that the gateway to Brielle was very important and did not think it necessarily needed commercial and thought that people driving in would want to see diverse housing options to move into a beautiful residential town. Ms. Farley stated the residents of Brielle Commons would be very impacted by the decision of the Board and hoped the Board would give it serious consideration. Ms. Farley stated they have 16 units and 10 very tiny parking spaces which causes parking issues. Ms. Farley stated that she thinks the proposed townhomes would be beautiful for the entry into Brielle.

Mr. Tim Shaak, 512 Borrie Avenue, was sworn in by Mr. Clark. Mr. Shaak stated, for full disclosure, he is a Brielle Councilman, is the listing real estate agent for the property and a lifelong resident of Brielle dating back to 1969. Mr. Shaak stated he agreed that the site is an eyesore and has been for the last several years. Mr. Shaak stated he understood the Board's desire to maintain the Gateway Zone, however, the Gateway Zone was developed circa 2000 and has never lived up to its potential. Mr. Shaak stated they had not received any interest from commercial developers that wanted to purchase the property for residential properties. Mr. Shaak stated the desire to maintain the Gateway Zone is just not realistic. Mr. Shaak stated he is very impressed with what has been proposed and would certainly support it.

Mr. Stan Mazur, 12 Courtyard Lane, was sworn in by Mr. Clark. Mr. Mazur stated he spends a lot of time walking around town picking up garbage and recycling and said he agreed that the area is a total eyesore.

Ms. Heidi Wittenberg, 601 Higgins Avenue, was sworn in by Mr. Clark. Ms. Wittenberg stated she was the Broker at the Folk Agency in Brielle, feels that the site is an eyesore and that anything that could be done there to beautify the property would be good for Brielle. Ms. Wittenberg stated that she felt the rules and regulations for the Gateway Zone should be revised because they do not fit in with the Borough that is now. Ms. Wittenberg stated she felt what the applicant is proposing would definitely better the community.

Hearing no other comments from the Board, Ms. Trainor asked Mr. Posada if he had any closing remarks. Mr. Posada thanked the members and professionals of the Board and wanted to make sure the Board understood that part of the bifurcated application was the understanding that there was no way they would propose exactly what the Board would want to see, it was impossible because it was not a permitted use, so they would not have bulk standards to go off of or stormwater requirements or any other type of regulations. Mr. Posada stated their approach to doing the bifurcated application was to hear the comments and concerns of the Board so they could propose those types of plans which the Board would want to see.

Ms. Trainor announced it was time for the Board to vote and asked Mr. Clark to give some guidance on what the motion would look like. Mr. Clark stated the application is bifurcated, the applicant is seeking a D(1) Use Variance to allow residential townhomes to be developed on the site and there would need to be 5 affirmative votes from the Board to grant the Use Variance. Mr. Clark stated the motion to approve the D(1) Use Variance would mean that the applicant has met the positive and negative criteria to show that the Use Variance is warranted and that there was sufficient evidence for the Board to decide that. Mr. Clark stated the motion to approve the D(1) Variance would be

to allow townhomes on the site with all site requirements to be addressed at a later time.

Ms. Trainor asked for a motion to approve the application. 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:

- u. 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.
- v. The Applicant is the contract purchaser of the Property.
- w. The Property is an approximately 57,989 square foot (1.33 acre) lot which currently contains a one-story commercial liquor store and associated seasonal garden center.
- x. The Applicant is proposing to demolish the structures on the Property and to construct a three-story multi-family development consisting of twenty-two (22) townhouse units (sixteen (16) of which will be two-bedroom units, and six (6) of which will be three-bedroom units) and fifty-two parking spaces with related improvements (as described more fully within the application, the "Project").
- y. The existing use is conforming to the zone, but the existing lot, the existing structures, the proposed use, and the proposed structures are not conforming to the zone.
- z. The Property is located within the Borough's Gateway C-1A Zone.
- aa. The C-1A Zone is primarily a commercial zone but it does allow one residential use (i.e. age-restricted townhomes) as a conditional use within the zone.
- bb. The Applicant is not seeking to develop the Property with a permitted or conditional use authorized under the C-1A zone,

and instead is seeking to develop the Property with unrestricted (i.e. non age-restricted) townhomes, which is a change of use requiring a use variance under N.J.S.A. 40:55D-70d(1).

