

May 10<sup>th</sup>, 2022

BRIELLE PLANNING BOARD  
TUESDAY, MAY 10<sup>th</sup>, 2022

The Regular Meeting of the Brielle Planning Board was held on Tuesday, May 10<sup>th</sup>, 2022, at 6:00 p.m., virtually. Ms. Trainor read the OPMA compliance statement and then announced it was time for the Salute to the Flag and a moment of silent prayer. Roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Absent – James Stenson, Chris Siano, Stephanie Frith

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 4 people in the audience.

A motion was made to approve the Minutes of April 12<sup>th</sup>, 2022, this done by Karen Brisben, seconded by Mayor Thomas Nicol, and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice

Noes: None

APPOINTMENT: Appoint Amber Fernicola to the position of Alternate Member #1 To December 31, 2022

OLD BUSINESS: Consideration of Resolution for Block 60, Lot 17, 9 Crescent Drive, owned by Peter & Katelynn Cappiello for renovations & addition to single-family home.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF PETER AND KATELYN CAPPIELLO SEEKING VARIANCE RELIEF FOR THE RENOVATION OF A SINGLE-FAMILY DWELLING AND CERTAIN OTHER IMPROVEMENTS ON THE PROPERTY LOCATED AT 9 CRESCENT DRIVE AND IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 60, LOT 17**

**WHEREAS**, Peter and Katelyn Cappiello (the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to renovate a single-family dwelling and make certain other improvements as described more fully herein on the property owned by the Applicant located at 9 Crescent Drive and identified on the tax map of the Borough of Brielle as Block 60, Lot 17 (the “Property”); and

**WHEREAS**, the Property is located within the Borough's R-3 Residential Zone (the "R-3 Zone"); and

**WHEREAS**, prior to the improvements proposed within this application, the Property was the site of a 1 ½ story single-family home with a detached garage and various accessory structures; and

**WHEREAS**, the Applicants began construction of certain improvements on the Property, but then the Borough Zoning Officer revoked a zoning permit issued to the Applicants and the Applicants were directed by the Borough to stop any further work on these improvements and to file this application seeking variance relief from the Board; and

**WHEREAS**, through this application, the Applicants are proposing to convert the 1 ½ story single family home on the Property into a 2 story single family home, to replace the existing two car detached garage with a one car detached garage, to eliminate much of the rear yard impervious coverage (pavers, fire pit, and pond), to relocate the mechanical equipment to the rear yard, and to install an evergreen buffer along the side and rear yards, all as described more fully within the plans (as revised) submitted with this application; and

**WHEREAS**, simultaneously with the filing of this application for variance relief, the Applicants also filed an appeal of the Zoning Officer's determination to revoke the zoning permit, but the Applicants withdrew that appeal at the October 12, 2021 hearing; and

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

- (a) architectural plans (5 sheets) prepared by Caesar Bustamante, AIA, dated January 5, 2021;
- (e) an application package signed by the Applicants' counsel;

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- (f) a Zoning Permit denial letter from the Zoning Officer dated May 5, 2021; and

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

- (a) a copy of the Certificate of Elevation for the principal structure prepared by William Fiore, PLS, dated March 24, 2021;

- (b) a survey of the property (not to scale) prepared by Charles Surmonte, PE/PLS, dated September 2, 2020; and

- (c) amended architectural plans (5 sheets) prepared by Scott Nichol, AIA, dated revised November 30, 2021; and

**WHEREAS**, the Board was also provided with letters dated September 6, 2021, November 2, 2021, and January 19, 2022 prepared by Alan Hilla P.E., P.P., C.M.E., of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS**, the existing and proposed use and the existing and proposed garage are conforming to the zone, but the existing lot and the proposed and existing single family home on the Property are not conforming to the zone; and

**WHEREAS**, the Property has the following non-conformities which are not being impacted or changed by this application:

- (a) Lot Area—11,250 square feet minimum required; 7,268 square feet existing;
- (b) Lot Width—75 feet minimum required; 60 feet existing;
- (c) Lot Depth—125 feet minimum required; 111 feet existing;
- (d) Rear Yard Setback—35 feet required; 33.5 feet existing; and

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

(a) Side Yard Setback—10 feet required; 6.16 feet existing (to southerly side); **6.16 feet proposed (to southerly side second story)**; 9.58 feet existing (to northerly side); **9.58 feet proposed (to northerly side second story)**;

(b) Maximum Lot Coverage—20% allowed; 25.9% existing; **30.71% proposed**;

(c) **variance relief from Section 19-4.4(b) of the Borough Code (flood damage prevention) with regard to the existing basement**; and

**WHEREAS**, after meeting with counsel for objectors to the application, the Applicants amended their application to seek the following revised variance relief (the variances sought are highlighted in bold type below):

(a) Side Yard Setback—10 feet required; 6.16 feet existing (to southerly side); **6.16 feet proposed (to southerly side second story)**; 9.58 feet existing (to northerly side); **9.58 feet proposed (to northerly side second story)**; and

(b) Maximum Lot Coverage—20% allowed; 25.9% existing; **27.8% proposed**;

(c) **variance relief from Section 19-4.4(b) of the Borough Code (flood damage prevention) with regard to the existing basement**; and

**WHEREAS**, the Planning Board held hearings on this application on October 12, 2021, February 8, 2022, March 8, 2022, and April 14, 2022 and considered the following documents presented at the hearings in connection with this application:

(a) Exhibit A-1 (sheet A2.0) an updated elevation that was done in November;

(b) Exhibit A-2 (sheet A 1.1) plans and elevations for the garage;

(c) Exhibit A-3 (sheet TS1.0) existing and proposed condition;

(d) Exhibit A-4 (sheet A1.1) elevation of garage dated November 30, 2021;

(e) Exhibit A-5 aerial photo with a red line around the lot being considered;

(f) Exhibit A-6 photo of photo of the front elevation of the existing home showing the front porch addition;

(g) Exhibit A-7 photo of the rear elevation and foundation for the all-season room;

(h) Exhibit A-8 photo of 11 Crescent Drive;

(i) Exhibit A-9 photo looking down driveway;

(j) Exhibit A-10 photo of 7 Crescent Drive;

(k) Exhibit A-11 photo of 13 Crescent Drive;

(l) Exhibit A-12 photo of 17 Crescent Drive;

(m) Exhibit A-13 photo of the rear of 17 Crescent Drive;

(n) Exhibit A-14 photo of area between 6 & 8 Crescent Drive;

(o) Exhibit A-15 photo of 10 Crescent Drive;

(p) Exhibit A-16 photo showing area between 10 & 12 Crescent Drive; and

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

**October 12, 2021 hearing**

Ms. Trainer stated that at the last meeting on the appeal from the determination made by the Zoning Officer to revoke the zoning permit, Mr. Zimmermann had requested an adjournment so that he could submit some briefing for Mr. Clark's review and advice to the Board about the Board's jurisdiction. Ms. Trainor stated since then the Board had received correspondence, among other things, with respect to a group of objectors, represented by counsel.

Ms. Trainor asked who was here on behalf of the application. Attorney Evan Zimmerman, from Giordano, Halleran & Ciesla stated he was appearing for the applicant but said the rest of their professionals had not come anticipating that the application would be adjourned.

Attorney Edward Liston, Toms River, NJ appeared on behalf of the objectors. Mr. Liston read the following names and addresses into the Record, Grillo-1 Crescent Drive, Petracco-7 Crescent Drive, 8 Crescent Drive, LLC-8 Crescent Drive, Farinacci- 11 Crescent Drive, Vertullo- 13 Crescent Drive, Keating- 15 Crescent Drive, Knapp- 16 Crescent Drive, and Brehm- 19 Crescent Drive. Mr. Liston stated he had spoken to Mr. Clark yesterday and sent him a letter and

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copied Mr. Zimmermann and Mr. Giunco. Mr. Liston stated that it was his understanding on his conversation with Mr. Giunco that the applicant was going to withdraw his appeal of the decision of the Zoning Officer and proceed with the variances. Mr. Liston stated that he had spoken to Mr. Zimmermann and Mr. Giunco today who advised him that they were going to ask for an adjournment. Mr. Liston stated that hopefully next week he and his clients would be meeting with Mr. Giunco and Mr. Zimmermann to discuss what the applicant is trying to do and then based on that, they will see where they go from there.

Mr. Zimmermann stated he had spoken with Mr. Liston and Mr. Clark earlier in the day and asked that the application be adjourned to give them time to meet and confer with Mr. Liston and his clients and then hopefully return at the next available meeting date with a plan that would be satisfactory to all.

Mr. Clark asked Mr. Zimmermann if they would be withdrawing their appeal of the Zoning Officer's determination to revoke the zoning permit and just moving ahead with the variance. Mr. Zimmermann replied yes, they would be just focusing on the variance application. Mr. Clark said it would be noted for the Record that the appeal of the Zoning Officer's determination to revoke the zoning permit is withdrawn and that the applicants were requesting to carry the variance application to the next meeting. That adjournment request was granted by the Board.

