

Tuesday, January 10, 2023

BRIELLE PLANNING BOARD
TUESDAY, JANUARY 10th, 2023

The Reorganizational Meeting of the Brielle Planning Board was held on Tuesday, January 10th, 2023, at 7:00 p.m., in the Brielle Borough Hall, 601 Union Lane. After a moment of silent prayer and a Salute to the Flag roll call was taken:

Present – Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice

Absent – Stephanie Frith

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 37 people in the audience.

APPOINTMENTS TO
PLANNING BOARD:

Mayor Thomas Nicol through 12/31/23
Councilman Frank Garruzzo through 12/31/23
Karen S. Brisben through 12/31/23
Stephanie Frith, Class 4 Member, through 12/31/26
Jay Jones, Class 4 Member, through 12/31/26
Amber Fernicola, Alternate Member #1, through 12/31/24

NOMINATION &
ELECTION OF:

Chairperson, Vice-Chairperson

Corinne Trainor was appointed as Chairperson on a motion by Councilman Frank Garruzzo, seconded by James Stenson and then by roll call vote:

Ayes: Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Chris Siano was appointed as Vice-Chairperson on a motion by Karen Brisben, seconded by Councilman Frank Garruzzo and then by roll call vote:

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

Noes: None

The following Resolutions were then presented for approval for 2023:

MEETING DATES FOR BRIELLE PLANNING BOARD FOR 2023

WHEREAS, an act of the Legislature known as the “Open Public Meetings Act” enacted October 21, 1975, requires that advance notice be given of all regularly scheduled meetings of the Planning/Zoning Board of the Borough of Brielle, this act becoming effective January 19, 1976;

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

1. The regularly scheduled public business meetings of the Brielle Planning Board shall be held at 7:00 p.m. on the second Tuesday of each month with the exception of the following months: February’s meeting will be held on February 21st, April’s meeting will be held on April 18th, and November’s meeting will be held on November 7th, 2023.
2. A copy of this Resolution shall be posted on the public bulletin board in the Borough Hall and published in one of the official newspapers of the Borough.

A motion was made by James Stenson, to approve the above Resolution, this seconded by Councilman Frank Garruzzo, and approved unanimously by following vote.

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

Noes: None

RESOLUTION FOR BOARD ATTORNEY & BOARD ENGINEER FOR 2023

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

WHEREAS, the Brielle Planning Board has determined that there is a need for legal services and engineering services during 2023; and

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

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

WHEREAS, the term of these contracts are one year (January 1, 2023 to December 31,

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2023); and

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

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

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

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

1. The Business Disclosure Entity Certification of both Mr. Clark and Mr. Hilla as well as the Determination of Value Certification of the Chief Finance Officer shall be filed in the office of the Municipal Clerk and shall be available for public inspection.
2. The Planning Board is hereby authorized and directed to execute a contract with Mr. Clark to provide legal services and Mr. Hilla to provide engineering services for the 2023 contract year.
3. A notice stating the nature, duration, service, and the amount of this contract shall be published in the Coast Star newspaper and this Resolution shall be maintained on file and available for public inspection in the office of the Board Secretary.
4. A certified copy of this Resolution shall be sent to Mr. Clark and Mr. Hilla.

OFFICIAL NEWSPAPERS OF THE BRIELLE PLANNING BOARD FOR 2023

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

RESOLUTION FOR PLANNING/ZONING BOARD SECRETARIES FOR 2023

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

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

NOW, THEREFORE, BE IT RESOLVED that Karen S. Brisben be appointed Secretary of the

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Board for 2023 at a salary of \$5,250 annually and Denise Murphy be appointed as Recording Secretary for the year 2023 at a salary of \$5,250 annually.

A motion was made by Karen Brisben to approve the above Resolutions, this seconded by Councilman Frank Garruzzo, and approved unanimously by following vote.