- cc. The Applicant has filed a bifurcated land use application as authorized within N.J.S.A. 40:55D-76b in order to seek a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1);
- dd. The Applicant has represented to the Board that if the Applicant is successful in this application in obtaining a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1), the Applicant will thereafter file another application seeking site plan approval for its Project and that this other application will seek all additional variance relief required for the Project (which, if the Project remains as described within the application, would include a density variance under N.J.S.A. 40:55D-70d(5) as well as a number of bulk variances under N.J.S.A. 40:55D-70c).
- ee. The existing use is conforming to the zone, but the existing lot, the existing structures, the proposed use, and the proposed structures are not conforming to the zone.
- ff. The Applicant is seeking the following variance relief through its bifurcated application (the variance relief sought is shown in bold type): the proposed principal use is non-conforming to the zone and the conditions of the conditional use of “age-restricted townhouse developments” are not satisfied by this proposed Project; **therefore, the Applicant is seeking a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1).**
- gg. The Applicant has indicated that if it obtains a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1), the Applicant will thereafter file an application seeking site plan approval for its Project and seeking all other variance relief required for the Project (which would include a density variance under N.J.S.A. 40:55D-70d(5) and a number of bulk variances under N.J.S.A. 40:55D-70c);
- hh. In order to obtain a variance under N.J.S.A. 40:55D-70d(1) for a change in use of the Property, the Applicant has the burden of proof to show that that all of the elements supporting such variance relief have been satisfied.

- ii. In particular cases and for special reasons, a zoning board may grant “d” variance relief to an applicant. In order to show that special reasons exist, an applicant must satisfy what is commonly known as the positive and the negative criteria.
- jj. One way to satisfy the positive criteria is to show that the proposed use is an inherently beneficial use. The Applicant herein is not arguing, and has provided no proofs to demonstrate, that its proposed use of the Property is an inherently beneficial use.
- kk. Another way of satisfying the positive criteria is to show extreme or undue hardship warranting the granting of variance relief. To show extreme or undue hardship, an applicant must demonstrate that a condition of the land results in economic inutility and the property cannot reasonably be used for its zoned purpose. The Applicant herein is not arguing, and has provided no proofs to demonstrate, that it is suffering an extreme or undue hardship warranting the granting of variance relief.
- ll. The third way to satisfy the positive criteria is to rely upon the “site suitability” test to satisfy the positive criteria for variance relief; that is, whether the proposed use will promote the general welfare and whether the development of the property is particularly suited for the use proposed. That is the sole basis cited by this Applicant for the d(1) variance that it is seeking through this bifurcated application.
- mm. Although the Applicant provided testimony as to why its proposed use would promote the general welfare, the Board finds that the Applicant did not demonstrate why the Property is particularly suited for this proposed use rather than for any of the other permitted and conditional uses allowed within this zone. To the contrary, it appears to the Board that the Property is suited for any of the permitted or conditional uses in the zone and that those permitted and conditional uses would have the same benefit to the general welfare that the proposed use allegedly has. Thus, the Board finds that the Applicant has not met its burden of proof to satisfy the site suitability test, and therefore has not satisfied the positive criteria for variance relief.
- nn. In order to obtain the variance relief sought herein, the Applicant also must prove that a “d” variance can be granted (i)

without substantial detriment to the public good, and (ii) that it will not impair the intent and purpose of the zone plan and zoning ordinance. This is commonly referred to as the negative criteria.

- oo. The purpose of the C-1A Gateway 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 themed retail/professional use development with limited conditional residential aspects. Seashore colonial architectural features are recommended for any sort of development.
- pp. The Board finds that this proposed development is inconsistent with the Main Street theme of this corridor and with the primary intent of the zoning to promote retail/professional use development and that the Applicant's proposed development of the Property will impair the intent and purpose of the zone plan and zoning ordinance.
- qq. The Board notes that the Applicant could have mitigated or limited this impairment by proposing a mixed use development with some commercial uses to further the goals of the zone along with some residential development, but it did not do so.
- rr. The Board also notes that this Applicant has not attempted to meet the conditional use requirements for the limited residential use that is allowed within the C-1A Zone, which is the development of age-restricted townhomes meeting all of the conditions of the zoning ordinance. As this limited residential use is only a conditional use and the conditions have not been satisfied through this application, this proposed change in use impairs the intent and purpose of the zone plan and zoning ordinance.
- ss. For all of the cited reasons, the Board finds that the Applicant herein has not adequately demonstrated that this proposed change in use will not impair the intent and purpose of the zone plan and zoning ordinance, and it therefore has not met the negative criteria for variance relief.
- tt. The Applicant's failure to meet either individual prong necessary for variance relief (i.e. the positive criteria or the negative criteria) would warrant denial of this application. Here, the

Board finds that the Applicant has failed to meet either of these prongs.

- uu. For all of these reasons, the Board finds that the Applicant has not satisfied its burden of proof to demonstrate that it is entitled to a variance under N.J.S.A. 40:55D-70d(1) for a change in use of the Property.