#### **November 9, 2021**

Hearing carried at request of Applicants.

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

Hearing carried at request of Applicants.

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

Hearing carried at request of Applicants to allow Board Engineer adequate time to review the Applicants' revised plans.

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

Mr. Siano stated it was necessary for him to abstain from this application.

Attorney John Giunco, Giordano, Halleran & Ciesla, announced he was here for the applicant and Attorney Edward Liston announced that he was here for Mr. Peter Petracco and several neighbors who were interested parties in this matter.

Mr. Giunco began by saying that they have modified the plans in response to comments made by the Planning Board and had the opportunity to meet with Mr. Liston's clients. Mr. Giunco stated that construction started in January 2021 and was halted in May of 2021 after a substantial

portion of the work was underway and completed. Mr. Giunco stated the Borough allowed the applicant to wrap the building, add the roof and install windows to protect the interior.

Mr. Giunco stated they were seeking several variances and called Mr. Scott Nicholl, Tekton Architectural Studio, to testify. Mr. Nicholl was sworn in by Mr. Clark. Mr. Giunco asked Mr. Nicholl to list his licensing, education, and training. Mr. Nicholl replied that he had been licensed since 2016, had been practicing in the shore area, and prior to that received a master's degree in architecture from NJIT and his undergraduate at Rutgers University. Mr. Giunco asked if the Board accepted Mr. Nicholl as an expert in the field of architecture. Ms. Trainor stated the Board did recognize Mr. Nicholl as such. Mr. Giunco asked Mr. Nicholl if in preparing the plans, did he review the Ordinances, examine the existing site, along with the surrounding area. Mr. Nicholl answered that he had. Mr. Giunco asked Mr. Nicholl to describe to the Board the construction that is proposed. Mr. Nicholl described the home, an extension at the second level, a small addition that would be added to the back and the style, colors and materials that would be used on the exterior.

Mr. Giunco presented to the Board, Exhibit A-1, described as sheet A2.0, an updated elevation that was done in November in regard to some of the discussions they had with the surrounding neighbors. Mr. Clark reminded Mr. Giunco to send the Board a marked copy of any exhibits that they planned on using so they could be added to the Record. Mr. Nicholl described the front, rear, right and left side elevation, height, siding, colors, expansion of front porch with black antique metal roof and the expansion in the rear.

Mr. Giunco presented Exhibit A-2, described as sheet A 1.1, plans and elevations for the garage. Mr. Nicholl described the elevations, changes they proposed making to the garage and the siding they would use. Mr. Nicholl stated that the utilities and the second floor had been removed from the plans. Mr. Nicholl stated it was now a one car garage with electric but no plumbing. Mr. Nicholl stated the detached garage was now 331 square feet, previously near double that.

Mr. Giunco asked Mr. Nicholl to describe where the mechanical units would be located. Mr. Nicholl stated the mechanical units would be behind the house. Mr. Giunco asked Mr. Nicholl to describe, in terms of stormwater management, the existing condition of the driveway and the rear area. Mr. Nicholl answered that much of the yard is covered in paver stone, the entire rear going all the way up to the driveway. Mr. Nicholl stated they proposed to remove all of the paver stone and intend to use crushed stone on the driveway and grass in the back.

Mr. Giunco presented Exhibit A-3, described as sheet TS1.0, the existing and proposed condition. Mr. Giunco asked Mr. Nicholl to describe the proposed landscaping and perimeter plantings proposed for a further buffer between the site and the neighbors. Mr. Nicholl replied that they intend to add evergreen trees along the entire perimeter beginning at the front of the house continuing all the way to the back of the property and up to the rear at the base of the driveway. Mr. Giunco asked Mr. Nicholl where the interior mechanical equipment was located in the former existing property. Mr. Nicholl responded that it was located in the basement. Mr. Nicholl stated that all the utility equipment would be lifted up above the first floor, more than a foot above base

flood elevation. Mr. Giunco asked Mr. Nicholl if there were any plans to use the basement for anything besides storage. Mr. Nicholl answered no, there were no plans to do so.

Mr. Hilla referred to sheet TS1.0 and asked for the date on this document because it did not look like any site plan he received. Mr. Nicholl stated that this was part of the original plan at their last submission, and it shows the same idea with the proposed evergreens at the perimeter of the home but does not show the removal of the pavers at the driveway which was submitted in their last submission. Mr. Giunco stated with regard to the flood elevation certificate and asked Mr. Nicholl if he could state what the elevation is. Mr. Nicholl answered that he was not sure the exact number, but it was well over one foot above base flood elevation. Mr. Nicholl stated that as far as they knew from the owner, the existing home had never had any issues except for Super Storm Sandy where there was some water in the basement. Mr. Giunco asked Mr. Nicholl in his opinion, did he have any concerns about flooding on the property. Mr. Nicholl answered he did not have any concerns. Mr. Giunco stated he had no further questions for Mr. Nicholl.

Ms. Trainor asked Mr. Liston if he had any questions for Mr. Nicholl. Mr. Liston stated that the plans he received and shared with his clients were different from the ones that were being presented tonight, with respect to the garage. Mr. Liston said that the garage has had a dormer added to the garage and that was not on the plan he received. Mr. Nicholl answered that there were no dormers, they had been removed and the plan shown, part of their exhibit is what was being designed, dated November 30<sup>th</sup>, 2021. Mr. Nicholl stated the garage would look like an A-frame. Mr. Nicholl displayed another sheet labeled A1.1 which showed the garage without dormers and stated that this sheet was submitted with the plans dated November 30<sup>th</sup>, 2021. Mr. Giunco asked that this sheet be marked as Exhibit A-4, November 30<sup>th</sup>, 2021, elevation of garage. Mr. Clark said this document would be marked A-4, A1.1 from the November 30<sup>th</sup>, 2021, plans as opposed to the earlier set of plans. Mr. Liston stated he had no further questions. Ms. Trainor asked Mr. Giunco if he had any redirect based on Mr. Liston's cross examination. Mr. Giunco stated he did not.

Ms. Trainor asked Mr. Hilla if he had any questions for Mr. Nicholl. Mr. Hilla asked Mr. Giunco if he would be providing any testimony on the Flood Damage Ordinance. Mr. Hilla stated that Mr. Giunco had submitted a letter that discussed various points within the Ordinance and believed those things should be on the Record. Mr. Clark explained what that he thought Mr. Hilla was saying that he had received a letter regarding variance relief request from the Ordinance but the information in the letter had not really been testified about by a witness. Mr. Giunco stated that the letter would be addressed through their Planner testimony. Mr. Hilla stated to Mr. Nicholl that the roof is very shallow on the single story at the rear of the property. Mr. Nicholl responded that they only heard a portion of Mr. Hilla's comment and answered that if Mr. Hilla was talking about the back bump out part of the roof, it is sloped but would be above the 4 to 12 feet which is the minimum requirement for this type of roofing, so they see no concern for any issues. Mr. Hilla asked Mr. Nicholl if there would be any sort of deck or anything like that. Mr. Nicholl replied that it would not be. Mr. Hilla stated he had no further questions for Mr. Nicholl.

Ms. Trainor announced it was now time to hear questions from the Board for Mr. Nicholl. Councilman Garruzzo asked Mr. Nicholl if there was a full basement and if it would be a storage style basement. Mr. Nicholl replied that it would be an unfinished basement for storage. Mr. Nicholl

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stated that is only on the main portion of the house, the bump out on the back is a slab on grade. Mr. Maclearie asked if the new lot coverage would be with the smaller garage. Mr. Nicholl stated the previous was at 27.9% and they are proposing 28.5% coverage. Mr. Maclearie asked why the coverage increased. Mr. Nicholl stated that the pavers that they would be moving were never included in the original calculation per the Ordinance, the pavers are considered pervious so despite the fact that if they remove all the pavers, remove half of the garage, add a roof over the porch and add a small addition on the back, they still end up going up a small amount of coverage.

Ms. Brisben asked Mr. Nicholl what the front yard setback would be after adding the porch. Mr. Nicholl answered that there would be no change because they are only covering an existing porch that is there now.

Mr. Tice asked Mr. Nicholl where the increase in lot coverage was specifically coming from. Mr. Nichol replied that what is being added is the small room in the back corner and the extension of the roof over the front porch which makes that part of the building.

Councilman Garruzzo asked Mr. Nicholl for the calculation for the previous Lot coverage compared to now and if they would have enough drainage and dry wells on the property to handle all the water. Mr. Nicholl answered that the lot coverage calculation is really a building coverage calculation and with the removal of the pavers and some of the other existing hard tops, the site will be more pervious that it was previously. Mr. Nicholl stated they were proposing a stormwater infiltration system with dry wells.

Mayor Nicol, Ms. Trainor, Ms. Frith, Mr. Jones stated they had no questions for Mr. Nicholl.

Ms. Trainor announced it was time to hear questions from the public for Mr. Nicholl. Hearing none, Ms. Trainor reminded Mr. Giunco that the Board allows 45 minutes for applications and stated it was approaching that time. Mr. Giunco asked if he could use the remaining minutes to introduce and ask the Board to accept as an expert, Mr. Andrew Janiw, Professional Planner, Beacon Planning and Consulting Services, Colts Neck, NJ. Mr. Janiw was sworn in by Mr. Clark. Mr. Janiw stated he had a bachelor's and master's degree in civil engineering from the New Jersey Institute of Technology, is a Licensed Planner and a member of the American Institute of Certified Planners. Mr. Janiw stated he currently serves as the Planner for the Borough of Carteret, the Township of Livingston, Redevelopment Planner for Toms River, Plainsboro, and South Amboy and has testified for private clients throughout New Jersey and has been accepted as an expert in Land Use Planning by the Superior Court of New Jersey. Ms. Trainor stated that the Board accepted Mr. Janiw as an expert in the field of Professional Planning.

Ms. Trainor announced 45 minutes has passed and stated that this application would be carried to the next meeting on Tuesday, March 8<sup>th</sup>, 2022. Mr. Clark stated that the application was being carried without a requirement that it be re-noticed.

### **March 8, 2022 hearing**

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 Janiw, Professional Planner; he stated that Mr. Nicholl was also present for any further questioning.

Mr. Clark reminded all that Mr. Janiw 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. Janiw was ready to give his testimony.

Mr. Janiw 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. Janiw 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 home styles 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw was through with his testimony, Ms. Trainor asked Mr. Liston if he had any questions. He asked Mr. Janiw 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. Janiw 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. Janiw cited a minimum standard in the Ordinance and Mr. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw 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. Janiw felt they are qualified to ask for this relief.

Mr. Hilla had no further questions to Mr. Janiw 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. Janiw said the only history of flood there was during Hurricane Sandy. Mr. Liston then asked if the Ordinance supersedes MFIP guidelines? Mr. Janiw said he was not qualified to answer this.

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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 12th with no re-notice necessary.

### **April 12, 2022 hearing**

Attorney John Giunco, Giordano, Halleran & Ciesla, announced he was here for the applicant and Attorney Edward Liston announced that he was here for several neighbors who were interested parties in this matter.

Ms. Brisben announced she was on vacation with a 6-hour time difference and had just received an email from Mr. Liston. Ms. Brisben said she sent the email to all the Board members but probably not until around 5:45pm. Ms. Brisben stated that perhaps Mr. Liston could go over the letters because she was not sure all the Board members had a chance to read them.

Ms. Trainor asked Mr. Giunco to remind the Board how things were left in the last hearing. Mr. Giunco stated they had presented all of their witnesses and that Mr. Liston had finished his cross-examination of Mr. Janiw. Mr. Giunco stated that Mr. Janiw was available for questions and/or comments.

Ms. Trainor asked if there were any members of the public that had questions for Mr. Janiw. Hearing none, Ms. Trainor stated it was time to hear questions for Mr. Janiw from the Board.

Ms. Brisben stated that in Mr. Janiw's previous testimony, he stated there would be no change to the footprint of the building and asked if this was correct. Mr. Janiw answered that they would be adding a structure in the back corner where the koi pond was.

Hearing no other questions from the Board, Ms. Trainor asked Mr. Liston if he had any witnesses or had a position that he would like to put forward. Mr. Liston stated he did not have any witnesses to present this evening. Mr. Liston stated that with respect to the letter emailed to the Board secretary earlier in the afternoon on April 12<sup>th</sup>, the second paragraph really expresses where the neighbors were in respect to the application. Mr. Liston then read the following into the record, "During the time that this application has been pending, my clients have been working through me with John Giunco, the applicant's attorney, to revise the plans to the point where my clients are now in a position to support the application. I will attend the Zoom meeting tonight with at least one of my clients and will be glad to place that statement of the record."

Mr. Liston stated there were two additional letters attached to the email to Karen Brisben. Mr. Liston said one of the letters was from Mr. Giunco to him dated November 9<sup>th</sup>, 2021, and the other one a letter from him back to Mr. Giunco, dated November 16<sup>th</sup>, 2021. Mr. Liston stated when the letters were read together it synthesized the position of the clients and generated a

solution to the differences in the two positions. Mr. Liston referenced the paragraph he called the “housekeeping” paragraph in his letter and stated that the paragraph had been completely satisfied. Mr. Liston referenced a letter written by him indicating that all of their comments were on the record and there were no further problems or comments with regard to the basement and how it was being handled. Mr. Liston thanked the Board for taking the time to consider the application and indicated that their questions and comments had helped to solve the issues and said he now thought there would be a building they all could be proud of.

Ms. Trainor asked Mr. Giunco if the mechanicals would be moved from the basement to the attic. Mr. Giunco replied that they would be relocated to the upper floors and was not sure if all of them would be in the attic but well above the base flood elevation. Ms. Trainor stated that in a November 9<sup>th</sup> letter, paragraph 2 it states that all mechanical equipment will be relocated from the basement to the attic, and asked Mr. Giunco for more clarification. Mr. Giunco responded that since then the architects had made a little bit of an adjustment, but the idea was to keep it out of the flood area which was necessary. Mr. Clark stated that he believed revised plans had been submitted since the November letters so it could be possible that many of the issues that are in the November letters have been incorporated into these revised plans.

Ms. Trainor asked Mr. Giunco to give a review to the Board and if they had any questions, they would let him know. Mr. Giunco described to the Board the events that had occurred resulting in the Planning Board application. Mr. Giunco spoke about the stop work order, the variances sought, and all the changes they had agreed to. Mr. Giunco stated that they had met with some neighbors and had a good discussion, went through a lot of the issues and the applicant found that he could accommodate the concerns and could still have the house in the format he desired for his family.

Ms. Trainor asked Mr. Liston if he agreed with the comments Mr. Giunco had just provided. Mr. Liston answered he did and read from his letter dated today, April 12<sup>th</sup>, 2022 the following, “Should the Board decide to approve the above referenced application, I hereby request, on behalf of my clients, that the items set forth in the two enclosed letters be included in the Board's Resolution of Approval as Specific Factual Findings and as conditions of approval so that the agreement of the parties with respect to the development of the applicant's property is clearly stated as part of the public record.” Mr. Liston stated he wanted to highlight the mention of the extra shrubbery that would be put in. Mr. Liston stated he did not believe it was on the plan and did want it included and not overlooked by the Board because that was something that was important to his clients. Mr. Giunco stated the applicant has agreed to that.

Ms. Trainor announced it was now time to hear comments from the public regarding the application. Ms. Trainor read into the record a public comment via an email sent to Ms. Brisben, Mr. Hilla, and Mr. Clark on February 7<sup>th</sup>, 2022, from Joseph Natoli, 2 Crescent Drive expressing his hope that the application would be approved and thought that it would be a nice addition to the neighborhood. Hearing no other comments from the public, Ms. Trainor asked Mr. Giunco if he would provide his summary to the Board. Mr. Giunco reviewed the details of the applications to the Board and stated they felt this would be a nice addition to the neighborhood and was worthy of the Board's approval.

Ms. Trainor announced it was now time for comments from the Board. Mayor Nicol stated he felt this would be a wonderful addition to the neighborhood and appreciated Mr. Cappiello's diligence. Mayor Nicol also addressed attorneys that send emails at the last minute and suggested that the Board may want to consider requiring that written submissions be made at least 48 hours before a meeting. Mayor Nicol stated he felt this would be fair for the attorneys, applicants, and the Board. Mr. Stenson stated he agreed with Mayor Nicol. Ms. Brisben stated that if this had been a normal application with a letter of denial, she would not be for this application but because they were given a building permit, had begun to build before the errors were discovered and because the neighbors now were all in agreement, she would be for approval. Mr. Jones stated he felt the lot coverage was very excessive but because Mr. Cappiello had made concessions to the neighbors, he would be for approval. Ms. Trainor stated her largest concern was the safety of the basement but does appreciate that the mechanicals and electric would be removed from the basement. Ms. Trainor stated she felt the applicant had met the standards for the relief that he was seeking and thanked Mr. Giunco for being persistent and comprehensive in his presentation.

Ms. Trainor asked Mr. Clark to go over the different conditions and elements of a motion in respect to the application. Mr. Clark began by saying that he had reviewed the minutes from previous meetings and said he felt several of the concerns raised had been addressed and corrected through revised plans. Mr. Clark stated there would be stormwater infiltration with dry wells installed to the satisfaction of the Mr. Hilla, and the applicant would install shrubbery as per the agreement also to the satisfaction of the Mr. Hilla. Mr. Clark addressed the letters back and forth between Mr. Liston and Mr. Giunco that discussed issues that were incorporated into revised plans would also be conditions of the approval as well as the standard conditions.

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

**WHEREAS**, the Board after carefully considering the evidence presented by the 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-3 residential zone.
- c. Prior to the improvements proposed within this application, the Property was the site of a 1 ½ story single-family home with a detached garage and various accessory structures.
- d. The Applicants began construction of certain improvements on the Property, but then the Borough Zoning Officer revoked a zoning permit issued to the

Applicants and the Applicants were directed by the Borough to stop any further work on these improvements and to file this application seeking variance relief from the Board.