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

Ayes: Corinne Trainor, Jim Maclearie, Karen Brisben

Noes: Chris Siano, Stephanie Frith, Jay Jones, Charlie Tice

Absent: James Stenson

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Brielle, that the Applicant's bifurcated application seeking a variance under N.J.S.A. 40:55D-70d(1) for a change in use of the Property in order to allow for the development of this Property with non age-restricted residential townhomes is hereby **DENIED**.

A motion to approve the above Resolution was made by Ms. Frith, seconded by Mr. Jones and then by the following roll call vote:

Ayes: Stephanie Frith, Jay Jones

Noes: None

Not Eligible to Vote: Karen Brisben, James Maclearie, Corinne Trainor

Absent: James Stenson, Chris Siano, Charlie Tice

The next item under Old Business was a hearing that was carried from the February meeting: 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 to move lot lines.

Before testimony started, Mr. Clark reminded all that both Ms. Hamilton and Mr. Delgado were placed under oath last month, then there were some questions and issues about what their testimony was going to be about and Mr. Hilla's letter, then there was a discrepancy about their survey matching the tax map; after that Mr. Hilla took a look at it again and realized their survey did match the tax records so this can proceed. Mr. Hilla agreed and said he was looking at an old version of the tax map and the survey submitted was in keeping with the most recent tax map sheet and he apologized for the confusion.

At this point Mr. Delgado was having a problem with his computer microphone and could not be heard, so Ms. Hamilton stepped in and told the Board there was another updated survey submitted that shows his house is 8 feet from the property line, Ms. Trainor told her the Board had received that, a survey done by Morgan Engineering & Surveyors which says the home is in compliance with the setbacks. Ms. Hamilton said yes so the setback is no longer a problem. In an answer to a question from Ms. Trainor on other issues, Mr. Clark felt that testimony should be given to clarify all setback and coverage questions.

At this time Mr. Delgado was able to communicate with the Board and verified that, with the new survey, the house is shown to be compliant, pertaining to the shed which is really a kids' playhouse, that is 5.3 feet from the property line so it conforms. As far as the front setback for lot 10, that pertains to Diana Hamilton's house and he couldn't really comment on the lot coverage. Ms. Hamilton said the coverage will be 21.51%. Mr. Clark said the property already exceeded the building coverage, it is existing and this subdivision reduces that, so the deviation of coverage is being improved. Ms. Hamilton added that her lot exists as it is and there is no change, the issues were on lot 11 which will have the building coverage reduced to 21.51%.

As there was no more testimony, the Board had an opportunity to ask questions; Mayor Nicol had no questions, Councilman Garruzzo asked Mr. Hilla if all his questions were answered by the testimony and Mr. Hilla said they were outlined, he was questioning if the proofs for the variance relief were there and he wanted to know how the filing of the subdivision was going to be. Mr. Clark remembered conversations from last month that the applicants were not sure how to proceed and he asked Mr. Delgado if they had looked into how they were going to file the subdivision, either by deed or by filing a plat with Monmouth County Planning Board. Mr. Delgado said he was not familiar with either process and he would like to do the more practical one. Ms. Hamilton asked if all that needs to be done is to have an attorney draw a new deed and

file it; Mr. Hilla felt that map filing is more complicated than filing by deed but they do need an attorney to come up with the descriptions of what is being transferred, it is not the Board's place to advise on how to do this. Mr. Delgado then said they would be filing by deed and Ms. Hamilton agreed. Mr. Maclearie had no questions, Mrs. Brisben told the applicants they do need to get new lot numbers from the Tax Assessor, usually she did that if the applicants didn't, but she did not do so this time; after they get the new lot numbers they will have to submit a revised plan showing the correct lot numbers; other than that she had no questions. Mr. Jones had a question about the deck, does that serve as a roof for the lower deck? Mr. Delgado said the second floor decking is ipe (Brazilian Walnut). Mrs. Frith had no questions as well as Ms. Trainor.

At this time the hearing was opened to the public for questions to the applicants and there was no response so that portion was closed and the Board went into comments. Mayor Nicol had no problem with the application as long as Mr. Hilla and Mr. Clark were satisfied with it. Councilman Garruzzo agreed with the Mayor and also did not have any issues with the application, he thought it made more sense to move the lines. Mr. Maclearie agreed with both the Mayor and Councilman, Mrs. Brisben asked that it be put in the Resolution that revised plans have to be submitted, 4 copies showing the new lot numbers. Mr. Jones agreed with the Board with no further comments, Mrs. Frith was also for approval. Ms. Trainor did believe that the applicants did meet their burden of proof and had no problem with their application.