- e. Through this application, the Applicants are proposing to convert the 1 ½ story single family home on the Property into a 2 story single family home, to replace the existing two car detached garage with a one car detached garage, to eliminate much of the rear yard impervious coverage (pavers, fire pit, and pond), to relocate the mechanical equipment to the rear yard, and to install an evergreen buffer along the side and rear yards, all as described more fully within the plans (as revised) submitted with this application.
- f. Simultaneously with the filing of this application for variance relief, the Applicants also filed an appeal of the Zoning Officer's determination to revoke the zoning permit, but the Applicants withdrew that appeal at the October 12, 2021 hearing.
- g. The existing and proposed use and the existing and proposed garage are conforming to the zone, but the existing lot and the proposed and existing single family home on the Property are not conforming to the zone.
- h. The Property has the following non-conformities which are not being impacted or changed by this application: (i) Lot Area—11,250 square feet minimum required; 7,268 square feet existing; (ii) Lot Width—75 feet minimum required; 60 feet existing; (iii) Lot Depth—125 feet minimum required; 111 feet existing; and (iv) Rear Yard Setback—35 feet required; 33.5 feet existing.
- i. The Applicant filed an application with the Board which initially sought the following variance relief (the variances sought are highlighted in bold type below): (i) Side Yard Setback—10 feet required; 6.16 feet existing (to southerly side); **6.16 feet proposed (to southerly side second story)**; 9.58 feet existing (to northerly side); **9.58 feet proposed (to northerly side second story)**; (ii) Maximum Lot Coverage—20% allowed; 27.9% existing; **30.71% proposed**; and (iii) **variance relief from Section 19-4.4(b) of the Borough Code (flood damage prevention) with regard to the existing basement.**
- j. Attorney Edward Liston, Toms River, NJ appeared on behalf of a number of neighboring property owners who he characterized as objectors to this application. He indicated that he represents the following objectors: (i) Grillo- 1 Crescent Drive,; (ii) Petracco-7 Crescent Drive; (iii) 8 Crescent Drive, LLC- 8 Crescent Drive; (iv) Farinacci- 11 Crescent Drive; (v) Vertullo- 13 Crescent Drive; (vi) Keating- 15 Crescent Drive; (vii) Knapp- 16 Crescent Drive; and (viii) Brehm- 19 Crescent Drive (collectively, the "Objectors").

- k. Representatives of the Applicants and representatives of the Objectors subsequently met to attempt to resolve their differences. As a result of their negotiations, the Applicants and the Objectors agreed to the following changes to the project (which are described in more detail within the November 9, 2021 letter from John Giunco, Esq. to Edward Liston, Esq. and within the November 16, 2021 letter from Edward Liston, Esq. to John Giunco, Esq.) in order to address the concerns raised by the Objectors:
- (i) the Applicants agreed to a reduction in the size of the garage, thus reducing the lot coverage by approximately 170 square feet, and also agreed to have no gas, sewer or water inside the garage;
  - (ii) the Applicants agreed to relocate mechanical equipment on the side of the house to the rear yard, but still within the side yard setback, and to provide a simple drawing depicting this relocation;
  - (iii) the Applicants agreed to add a fence to three sides of the Property only (specifically, to add a fence alongside the 11 Crescent property and to replace the other two sides), with the type of fencing to be proposed by the Applicants and approved by the Objectors;
  - (iv) the Applicants agreed to provide perimeter Arborvitae plantings of 8' to 10' in height;
  - (v) the Applicants agreed that the building height will be approximately 28 feet;
  - (vi) the Applicants agreed to add windows to Bedrooms 1 and 2 on the 7 Crescent property side;
  - (vii) the Applicants agreed to use flame retardant materials suitable for construction, the type of which will be determined by the Applicants;
  - (viii) the Applicants agreed to keep the front porch;
  - (ix) the Applicants agreed to maintain the sunroom as originally proposed at 15' x 12' or approximately 180 square feet;
  - (x) the Applicants agreed to remove the paver driveway and to replace it with an apron of 3' to 4' of paver blocks and to use crushed stone for the balance of the driveway from the apron to the front of the garage (the Objectors did not request this change, but they reviewed and approved the plans for these proposed revisions to the project);
  - (xi) the Applicants agreed to remove the existing paver patio at the rear of the house and return that to a turf condition;

(xii) the Applicants agreed to relocate all basement mechanical and electrical equipment from the basement to the attic, keeping the basement free of mechanical equipment and free of electrical connections below the base-flood elevation, but still maintaining the unfinished basement for storage.

- l. As a result of the changes to the project agreed to by the Applicants and the Objectors, the Applicants amended their application to seek the following revised variance relief (the variances sought are highlighted in bold type below): (i) Side Yard Setback—10 feet required; 6.16 feet existing (to southerly side); **6.16 feet proposed (to southerly side second story)**; 9.58 feet existing (to northerly side); **9.58 feet proposed (to northerly side second story)**; (ii) Maximum Lot Coverage—20% allowed; 27.9% existing; **28.5% proposed**; and (iii) **variance relief from Section 19-4.4(b) of the Borough Code (flood damage prevention) with regard to the existing basement.**
- m. With regard to the variance relief that the Applicants sought from Section 19-4.4(b) of the Borough Code, the Applicants conceded that the improvements constitute “substantial improvements” as defined under the Borough Code and that the existing basement is below the required flood plain elevation. Section 19-4.4(b) of the Borough Code provides, however, that variances may be granted from the flood elevation requirements of the Code if warranted after consideration of the issues set forth within items (a)-(k) of Section 19-4.4(a)(4). Here, the Applicants provided testimony from their planner, Andrew Janiw, that the issues set forth within items (a)-(k) of Section 19-4.4(a)(4) are either not applicable to these improvements or are not being exacerbated by the proposed improvements since the basement at issue is a pre-existing condition and all mechanical and electrical equipment will be located outside of the basement and above the required flood elevation. The Board finds that the proposed improvements will make the basement safer, the existing conditions will not create any new flood hazards, and the Applicants would suffer undue hardship if this relief were denied.
- n. With regard to the side yard setback variances sought by the Applicants, the Board finds that the Applicants are not increasing the setback beyond what already exists as they are just building upwards and what is proposed is consistent with other homes in the neighborhood as shown by the photo exhibits.
- o. With regard to the lot coverage variance sought by the Applicants, the Board finds that even though the Applicants are seeking approval to increase the lot coverage, they are reducing the impervious coverage of the Property by installing gravel and grass where pavers are now located. Additionally, the Applicants are proposing significant drainage improvements to the Property through the installation of a drywell system with roof drains, thereby mitigating

any negative impact caused by this deviation from the lot coverage requirements.

- p. The Board finds that the benefits of runoff control from these drainage improvement outweigh any detriments caused by the slight increase in lot coverage (by .6%) from the lot coverage which already exists on the Property.
- q. The Board finds that the Applicants made good faith efforts to mitigate any negative impacts caused by the proposed deviations from the zoning requirements for the Property by negotiating with the Objectors and making substantial changes to the project as described more fully within subsection k above and within the November 9, 2021 letter from John Giunco, Esq. to Edward Liston, Esq. and within the November 16, 2021 letter from Edward Liston, Esq. to John Giunco, Esq.
- r. 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.
- s. The Board finds that the positive criteria for a c(2) variance have been met as this project is not impeding any light, air and open space and is not doing anything to increase the activity on this Property. Rather, the Applicants are reducing the garage size, reducing the impervious coverage of the Property by installing gravel and grass where pavers are now located, making drainage improvements, and with one limited exception, are building within the footprint of the existing principal structure on the Property in a manner that is consistent with the neighborhood and with the zone.
- t. The Board finds that the Applicants have mitigated and reduced the impact of any detriments caused by their deviation from the Borough Code requirements notes by making the changes to their project described more fully herein as a result of concerns raised by the Objectors and the Board and that the benefit of the improvement proposed outweighs any detriment that these deviations from the zoning requirements may cause.
- u. 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.
- v. For all of these reasons, the Board also finds that the requirements for a N.J.S.A. 40:55D-70(c)(2) variance have been satisfied by the Applicants 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**, Mayor Nicol moved to approve the application; this motion was seconded by Mr. Jones. At that time the application was approved by the following roll call vote:

Ayes: Mayor Thomas Nicol, Corinne Trainor, Karen Brisben, Stephanie Frith, Jay Jones