The hearing was then opened to the public for comments regarding the application and, as there was no response, that portion was closed. Mr. Clark noted the conditions that the subdivision will be filed by deed and that the applicant will file revised plans, and in terms of the lot coverage this application is making the lot coverage better. At this time a motion for approval was made by Mr. Maclearie, seconded by Mrs. Frith and then a roll call vote was taken:

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

Noes: None

Ms. Hamilton asked if they have to be present next month for the Resolution and Mr. Clark explained that they will be sent a draft copy of the Resolution before the meeting date and if they have any issues to let him know, they do not have to be present.

Ms. Hamilton wondered if she has to get the new Block and Lot numbers by next month and Mrs. Brisben explained that the deed has to be signed by both the Chairperson and Secretary and that can't be done until the revised plans are

done and approved, so this doesn't have to be done within the next 30 days but it does need to get done in order to file the subdivision.

The last hearing under Old Business was the continuation of an application for variance relief for Block 60, Lot 17, 9 Crescent Drive, owned by Peter & Katelynn Cappiello, to allow renovations & additions to a single-family dwelling. Side Yard Setback - 10 feet required, 5.67 feet existing to southerly side, 6 feet proposed; 9.58 feet existing & proposed to northerly side second story. Maximum Building Coverage - 20% allowed, 25.9% existing & 28.5% proposed. Existing Nonconforming Conditions: Lot Area - 11,250 square feet minimum required, 7,268 square feet existing; Lot Width - 75 feet minimum required, 60 feet existing; Lot Depth - 125 feet minimum required, 111 feet existing; Rear Yard Setback - 35 feet required, 33.5 feet existing.

Mr. John Giunco, Esq. came forward to continue this application for the applicants. He reminded all that the applicants had been issued a building permit and had started construction at which point the Zoning Officer had determined there were variances required and construction was stopped; they have been trying to get this application completed over the past few months. At the last hearing the architect, Scott Nicholl, had testified and he has one witness for this evening, Andrew Janew, Professional Planner; he stated that Mr. Nicholl was also present for any further questioning.

Mr. Clark reminded all that Mr. Janew gave his qualifications at the last meeting, was sworn in and accepted as an expert witness so he can go right into his testimony. Mr. Ed Liston, Esq. then spoke up to state he was here representing Peter Petracco as an objector to this application. Mr. Giunco said he has spoken with Mr. Liston, as well as Mr. Clark, and Mr. Janew was ready to give his testimony.

Mr. Janew was familiar with the site, has reviewed the correspondence and documents as well as the Master Plan and Ordinances. Mr. Giunco asked him to speak about the neighborhood and how this application will affect it. Mr. Janew said the neighborhood is an important part of the variance requested and had some photos/aerials of the area; in general the neighborhood is eclectic in terms of homestyles and ages, many homes having been renovated after Hurricane Sandy as well as older homes from the 1940s and newer homes. The subject property is an irregularly shaped undersized parcel on the north side of Crescent Drive and is in the R-3 single family zoning district. This property contains 7,271 square feet where 11,250 square feet is required, so this is about 65% of what is required. It is currently improved with a tudor-style home & garage. The applicant applied for a zoning permit back in January 2021 and a building permit was issued in March 2021; then a Stop Work Order was issued due to some required variances being identified, lot coverage and existing conditions. The applicant has revised the application, reduced the size

of the garage to a one car garage with no dormers and the proposed bathroom has been removed, there is no occupancy there at all, the upstairs is storage. With respect to the driveway, it currently has a paver driveway and paver patio in the rear and they are going to remove and replace the pavers with gravel to help with the infiltration on the property. The additions to the home will include a front porch addition, an addition to the rear where there was an existing koi pond that has been removed and will now be a sunroom; he noted they are not increasing the footprint, that will stay the same as they were going straight up. He said all this will decrease the impervious coverage that currently exists and he will get into that later.

The bulk variances that they are seeking this evening are a side yard setback on either side, 10 feet is required and there is 5.8 feet on one side and 9.58 feet on the other side and that will remain. On lot coverage, 20% is permitted, 27.9% exists and 28.5% is being proposed and that is calculated by reducing the size of the garage but putting on the addition of the front porch and sunroom to the rear. The front porch is being added for an architectural style, the idea is to re-imagine the home as a seashore Victorian and be very attractive, it will add livability to the home and fit in the neighborhood. The existing conditions will remain unchanged – lot area of 7,271 feet where 11,250 feet is required, width is 75 feet required and 68 feet is existing, depth of 125 feet required and 111 feet existing, rear yard has a 35 feet requirement and they have 33 feet. None of these are being affected any way by this application.

In preparing for the relief requested, Mr. Janew did look at the Master Plan and goals and it was pretty consistent with the characteristic of staying with the theme of the neighborhood; to promote a visually desirable environment, to encourage public and private activities and have an efficient use of land; there is an existing home on this property and he felt they are consistent with this. It also spoke of being able to work with the existing roads and surfaces and encourage a development pattern to help environmental and social benefits for future residents of Brielle. The Master Plan describes the R3 Zone as a parcel of land located for structures with an impervious coverage of not more than 50%. Mr. Hilla's report said the Planning Board entertains applications requesting more than 50% impervious coverage. This applicant will be in compliance with this, when looked at in total, it will be under 50%.

Mr. Janew said neither the 2006 or 2016 Master Plan re-examination report have any suggestions directly for the R3 Zone but speak of the development within the Borough and consistency with the neighborhood's character. The original home dates back to the 1940s, a construction date of 1948; the applicant is seeking to update this home and the update will be in character of the other homes; he said there are at least 6 homes constructed on this block since 2004, this construction will be beautiful and again said it will fit

in the community. He then spoke of the purposes of Zoning and the Ordinance 40-55.d2 and spoke of 3 items that are on point with this application: 1) visual environment, they are adding a porch and eliminated an oversized garage, a single-family home in a single-family neighborhood, 2) create a good civic design and arrangement, 3) to encourage more efficient use of land, they are not demolishing the home but updating it and providing more livability.

Mr. Janew had exhibits to show, all done under his direction, and asked to be able to share the screen and this was done. Mr. Clark noted that Exhibit A-5 will be the next exhibit. Exhibit A-5 is an aerial photo with a red line around the lot being considered and Mr. Janew noted it is a meandering street with a variety of lot sizes, all improved with homes, no vacant lots. Exhibit A-6 is a photo of the front elevation of the existing home showing the front porch addition and Mr. Janew said this is the current condition of the home, the one-story elements are now two-story elements. Exhibit A-7 is the rear elevation and foundation for the all-season room which is the former location of the koi pond. Exhibit A-8 is the home to the right of the property, 11 Crescent Drive; this shows the scale here, the porch and the setbacks which is consistent with what is being proposed by the Cappiellos. Exhibit A-9 is looking down the driveway to show the setbacks are consistent with Exhibit A-8. Exhibit A-10 is 7 Crescent Drive which is left to the subject property at 9 Crescent Drive, showing impervious pavers for their driveway and shows the setbacks with arborvitae and, again a covered porch. Exhibit A-11 is a photo of 13 Crescent Drive, another two-story home with a porch and a gravel driveway. Exhibit A-12, 17 Crescent Drive is the home on the bend and is a unique corner property with interesting construction. Exhibit A-13 is the rear of 17 Crescent Drive, it shows the proximity to the lot line and fence, very attractive. It shows some homes are closer to other which helps show the application is keeping with the neighborhood. Exhibit A-14 is the area between 6 & 8 Crescent Drive across the street on the water, across from the Cappiello home and this, too, is a very attractive home. Exhibit A-15 is 10 Crescent Drive and it is another home that fits in the neighborhood and is in keeping with the character they are proposing. Exhibit A-16 is between 10 & 12 Crescent showing how close the homes can be.

This brings his testimony to the bulk relief for the variance and they are not using the C-1 criteria, the hardship criteria which would apply to the lot configuration, they are using the C-2 criteria where the benefits have to outweigh the detriments & use the positive & negative criteria. There are 3 prongs to the positive criteria, 1) the application relates to a specific piece of property, 2) the purpose of the Municipal Land Use law would be advanced by this deviation and 3) the variance can be granted without detriment to the public good. There are 2 prongs to the negative criteria, 1) this will bring

substantial detriment to the neighborhood and 2) this is not in keeping with the zone plan or Zoning Ordinance.

He went on to say that, when looking for relief for the two side yard setbacks, they are not increasing the setbacks to any more than what already exists as they are going straight up, this is common in this neighborhood as was shown by the photo exhibits. He went over again the positive criteria for a C-2 variance relief and felt they comply and they are not impeding on any light, air and open space. They are not doing anything to increase the activity on this property and are reducing the garage size, this application is consistent with the zone plan and they are making the property look more livable, they are not demolishing the existing home, this was said in relation to the side yard lot lines that do not comply.

Mr. Janew then spoke of the lot coverage and, while they are asking to increase the lot coverage they are reducing the impervious coverage by putting in gravel and grass where pavers now are. They are also proposing a drywell system with roof drains so the benefits of runoff control outweigh any detriments. He then addressed Mr. Hilla's concerns on the flood regulations and what is being proposed here eliminates any mechanical systems and electrical panels in the basement, the basement will be used for storage space only. This is a reconstruction of a home that basically exists and are not creating any additional flood concerns so are consistent with the flood regulations in Chapter 19 of the Flood Ordinance. Mr. Janew finished by stating this is a better alternative than doing nothing, this is an efficient way to construct something that will be an attractive addition to the neighborhood, is in keeping with the positive criteria and recommends approval.