Noes: None

Not eligible to vote: James Stenson, Chris Siano, Charlie Tice

**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 Applicants shall design and install a stormwater recharge system with drywells for the Property. Prior to its installation, the plans for this on-site stormwater recharge system shall be submitted to the Board Engineer for his review and approval, and the Applicants agree to comply with any revisions to the system proposed by the Board Engineer.
- b. To the extent, if at all, that these items are not already reflected within the approved plans for this application, the Applicants agree to comply with all of the terms of their agreement with the Objectors as summarized within subsection k of the Board's findings above and as described in more detail within the November 9, 2021 letter from John Giunco, Esq. to Edward Liston, Esq. and within the November 16, 2021 letter from Edward Liston, Esq. to John Giunco, Esq., and these settlement terms shall be conditions of this approval.
- c. The Applicants shall install shrubbery on the Property as per their agreement with the Objectors and such shrubbery must also be reviewed and approved by the Board Engineer.
- d. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- e. The Applicants shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application.
- f. All representations made under oath by the Applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

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A motion to approve the above Resolution was made by Karen Brisben, seconded by Jay Jones, and approved on the following roll call vote:

Ayes: Mayor Thomas Nicol, Corinne Trainor, Karen Brisben, Jay Jones

Noes: None

Not Eligible to Vote: Councilman Frank Garruzzo, Charlie Tice, Amber Fernicola

OLD BUSINESS: Consideration of Resolution for Block 81.01, Lot 9, 414 Melrose Avenue, owned by Frank & Theresa Angello for construction of a Deck.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF FRANK ANGELLO SEEKING VARIANCE RELIEF FOR THE CONSTRUCTION OF A DECK AND CERTAIN OTHER IMPROVEMENTS ON THE PROPERTY LOCATED AT 414 MELROSE AVENUE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 81.01, LOT 9**

**WHEREAS**, Frank Angello (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to construct a deck and certain other improvements as described more fully herein on the property owned by the Applicant located at 414 Melrose Avenue identified on the tax map of the Borough of Brielle as Block 81.01, Lot 9 (the “Property”); and

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

**WHEREAS**, the Property is currently the site of a frame dwelling (under construction), a shed, and various other accessories; and

**WHEREAS**, the Applicant is proposing to construct a deck at the rear of the frame dwelling under construction on the Property as described more fully within the plans submitted with this application; and

**WHEREAS**, the existing lot, the existing and proposed principal structure, and the existing accessory structures are all non-conforming to the zone; and

**WHEREAS**, the Property has the following non-conformities which are not being impacted or changed by this application:

- (a) Lot Area—11,250 square feet minimum required; 7,500 square feet existing;
- (b) Lot Depth—125 feet minimum required; 100 feet existing; and

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

- (a) Rear Setback (principal)—35 feet required; 37 feet existing; **23 feet proposed**;
- (b) Rear Setback (accessory)—5 feet required; **4.9 feet proposed**;
- (c) Lot Coverage—20% maximum allowable; **21.41% existing/proposed**;
- (d) Section 21-31.11 of the Borough Code requires that curb cuts between driveways on the same property must be a minimum of 50 feet apart; **the driveways constructed on the Property are only 20 feet apart and require a variance**; and

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

- (a) as-built survey site plan prepared by Alan R. Boettger, P.L.S. dated November 30, 2021;
- (b) architectural plan prepared by Richard Villano, R.A. dated October 1, 2021;
- (c) an application package signed by the Applicant;
- (f) a Zoning Permit denial letter from the Zoning Officer dated November 1, 2021; and

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**WHEREAS**, the Board was also provided with a letter dated February 4, 2022 prepared by Alan Hilla, P.E., P.P., C.M.E. of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS**, prior to the hearing, the Board received a letter from Timothy Middleton, Esq., who indicated that he represented Michele Spencer (the “Objector”), the owner of 414 Union Lane which is located immediately to the rear of the Property; and

**WHEREAS**, Mr. Middleton indicated within his letter that the Objector had discussed her concerns with this application with the Applicant and his engineer/planner and that, as a result, the Applicant had agreed to (i) amend the application by creating a 4’ by 22’ landing off the rear of the house with two steps leading to the deck, which deck would be approximately 8” or less above grade where it abuts the existing paver patio, (ii) and to stipulate that there would be no spot lights in the back yard and that the existing spot light on the shed will be removed; and

**WHEREAS**, Mr. Middleton further indicated that based upon the amendments to the project and stipulations described in this letter, the Objector had no objection to this application; and

**WHEREAS**, the Planning Board held a hearing on this application on April 12, 2022 and considered the following documents presented as exhibits at the hearing:

(a) Exhibit A-1 revised plan showing reduced deck size and elevation in response to Objector’s comments;

(b) Exhibit O-1 letter from Timothy Middleton, Esq. (attorney for Objector Michele Spenser, owner of 414 Union Lane property) to Board Attorney dated April 12, 2022; and

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

Mr. Kociuba, engineer, stated he was appearing on behalf of the applicant, Mr. Angello, who was also in attendance but was having computer issues so Mr. Kociuba stated, if permissible, he could present the application to the Board. Mr. Clark stated he felt that was okay and then addressed a letter he had received from Attorney Tim Middleton who had originally been retained to object to the application but the applicant had made some proposed changes to the application so they would be withdrawing their objection. Mr. Clark stated he thought Mr. Kociuba would address this but Mr. Clark said that he would read Mr. Middleton's letter into the Record, if necessary, to spell out his understanding of what is proposed to happen. Mr. Kociuba stated he had several conversations with Mr. Middleton earlier in the day regarding the objection his client had and have proposed some minor amendments to the deck in order to satisfy them.

Mr. Joseph Kociuba, KBA Engineering Services, Manasquan, NJ was sworn in by Mr. Clark. Mr. Kociuba stated he was a licensed engineer and licensed planner in the state of New Jersey. Mr. Kociuba stated he would be testifying as both an engineer and planner in this application. Ms. Trainor stated that Mr. Kociuba was qualified to testify as an engineer and planner. Mr. Kociuba stated he received Mr. Middleton's letter the morning of this meeting and quickly prepared an exhibit marked as displayed Exhibit A-1 and described to the Board the Exhibit details and the minor adjustments to the deck the applicant had agreed to with the neighbor. Mr. Kociuba stated he would send the exhibit electronically to the Board after the meeting for the Record. Mr. Kociuba described the property to the Board. Mr. Kociuba stated that the single-family home and a deck were recently constructed and said the deck was 24x14 feet with a patio adjacent to it. Mr. Kociuba stated that the size of the deck, although it was less than 3 feet above grade, was determined that it did not comply with the porch requirements and needed relief for a rear yard setback. Mr. Kociuba stated that the applicant was proposing is to reduce the length of the deck to a landing along the back of the property that would have two steps down to an at grade deck. Mr. Kociuba stated that the elevation of the deck was the concern of the neighbor and as a result they are proposing a 4x22 foot landing with two steps down to an at grade deck. Mr. Kociuba stated that was what the applicant had agreed to with Mr. Middleton.

Mr. Kociuba stated there a question regarding the building coverage and stated that a small shed was added and as a result of the shed, the Lot coverage exceeds the 20% allowable. Mr. Kociuba stated that with the changes made he believed that a variance would not be required because the small landing now complies with the porch requirements. Mr. Kociuba deferred to Mr. Hilla and said if relief were needed for the small landing, they would like to amend their application. Mr. Kociuba stated that the shed in the back left corner is noncompliant in rear yard setback by an inch and said they will shift the shed over to comply. Mr. Kociuba stated that there is relief necessary for the coverage associated with that lot coverage, it was considered as anything with a roof on it and as a result they are slightly over the allowable coverage, a little over 21% where 20% is permitted. Mr. Kociuba stated that this was a substantially undersized lot, and the shed provides the ability to store maintenance materials inside a building which would have a better impact on the neighborhood.

Mr. Kociuba stated the last relief identified by Mr. Hilla is at the front of the property. Mr. Kociuba stated the applicant had installed a U-shaped driveway where the Ordinance identifies a curb cut to be 50 feet spaced and said that this curb cut was 20 feet, 19 feet at the very smallest

portion. Mr. Kociuba stated that this is at the end of Melrose Avenue, one Lot in from the dead end. Mr. Kociuba stated that there were not many homes beyond this particular location and that this allowed for turning around and did not think this would have a detrimental impact but did provide the benefit of safety for additional turnaround and not having to back out onto Melrose Avenue.

Mr. Kociuba stated he believed that the variances limited to the building coverage and the driveway separation distances could be granted under the C-1 and C-2 criteria. Mr. Kociuba stated there were definitely some hardships due to the size of the property and undersized lot, both in area and depth which would justify some small coverage relief and in rear yard setback relief. Mr. Kociuba stated there was also a comment from the neighbor about a spotlight that was on the shed which the applicant has agreed to remove.

Mr. Clark referenced Mr. Hilla's report and asked Mr. Kociuba about the half story and the calculations for that. Mr. Kociuba answered that he believed the half story did comply and was approved that way and is constructed so in his opinion there was no relief required.

Ms. Trainor asked Mr. Angello if he had anything he would like to add. Mr. Angello was sworn in by Mr. Clark. Mr. Angello stated he did not really have anything to add and said Mr. Kociuba had covered everything. Mr. Angello stated he had agreed to do everything the neighbor in the back had requested him to do.