As Mr. Janew was through with his testimony, Ms. Trainor asked Mr. Liston if he had any questions. He asked Mr. Janew if he had looked at the Engineer's report of January 19, 2022 and the answer was yes. Mr. Liston then referred to item #2 on page 2 on flood damage prevention and said he had not heard any testimony on this and if they meet the criteria. Mr. Janew said again in Chapter 19 there is an indication that the minimum that is required is what should be proposed and they comply, the basement will be a shell. This is a substantial health improvement to the health, safety and welfare of the occupants.

Mr. Liston said Mr. Janew cited a minimum standard in the Ordinance and Mr. Janew said this is within section 19-4.4, "variances shall be issued as to the minimum necessary as to flood relief." He said they are making the cellar safer. Mr. Liston asked if they didn't do this would they have to raise the house and Mr. Janew said no, all the improvements are above base flood elevation. Mr. Liston then asked if a new home were constructed would there be a different base elevation? Mr. Janew said the finished floor of the living level is above the

base flood elevation. Mr. Liston again asked if the construction would be different if a new home were built and Mr. Janew said they would not have a basement but there would be no alteration to the base floor elevation. Mr. Liston then asked if there is a hazard to the basement, can it flooded? Mr. Janew said it will not create a further flood hazard, it has been there since the 1940s. Mr. Liston noted the foundation is now being asked to handle a lot more weight and Mr. Janew did not believe so, two small additions are being done and the foundation is adequate for this. Mr. Liston then went back to Mr. Hilla's letter where it stated that the 50% threshold had not been met and Mr. Janew referred him to page 3 where it states this has now been provided. Mr. Liston asked about the calculations referred to in his report, Mr. Janew was not sure.

Mr. Hilla then spoke and said they still haven't really established if, in his item #2 in respect to the flood zone, if the relief is required because they don't have the calculations for the substantial improvement. Mr. Janew said they are conceding that this is a substantial improvement. Mr. Hilla said the next item would be that, while raising the mechanicals and electrical panels above the flood elevation, that's not all, there are minimum claims as there is a basement; any new homes built in this flood zone do not have basements and there is a reason for that, a significant issue with hydrostatic pressures between the inside and outside walls, the walls are not retaining walls and not meant for the type of loading that the ground around them creates, causing the ability to collapse, this was seen during Hurricane Sandy in this area. Mr. Janew said that the only time this basement had water infiltration was during Hurricane Sandy, but no other storms. It has existed here since 1948 with no damage having been sustained by other storms, even Hurricane Irene. They are confident that this foundation does meet what the Ordinance requires.

Mr. Hilla then referred to Section 19-4.4 that was cited, item B5 says variances shall be issued for only 3 items and he did not think this was addressed. Mr. Janew said that, with respect for the conditions, it states "variances may be issued for new construction & can be approved for lots ½ acre or less, surrounded by lots with existing structures below the base flood elevation provided items A through K in Section 4.4 have been fully considered." He said this parcel is less than ½ acre and the existing basement will remain unfinished, so these items do not apply. "Variances shall not be issued for any changes in flood levels", he said they are not increasing this. "variances shall only be issued upon a determination that the variances are necessary for minimum for flood hazard relief." This basement has been here since 1948, they are making it safer and they are renovating the existing home. "variances shall be issued upon showing of good cause and not result in additional flood problems". They are not increasing the flood height, this is an existing home and to fill in the basement would be an extraordinary expense

and hardship. They are looking to save an existing home in an efficient way and Mr. Janew felt they are qualified to ask for this relief.

Mr. Hilla had no further questions to Mr. Janew but Mr. Liston said he did have follow-up questions. In regards to the history of the building, Mr. Liston asked if the basement never flooded, even in Hurricane Sandy or other storms and Mr. Janew said the only history of flood there was during Hurricane Sandy. Mr. Liston then asked if the Ordinance supercedes MFIP guidelines? Mr. Janew said he was not qualified to answer this.

As the time allotted for this hearing was over, Ms. Trainor told Mr. Giunco this application will be carried to next month for a continuation. Mr. Giunco commented this was probably one of the longest applications this Board has heard and Ms. Trainor reminded him that the Board had granted them several postponements that the applicant had asked for. Mr. Giunco said they hope to finish this next month and Ms. Trainor agreed the Board is trying to finalize this application and hope to next month; she announced that this hearing is being carried to the meeting of Tuesday, April 12<sup>th</sup> with no re-notice necessary.

#### NEW BUSINESS:

Before hearing the next application, Ms. Trainor spoke of a letter of resignation received from Mr. Maclearie and thanked him for his service to the Board over the past years, she then read his letter:

“Hello all, I am stepping down from the Brielle Planning Board after Tuesday’s meeting. We listed our house, taking advantage of the strong real estate market, and accepted an offer for our house. I am looking forward to this next chapter, we are moving to Battleground Country Club in Manalapan. It is not so far away, a little more than a chip and a putt. I thank you for having me on the Board, it has been a pleasure and honor to work with you. Sincerely, James Maclearie.” The Board all wished him good luck and agreed he was a pleasure to work with, he will be missed.

Also before the next application started, both Councilman Garruzzo and Mayor Nicol recused themselves from hearing this, Mrs. Scott was a Councilmember for 37 years and they felt a conflict if they stayed, Mayor Nicol also stating Mr. Siano is a member of the current Planning/Zoning Board and was appointed by him. At this time they both left the meeting.

The Board then turned to an application for a Minor Subdivision for Block 10.01, Lot 15 & Lot 16, 704 and 704 ½ Union Lane, 704 Union Lane owned by Ann Scott, 704 ½ Union Lane owned by Christian & Carrie Siano. Design Waiver requested for Code Section 24-9.4, side lot lines to be perpendicular to street lines. Existing Nonconformities: Lot 15 – Front Yard Setback, 30 feet required,

2.1 feet existing & proposed. Rear Yard Setback (barn), 11.52 feet required, 10.9 feet existing & proposed. Lot 16 – Lot Width, 75 feet required, 62.22 feet existing & proposed.

Mr. Michael Rubino, Esq. came forward for this subdivision. He agreed there are a few existing conditions on the property as stated in the introduction of this hearing, none of the existing conditions can be corrected by this application, if the Board will look at the map, Lot 15 is oversized and is a flag lot; the left turn it takes goes to the rear of Lot 16, which is oversized. Mrs. Scott would like to give a portion of the flag lot to Mr. and Mrs. Siano so they can add it to their existing lot. They cannot square off the lot as there is a barn in the rear and that would have to be removed if they went straight back, so they are jogging off that rear side line to keep the barn. In agreement with Mr. Hilla's letter they have identified the existing conditions and the waiver that is needed, paragraph 2, and Mr. Joe Kociuba was present to testify as to paragraph 3 of this report, paragraph 4 says they need new lot numbers and this will be done, the subdivision will be filed by deed. Mr. Rubino did have Mr. Siano with him to address any questions that might be raised and Mr. Rubino said he did speak with Mr. Clark today as Mr. Siano is a Planning/Zoning Board member and both agreed Mr. Siano has a perfect right to come before the Board as an applicant, but the courts caution to have the application without the applicant testifying is a better procedure so most of the case will be presented by Mr. Kociuba. Mr. Rubino also agreed that the Mayor and Councilman were correct in recusing themselves as they appointed Mr. Siano to the Board.

Mr. Joe Kociuba was then sworn in from KBA Engineering Services in Manasquan. He indicated that he would provide testimony as a Licensed Planner and Engineer. As he has given testimony before this Board many times he was accepted as an expert witness and proceeded with his testimony. Mr. Kociuba told the Board he did not do the actual subdivision plan but was familiar with the property; Lot 15 is 27,597 square feet and is an oversized lot that is L shaped and goes left behind Lot 16, it has a residential structure, driveway and a historic barn at the rear of the property. He asked to share his screen and his plan was marked at Exhibit A-1, Minor Subdivision Plat prepared by Charles O'Malley, dated July 7, 2020, last revision Nov. 4, 2021. He showed the Board where the barn structure was and then addressed Lot 16, which is 11,645 square feet, also oversized, is 62.22 feet wide where 75 feet is required and is 187 feet deep that contains a two-story dwelling which was recently completely renovated. Both properties have driveway access to Union Lane, the lot line adjustment being requested is at the back of the properties. Lot 15 will transfer 3,260 square feet to Lot 16 which will allow them to construct a garage, this will create a lot extension of 50x55 feet. The new lot line will not extend fully to the width of the property, there will be a 12-foot jog in order to

keep the barn structure setback on Lot 15. All existing nonconformities are pre-existing and this will not change.