Ms. Trainor asked Mr. Hilla if he had any questions for Mr. Kociuba. Mr. Hilla stated he did not really have any questions and said that he did concur with Mr. Kociuba regarding the landing and that there was no variance relief required for the proposed arrangement.

Ms. Trainor announced it was now time to hear questions for Mr. Kociuba from the Board. Hearing none, Ms. Trainor announced it was now time to hear questions for Mr. Kociuba from the public. Hearing none, Ms. Trainor asked Mr. Angello if he had any other witnesses to present to which he replied he did not. Ms. Trainor asked if there were anyone present on behalf of the neighbor or Mr. Middleton who wished to say anything to which there was no reply. Mr. Clark read Mr. Middleton's letter into the Record and marked it as O-1. Mr. Clark stated he wanted it to be clear who Mr. Middleton was representing (i.e. Michele Spencer, the owner of 414 Union Lane) and what concerns were addressed.

Ms. Trainor asked Mr. Hilla if he had any comments. Mr. Hilla stated that with regard to the half story, he put it in for completeness but said there are a number of checks and balances for both the Zoning and Construction officials when these things are going through the various approval processes. Mr. Hilla referenced the driveway and explained to the Board that allowing the variance for the driveway the way it is would not be the end of the world, but that he believed that allowing a builder to "beg for forgiveness" after building something that is not conforming to the zone should be viewed narrowly. Mr. Hilla then referenced the shed and said the Board has had builders build houses to the 20% that is allowed and then come before the Board for a garage, or a shed and he feels that it is a slippery slope and thinks the Board should also take a narrow view on that too. Mr. Hilla stated that if a builder designed a house to have a little more storage

area and a little less living space, there would be no need to exceed the 20% lot coverage requirement or to have a separate shed.

Ms. Trainor then announced it was now time to hear comments from the Board with respect to the application. Mayor Nicol, Mr. Stenson, Mr. Siano, Ms. Brisben and Mr. Tice stated they had no problems with the application and were glad to see the applicant work out the neighbor's concerns. Mr. Jones stated he agreed with the other Board members and said Mr. Hilla's concerns were noted. Ms. Frith stated she agreed with the other Board members and had no problems with the application. Ms. Trainor stated she accepted Mr. Kociuba's testimony and the reasoning why the variance relief is justified.

Ms. Trainor asked Mr. Clark to list the conditions the Board should consider for a motion. Mr. Clark stated the applicant has agreed to relocate the shed so it does not stick into the setback, the applicant has agreed to remove the spotlight that is currently on the shed and have no spotlights in the backyard, the applicant has stated they are changing the plans so there is no need for the rear yard setback because they are lowering the deck, and the applicant will submit 4 sets of revised plans as a condition of approval that show what is actually going to be constructed per the testimony submitted.

**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-3 residential zone.
- c. The Property is currently the site of a frame dwelling (under construction), a shed, and various other accessories.
- d. The Applicant is proposing to construct a deck at the rear of the frame dwelling under construction on the Property as described more fully within the plans submitted with this application.
- e. The existing lot, the existing and proposed principal structure, and the existing accessory structures are all non-conforming to the zone.
- f. The Property has the following non-conformities which are not being impacted or changed by this application: (i) Lot Area—11,250 square feet minimum required; 7,500 square feet existing; and (ii) Lot Depth—125 feet minimum required; 100 feet existing.

- g. The Applicant filed an application with the Board initially seeking the following variance relief (the variances sought are highlighted in bold type below): (i) Rear Setback (principal)—35 feet required; 37 feet existing; **23 feet proposed**; (ii) Rear Setback (accessory)—5 feet required; **4.9 feet proposed**; (iii) Lot Coverage—20% maximum allowable; **21.41% existing/proposed**; and (iv) Section 21-31.11 of the Borough Code requires that curb cuts between driveways on the same property must be a minimum of 50 feet apart; **the driveways constructed on the Property are only 20 feet apart and require a variance.**
- h. Prior to the hearing on the application, the Board received a letter from Timothy Middleton, Esq., who indicated that he represented Michele Spencer (the “Objector”), the owner of 414 Union Lane which is located immediately to the rear of the Property, which letter was then marked as Exhibit O-1 at the hearing.
- i. Mr. Middleton indicated within his letter that the Objector had discussed her concerns with this application with the Applicant and his engineer/planner and that, as a result, the Applicant had agreed to (i) amend the application by creating a 4’ by 22’ landing off the rear of the house with two steps leading to the deck, which deck would be approximately 8” or less above grade where it abuts the existing paver patio, (ii) and to stipulate that there would be no spot lights in the back yard and that the existing spot light on the shed will be removed.
- j. Mr. Middleton further indicated that based upon the amendments to the project and stipulations described in this letter, the Objector had no objection to this application.
- k. During the hearing, the Applicant stipulated and agreed that he would move the shed so that it was not located within the five (5) foot rear yard setback, thereby eliminating the need for a variance for this condition.
- l. During the hearing, the Applicant’s engineer/planner, Joseph Kociuba, testified that as a result of the changes to the rear deck to address the Objector’s concerns, the deck no longer required a rear yard setback variance, and this statement was thereafter confirmed on the record by the Board’s Engineer Alan Hilla.
- m. Thus, the only remaining variances being sought through this application are the lot coverage variance and the variance from Section 21-31.11 of the Borough Code (which requires that curb cuts between driveways on the same property must be a minimum of 50 feet apart), as the driveways constructed on the Property are only 20 feet apart.

- n. The Property is an undersized and irregularly-shaped lot which has insufficient lot area (7,500 square feet existing where an 11,250 square feet minimum required) and insufficient lot depth (100 feet existing where an 125 feet minimum is required). For these reasons, it meets the hardship requirements of N.J.S.A. 40:55D-70(c)(1).
- o. In view of the undersized lot area of the Property, the slight deviation from the lot coverage requirements of the zone (i.e. an increase of 1.41% over the maximum lot coverage requirement) is warranted. Moreover, this development of the Property is consistent with other development in the neighborhood and this deviation from the requirements of the zone 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.
- p. Additionally, the Property is located one lot in from the end of a dead-end street. Thus, there not many homes beyond the Property impacted by this deviation from the requirements of the Borough Code and the enhanced benefit of these two curb cuts providing this Property with a safe means of turning around on a dead-end street outweigh any negative impact caused by this deviation.
- q. For these reasons, these deviations from the zone requirements meet the conditions for variance relief under N.J.S.A. 40:55D-70(c)(1).
- r. 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;
- s. 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 the goals of the Municipal Land Use Law and the minor deviations from the requirements of the Borough Code are consistent with other development in the neighborhood 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.
- 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**, Mr. Stenson moved to approve the application; this motion was seconded by Mr. Siano. At that time the application was approved by the following roll call vote:

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

Noes: None

**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. Within sixty (60) days of the date of the adoption of this resolution, the Applicant shall relocate the shed on the Property so that it is not within the 5 foot rear yard setback for accessory structures.
- b. Within sixty (60) days of the date of the adoption of this resolution, the Applicant shall remove the spotlight which is currently located on the shed and agrees that it shall not install any other spotlights in the back yard of the Property.
- c. The Applicant shall revise the size and elevation of the rear deck on the Property in the manner described within the testimony and in the letter from the Objector's counsel marked as Exhibit O-1 to this application.
- d. Within sixty (60) days of the date of the adoption of this resolution, the Applicant shall submit four (4) sets of revised plans to the Board Secretary showing all revisions to the project described herein, including but not limited to the revisions to the rear deck on the Property.
- e. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- f. 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;
- g. 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.

May 10<sup>th</sup>, 2022

A motion to approve the above Resolution was made by Karen Brisben, seconded by Jay Jones, and approved on the following roll call vote:

Ayes: Mayor Thomas Nicol, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice

Noes: None

Not Eligible to Vote: Councilman Frank Garruzzo, Amber Fernicola

OLD BUSINESS: Consideration of Resolution for Block 76.01, Lot 3, 414 Brown St., Owned by Allison Princiotta (Applicants — Richard & Rosalie Giordano, for construction of addition & dormers.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF RICHARD AND ROSALIE GIORDANO SEEKING VARIANCE RELIEF FOR CONSTRUCTION OF A SECOND FLOOR ADDITION AND DORMERS ON THE PROPERTY LOCATED AT 414 BROWN STREET IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 76.01, LOT 3**

**WHEREAS**, Richard and Rosalie Giordano, on behalf of their daughter (the “Applicants”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to construct a second floor addition and dormers on the property owned by the Applicants located at 414 Brown Street and identified on the tax map of the Borough of Brielle as Block 76.01, Lot 3 (the “Property”); and

**WHEREAS**, the record owner of the Property is Allison Princiotta, the daughter of the Applicants, who consented to the Applicants’ filing of this application; and

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

**WHEREAS**, the Property is currently developed with a one-story dwelling, a concrete driveway, and a detached garage; and

**WHEREAS**, the Applicants are proposing to construct a second floor addition and dormers on the Property as described more fully within the plans submitted with this application; and

**WHEREAS**, the existing and proposed use are conforming to the zone, but the existing lot, the existing principal structure, and the proposed addition to the principal structure do not conform to the zone; and

**WHEREAS**, the Property has the following non-conformities which are not being impacted or changed by this application:

- (a) Lot Area—15,000 square feet minimum required; 10,000 square feet existing;
- (b) Lot Depth—125 feet minimum required; 100 feet existing;
- (c) Front Yard Setback (first floor)—40 feet required; 24.7 feet existing;
- (d) Rear Yard Setback (first floor)—40 feet required; 33.5 feet existing; and

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

- (a) Front Yard Setback (second floor)—40 feet required; **26.10 feet proposed**; and

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

- (a) plot plan prepared by Joseph Kociuba P.E., P.P. dated October 28, 2020, last revised January 20, 2022;
  - (b) architectural plans (7 sheets) prepared by Michael Mellillo, A.I.A., dated November 11, 2021;
  - (d) an application package signed by the Applicants; and
  - (e) a Zoning Permit denial letter from the Zoning Officer dated November 16, 2021;
- and

**WHEREAS**, the Board was also provided with a letter dated March 10, 2022 prepared by the Board's Engineer and Planner Alan Hilla, P.E., P.P., C.M.E., of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS**, the Planning Board held a hearing on this application on April 12, 2022; and

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

Mr. Richard Giordano, 6 Clarendon Lane, Hilton Head Island , South Carolina, stated he would be testifying before the Board on behalf of the applicant, Allison Princiotta, his daughter. Mr. Giordano was sworn in by Mr. Clark.

Mr. Giordano began by saying that the present footprint of the house is nonconforming with the Zoning variance and that they would not be increasing the footprint for lot coverage that is presently there. Mr. Giordano stated a new roof was needed and while replacing the roof they would like to add a bedroom and bathroom upstairs without increasing the footprint.

Ms. Trainor asked Mr. Giordano if he were the only witness that would be testifying to which he replied that he was. Ms. Trainor asked Mr. Giordano if he had received a copy of Mr. Hilla's March 10<sup>th</sup> letter. Mr. Giordano answered that he had received a copy. Mr. Giordano stated it was his understanding from his architect, Michael Melillo, that the question of the front yard setback was the issue. Mr. Giordano stated that the house was conforming with all the other houses on the block that are less than the 40-foot setback for Brown Street and said he believed that the Zone was changed at some point. Ms. Trainor referenced paragraph 2 in Mr. Hilla's letter which said that the plot plan depicted some feature along the eastern property line and asked Mr. Giordano to add clarity with respect to that. Mr. Giordano answered that it was a vegetable garden that his daughter has that has 2x4's that outline it to separate it from the lawn. Mr. Giordano stated he could provide the Board with a survey depicting that.

Ms. Trainor announced it was time to hear questions for Mr. Giordano from the Board. Mayor Nicol, Mr. Stenson, Mr. Siano, Ms. Frith, Mr. Jones, Mr. Tice, and Ms. Trainor stated they had no questions. Ms. Brisben asked Mr. Giordano how old the home was and to confirm whether or not he would be changing the lot coverage. Mr. Giordano answered he thought it was built in the mid sixty's and the lot coverage would not be changing.

Ms. Trainor announced it was time to hear questions for Mr. Giordano from the public. Hearing none, Ms. Trainor asked Mr. Hilla if he had any comment in regard to the application. Mr. Hilla replied that he did not. Ms. Trainor announced it was time to hear comments from the public in regard to the application. Hearing none, Ms. Trainor announced it was time to hear comments from the Board. Mayor Nicol and Mr. Stenson stated he had no issues with application. Mr. Siano stated he was in favor of the application and thought it would be a nice addition to the

neighborhood. Ms. Brisben said that considering the age of the home and because the existing nonconformities were legal at the time, she would have no problem approving the application. Mr. Jones stated he felt it would be a nice addition. Ms. Frith stated she was in favor of the application and thought it would be a lovely addition. Mr. Tice also stated he was in favor of the application. Ms. Trainor stated she agreed with Ms. Brisben with respect to the existing nonconformities and the age of the home and thought the changes Mr. Giordano and his daughter were proposing would be worthy additions to the neighborhood.

Ms. Trainor asked Mr. Clark to list the conditions or issues the Board should consider for a motion. Mr. Clark stated that the applicant had agreed to supply the Board with a copy of the 2020 survey which was referenced within the plot plan and that the Board would put a timeline in the condition of the approval that requires that it be submitted. Mr. Clark stated that there were no other specific conditions.

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

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The record owner of the Property is Allison Princiotta, the daughter of the Applicants, who consented to the Applicants' filing of this application
- c. The Property is located within the Borough's R-2 residential zone.
- d. The Property is currently developed with a one-story dwelling, a concrete driveway, and a detached garage.
- e. The Applicants are proposing to construct a second floor addition and dormers on the Property as described more fully within the plans submitted with this application.
- f. The existing and proposed use are conforming to the zone, but the existing lot, the existing principal structure, and the proposed addition to the principal structure do not conform to the zone.
- g. The Property has the following non-conformities which are not being impacted or changed by this application: (i) Lot Area—15,000 square feet minimum required; 10,000 square feet existing; (ii) Lot Depth—125 feet minimum

required; 100 feet existing; (iii) Front Yard Setback (first floor)—40 feet required; 24.7 feet existing; and (iv) Rear Yard Setback (first floor)—40 feet required; 33.5 feet existing.

- h. The Applicants are seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Front Yard Setback (second floor)—40 feet required; **26.10 feet proposed**.
- i. The Property is an undersized and irregularly-shaped lot which has insufficient lot area (10,000 square feet existing where an 15,000 square feet minimum required) and insufficient lot depth (100 feet existing where an 125 feet minimum is required).
- j. The improvements proposed by the Applicants are essentially expanding the existing principal structure on the Property so that it has a second floor with dormers. While the dormers extend a little further into the front yard setback, the improvements are being made within the footprint of the existing structure and are not impacting the lot coverage of the improvements on the Property.
- k. By reason of the size, shape, and topography of the Property, it would be a hardship to the Applicants to comply with the requirements of the Borough Code, and the development being proposed by the Applicants is consistent with other development in the neighborhood.
- l. The purposes of the Borough Code would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.
- m. This application and the variance relief sought therein advances the purposes of the Municipal Land Use Law, does not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**WHEREAS**, Mayor Nicol moved to approve the application; this motion was seconded by Mr. Siano. At that time the application was approved by the following roll call vote:

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

Noes: None

**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. Within forty-five (45) days of the date of the adoption of this resolution, the Applicants shall submit a copy of the 2020 survey which was referenced within their plot plan to the Board Secretary.
- a. The Applicants shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- b. The Applicants shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- c. All representations made under oath by the Applicants or their agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicants contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above Resolution was made by Karen Brisben, seconded by Charlie Tice, and approved on the following roll call vote:

Ayes: Mayor Thomas Nicol, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice

Noes: None

Not Eligible to Vote: Councilman Frank Garruzzo, Amber Fernicola

NEW BUSINESS: Application for Minor Subdivision for Block 35.01, Lot 19, 611 Brielle Avenue, owned by JR Knight Development, LLC to create Two conforming lots.

Attorney Michael Rubino announced he was here for the applicant and said the application being presented was for a minor subdivision of a property. Mr. Rubino stated that the existing lot was 12,346.6 feet and was in the R-4 Zone where 5,000 square feet was required. Mr. Rubino stated both lots would be approximately 6,200 square feet and would be compliant in area and would meet all of the yard requirements. Mr. Rubino stated that the applicant's intent was to keep the existing house but it may have to be taken down and a new one constructed. Mr. Rubino stated the garage that is shown on the northern side of the property would be demolished and a new house would be built. Mr. Rubino stated that Mr. Hilla had indicated in his letter that there was an overlay issue that should be addressed. Mr. Rubino stated that these lots were oversized and said that the last thing they want was years of litigation so they had agreed to amend the plans to show the two boundary lines meeting. Mr. Rubino stated he felt that should eliminate any issue as to a claim of overlap against the neighbors to the rear. Mr. Rubino stated that to address Mr. Hilla's last question in his letter, he thought it would be a good idea to file the deed by map so anyone searching the title would understand exactly what they were getting. Mr. Rubino stated that the applicant is also the listing broker and said that he advised him he should attach a copy of the subdivision as part of the selling the property. Mr. Rubino stated the applicant would submit a grading plan to the Board, and would check with the Borough Tax Assessor in regard to the Lot numbers.

Ms. Trainor asked Mr. Clark if Mr. Rubino's proffer was sufficient. Mr. Clark responded that he had spoken to Mr. Rubino prior to this meeting and had also spoken to Mr. Hilla and said that the applicant agreed to waive the two foot overlap area and assume that it would become the neighbor's property and make certain the boundaries meet. Mr. Clark stated the applicant had agreed to submit revised plans to show that and were willing to have that as a condition of their approval, so it is clear what the exact size of the subdivided lots would be. Mr. Clark stated that he thought Mr. Kociuba would be testifying about the size of the revised lots and how the lots were slightly different then what is in the plans.