As there will be a garage built on Lot 16, they are extending the driveway, done in crushed shell, to match the existing driveway materials. Ordinance 21:31.22 states that a paved driveway needs a certain setback but if the access is not paved there are no setback requirements. Mr. Hilla, in his report, had brought up some existing trees and Mr. Kociuba agreed there are trees where the garage will be but noted there are smaller trees, also there are two larger trees there but the larger trees are damaged and rotting and will be coming down, the trees around the perimeter of the lot will not be affected by any construction and will stay. He ended by saying there are no variances being asked for and felt this application can be approved.

Mr. Kociuba then showed the Board a series of photos he had taken, these were marked as Exhibit A-2:

Photo 1 - the home on Lot 16 as it exists today.

Photo 2 - the driveway on Lot 16.

Photo 3 - the end of the crushed shell driveway on Lot 16 and the shed.

Photo 4 - the rear yard fencing that is to come down on Lot 16, the shed will be moved and the driveway will be extended. The barn on Lot 15 can be seen on the right.

Photo 5 - Another photo of the rear of Lot 16 showing smaller trees to be removed for the proposed garage, as well as two larger trees that are sick and will come down as well.

Photo 6 - on Lot 16, looking northeast towards the barn.

Photo 7 - shows the damage & rot of tree on the right that will be removed.

Photo 8 - another tree that is rotting and will be removed. Trees on the fence line are far enough away from construction and will stay.

Photo 9 - more photos of trees.

Photo 10 - more photos of trees.

Photo 11 - the driveway on Lot 16 looking out to Union Lane.

As this was the end of Mr. Kociuba's testimony, Mr. Hilla was asked if he had any questions and he did not have any. Ms. Trainor then asked the Board members for questions. Mr. Maclearie did not have any, Mrs. Brisben asked about drainage with trees coming down and new construction and Mr. Kociuba did not see any problem but commented they are putting in a dry well. Mr. Jones felt it was well presented and Mrs. Frith felt it was straightforward and neither Board member had questions, as well as Ms. Trainor. She then opened the hearing to the public for questions to Mr. Kociuba and there was no response so that portion was closed.

Mr. Rubino had no more witnesses and said he had presented the case with nothing further to add at this time, he would like to hear from the public before he summed up the application. At this time the hearing was opened to the public for comments and there was again no response so that portion was closed. Mr. Rubino then summarized the application and said this was a clean application, they are taking 3,260 square feet from the flag lot and somewhat straightening out the lot line, both lots are oversized and he asked the Board to look favorably on this.

The Board then gave their comments, Mr. Maclearie felt it would be an improvement and would be in favor, Mrs. Brisben was for it as well and wanted to let the applicant know she had received new lot numbers from the Assessor and she will pass this information on to Mr. Rubino so 4 sets of revised plans can be submitted with the correct new lot numbers, she also asked this be put in the Resolution.

At this time Ms. Trainor had to interrupt the comments being made, she saw a hand raised in the chat box and asked Mr. Clark if this was permissible as the public portion had been closed. Mr. Clark said this is within the Board's discretion, sometimes there are difficulties with members of the public joining the meeting virtually, and the vote has not been taken yet. Mr. Rubino said he had problems himself trying to speak and had no objection to this. The Board was agreeable to having this done and Jacque Lucas was then sworn in, 706 Union Lane. She asked if there was any chance, in the future, that the driveway on Lot 16 would be paved as it is on the property line. Mr. Kociuba said there is a 5 yard setback requirement if this were going to be paved and they do not plan on doing this.

Going back to comments, Mrs. Brisben was asked again for comments and she added that she was in favor and felt it was good to be straightening out the lot lines, Mr. Jones had no comments and agreed with the rest of the Board, Mrs. Frith felt it look good and was in favor as was Ms. Trainor. She asked Mr. Clark to go over any conditions and he said the subdivision will be perfected by deed and 4 sets of revised plans showing the new lot numbers have to be submitted.

At this time Mr. Maclearie made a motion to approve the application, as presented and with the conditions noted, this seconded by Mrs. Frith and then by the following roll call vote:

Ayes: Karen Brisben, Stephanie Frith, Jay Jones, James Maclearie,  
Corinne Trainor

Noes: None

OTHER BUSINESS:

The Board was going to go into Executive Session to discuss Litigation but Mr. Clark felt this should wait for another meeting as there were only 5 members present and Mr. Maclearie did not have to stay for this. If he left that would only leave 4 members which is not a quorum. The Board was agreeable to putting this on the agenda another time and, as there was no other business to come before the Board a motion to adjourn was made by Mr. Maclearie, seconded by Mrs. Frith and unanimously approved by voice vote, all aye. Ms. Trainor announced that the next hearing of the Board will be Tuesday, April 12, 2022 at 6:00 pm virtually. The meeting was adjourned at 7:58 p.m.

Approved: April 12, 2022

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Karen S. Brisben, Board Secretary