Mr. Joseph Kociuba, KBA Engineering Services, Manasquan, NJ was sworn in by Mr. Clark. Mr. Kociuba stated he was a licensed engineer and a licensed planner in the state of New Jersey and would be testifying as both in this application.

Mr. Kociuba presented Exhibit A-1 and explained that this exhibit had been updated to show the amended lots for the proposed subdivision. Mr. Kociuba stated the existing lot consisted of 12,346 square feet, contained a 2-story dwelling, a garage apartment, and a driveway. Mr. Kociuba then identified the rear of the property and the area of questionable title. Mr. Kociuba stated that had been determined by the surveyor that there was an overlap of 1.82 feet on the southern end and 2.59 feet to the northern end. Mr. Kociuba stated that it was agreed that the applicant would relinquish that area.

Mr. Kociuba presented Exhibit A-2 that he described as the updated development plan to show the amended areas. Mr. Kociuba identified the right lot, Lot 19.01 and said this was the vacant lot that would be developed with a new home, would have 6,088 square feet of area, 50 feet of width, and would be fully conforming. Mr. Kociuba identified the left lot, Lot 19.02 and said this lot would have 6,119 square feet and 50 feet of width and would also fully conform. Mr. Kociuba stated that the intent was to maintain the existing home on the property but the applicant would have to construct a new conforming driveway for the home. Mr. Kociuba stated they would be eliminating the garage apartment which was a nonconforming use and would be fully conforming with parking. Mr. Kociuba stated the property grades from the rear of the property towards Brielle Avenue and that would continue. Mr. Kociuba stated they would provide a plot plan for any proposed construction and agreed with the recommendations in Mr. Hilla's review letter. Mr. Kociuba stated there were two large trees in the front of Lot 19.01 that would need to be removed in order to construct the dwelling. Mr. Kociuba stated there were a number of cedar trees running down the right side of the property that would need trimming in order to try to save them, said they would save the trees and vegetation up the left side of the property and would maintain the trees along the rear of the property. Mr. Kociuba stated there were no variances being requested as result of the application.

Mr. Rubino asked Mr. Kociuba if the existing house would conform with the subdivision if it remained. Mr. Kociuba answered that it would conform and stated that the home was positioned in a way that a subdivision could be created without creating any variances.

Ms. Trainor asked Mr. Hilla if he had anything to add. Mr. Hilla said that with the modification, the deed would be filed by map, and stated it should be noted that the subdivision map was not reviewed for map filing so that would have been done before being released and ready for signature.

Ms. Trainor announced it was time for questions from the Board for Mr. Kociuba. Ms. Brisben asked Mr. Kociuba if he would talk about any new landscaping that would mitigate taking down the two trees in the front. Mr. Kociuba stated they could certainly add a street tree at the front of the property. Ms. Brisben asked Mr. Clark if that could be added to a Resolution to which Mr. Clark replied that it could. Mr. Rubino stated they would prefer it be a condition of the Certificate of Occupancy. Mr. Clark stated that the Board could declare it be a condition of the C.O. Mr. Kociuba stated he wanted to make it clear that there would be a minimum of three trees, two large trees in the front and one in the rear, which would be removed. Mr. Jones asked Mr. Kociuba if he could confirm that stormwater would not drain on the adjacent properties and if this would be included on their new development plan. Mr. Kociuba replied that there would be no drainage impact to any neighbor and it would be included on the new plan. Mr. Rubino added that it would be to Mr. Hilla's approval. Mayor Nicol, Councilman Garruzzo, Ms. Trainor, Mr. Tice, and Ms. Fernicola did not have any questions for Mr. Kociuba.

Ms. Trainor announced it was time for questions from the public for Mr. Kociuba. Mr. Jonathan Marotta, 606 Cardeza Avenue, was sworn in by Mr. Clark. Mr. Marotta referenced a white fence that divides the two properties and asked if that was part of the overlay dispute that was being discussed. Mr. Kociuba answered that it was not and said that Mr. Marotta's fence was identified on the survey and was completely on his property. Mr. Marotta asked if the large poplar tree was on his property. Mr. Kociuba answered that he thought it may straddle the property line but was not sure.

Ms. Trainor asked if there was anyone else from the public that had questions for Mr. Kociuba. Hearing none, Mr. Rubino called Mr. Pittenger to testify. Mr. James Pittenger, Pittenger Builders, Neptune City, NJ, was sworn in by Mr. Clark. Mr. Pittenger stated that Pittenger Builders had been in business since 1953, that he had been with the Pittenger family company for roughly 18 years and had built a number of homes. Mr. Rubino asked Mr. Pittenger to explain to the Board his thoughts on the existing house. Mr. Pittenger responded that when the property was bought the owner was still living in the home so as to not disrupt the owners daily life, he did not spend a lot of time in the home and said the outside of the home matched the character of some of the other homes on the street. Mr. Pittenger stated that they would like to update the existing home but would not know if that were possible until the structural integrity of the home was determined. Mr. Rubino asked Mr. Pittenger if the garage apartment would be demolished. Mr. Pittenger answered that the garage apartment would be demolished. Mr. Rubino asked Mr. Pittenger if the new home would represent the style of houses in the area. Mr. Pittenger answered that it would. Mr. Rubino stated that he and Mr. Kociuba had a long discussion with the Board regarding the overlap issue and asked Mr. Pittenger if he understood that by doing this he would be giving up any claim to any title action to settle any boundary dispute that he had with any of the houses. Mr. Pittenger answered that he fully understood that.

May 10<sup>th</sup>, 2022

Ms. Trainor asked Mr. Hilla if he had any following to add with respect to the letter sent to the Board dated, May 2<sup>nd</sup>. Mr. Hilla answered he did not have anything to add.

Ms. Trainor announced it was time to hear questions for Mr. Pittenger from the Board. Hearing none, Ms. Trainor asked if there were anyone from the public that had questions for Mr. Pittenger. Hearing none, Ms. Trainor then said it was time to hear comments from the public in regard to the application. Hearing none, Ms. Trainor announced it was time to hear comments from the Board. Mayor Nicol stated he had no issues with the application. Councilman Garruzzo stated he thought the application was good, had no issues, stated there were no variances being sought, and it fits in with the characteristics of the neighborhood. Ms. Brisben stated she had no problems with the application and was sure they would build a proper home. Mr. Jones stated he was glad the applicant had given clarification of the borderlines, and said that everything looked fine. Ms. Trainor, Mr. Tice, and Ms. Fernicola had no comments.

Ms. Trainor asked Mr. Rubino if he had anything else to add. Mr. Rubino stated he agreed with the Board's positive comments, the two lots were completely conforming, said they were resolving any potential issue of a boundary dispute in the future and there would be trying to keep the existing house or build a new house and also a house built on the vacant lot. Mr. Rubino asked the Board to look favorably on the application.

At this time, Councilman Frank Garruzzo made a motion to approve the application, as presented and with the conditions noted, this seconded by Karen Brisben and then by the following roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, Corinne Trainor, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Ms. Trainor asked if there was any other business to bring before the Board. Ms. Brisben stated she wanted to let the Board know that there are some big applications coming in, two major subdivisions plus other applications.

Ms. Trainor stated she had one item of business to discuss with the Board regarding late submissions in recent months. Ms. Trainor said it has been difficult for the Board to review the late submissions in a timely fashion in advance of the meeting. Ms. Trainor asked Mr. Clark if he could give some recommendations to the Board about adopting a policy. Mr. Clark stated when the Board has their yearly reorganization meeting there are certain written policies and procedures that are adopted so if the Board wanted to make an official policy or amend what is already written then perhaps it could be done through a Resolution which would then allow anyone to see the Board's policies and procedures. Mr. Clark stated he could draft a policy and a Resolution to authorize the policy for the Board's next meeting. Mr. Clark stated that ultimately it would be the Board's decision to determine what the policy would convey. Mayor Nicol stated he would venture to say that the Police Department, Fire Company, and Soil Conservation do not receive any of the late submissions and added that these people declare that they approve the application the way it

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is originally submitted. Mayor Nicol continued by saying they are not aware of the late submissions and although it is not always critical information, it could be and said he thought the Board should take that into consideration. Mayor Nicol suggested that Mr. Clark put something in writing so the Board can review it.

Councilman Garruzzo asked if there had been any discussions of returning to in person meetings and asked if an email could be sent to the Board members for consideration and discussion at the next Board meeting. Ms. Trainor agreed and suggested it be listed as an item on the agenda for discussion at the next meeting.

Ms. Trainor asked if there were any other business to bring before the Board. Hearing none, Ms. Trainor asked for a motion to adjourn. Mayor Nicol made the motion, seconded by Councilman Garruzzo, and unanimously by the Board, all ayes. The meeting was adjourned at 6:59pm

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Denise Murphy, Recording Secretary

Approved: June 14<sup>th</sup>, 2022