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

Noes: None

A motion was made to approve the Minutes of December 13, 2022, this done by Councilman Frank Garruzzo, seconded by James Stenson, and then by the following roll call vote:

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

Noes: None

Not eligible to vote: Charlie Tice, Amber Fernicola

OLD BUSINESS: Consideration of approval of a Resolution to create a Minor Subdivision for Block 61, Lot 6.01 & 6.02, 22 Crescent Drive, owned by Michael Centrella.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH REGARD TO THE APPLICATION OF MICHAEL CENTRELLA FOR A MINOR SUBDIVISION, DESIGN WAIVERS, AND VARIANCE RELIEF FOR PROPERTY LOCATED AT 22 CRESCENT DRIVE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 61, LOTS 6.01 AND 6.02

WHEREAS, Michael Centrella (the “**Applicant**”) applied to the Planning Board of the Borough of Brielle (the “**Board**”) for a minor subdivision approval, design waivers, and variance relief for the property located at 22 Crescent Drive identified on the tax map of the Borough of Brielle as Block 61, Lots 6.01 and 6.02 (the “**Property**”); and

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

WHEREAS, the Applicant’s wife, Lori Centrella, asserts that she has an equitable ownership interest in the Property and has consented to this application; and

WHEREAS, the Property is a waterfront lot located on the eastern side of Crescent Drive north of Donnelly Place; and

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

WHEREAS, the Property is 46,618 square feet in size and currently has a one-story residential dwelling on it, but the two lots comprising the Property are not dimensionally conforming and would not currently allow for the development of two homes; and

WHEREAS, the Applicant previously filed an application for the minor subdivision of the Property and for design waivers which the Board granted by resolution dated March 9, 2021 (the "March 9, 2021 Resolution"); and

WHEREAS, the March 9, 2021 Resolution included a condition requiring the Applicant to demolish the structure on the Property prior to the deadline for the perfection of the subdivision; and

WHEREAS, the Applicant failed to demolish the structure on the Property and did not take the actions necessary to timely perfect the subdivision approved through the March 9, 2021 Resolution; and

WHEREAS, consequently, the approval granted through the March 9, 2021 Resolution expired; and

WHEREAS, the Applicant subsequently filed this application seeking the variance relief necessary to retain the existing structure on the Property in its current location; and

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

(a) Side Yard Setback (Lot 6.04) – 10 feet required, 2.57 feet existing, **2.57 feet proposed (to remain)**; and

WHEREAS, the remainder of this application sought the same relief that was previously granted within the March 9, 2021 Resolution—namely, (i) to subdivide the existing lots (i.e. Lots 6.01 and 6.02) into two dimensionally conforming building lots (proposed Lots 6.03 and 6.04) along with two associated riparian lots (Lots 6.05 and 6.06), and (ii) to obtain a design waiver from the Board waiving the requirement in Section 24-9.2(d) of the Borough Code to dedicate additional width to the existing road adjoining the Property (i.e. Donnelly Place); and

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

- a. Application form signed by Applicant attaching March 9, 2021 Resolution;
- b. Amended subdivision plan prepared by R.C. Burdick dated July 2, 2021;
- c. Legal descriptions for the various lots to be created prepared by Stanley Hans, Jr., P.L.S, dated February 10, 2021; and

WHEREAS, the Board was also provided with a letter dated November 21, 2022 prepared by the Board’s Engineer and Planner Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Board held a hearing on this application on December 13, 2022 and the following exhibits were marked into evidence at that hearing:

- a. Exhibit A-1-- March 9, 2021 Resolution;
- b. Exhibits A-2A through A-2D—correspondence from Applicant’s counsel and the attorneys representing the Applicant and Lori Centrella indicating that the Applicant and Lori Centrella both consent to this application; and

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

Attorney Ronald Gasiorowski stated he was representing the applicant. Mr. Gasiorowski stated that the applicant previously filed an application with the Board in March of 2021 and said that the plans that they were submitting now were identical to the previous plans except that one of the conditions in the Resolution of approval was that the existing house would be demolished and the applicant was now requesting variance relief to allow the structure to remain on the Property. Mr. Gasiorowski presented to the Board a copy of the Resolution which was marked as Exhibit A-1.

Mr. Clark announced that due to a legal proceeding between Mr. and Mrs. Centrella he wanted to confirm that both applicants were aware of and consented to this application. Mr. Clark stated he had sent a letter to Mr. Gasiorowski who confirmed that they were aware and did consent but stated he would have each of their attorneys send a letter as well. Mr. Clark stated he had received letters from each of their attorneys confirming the same. Mr. Clark marked the letters as Exhibits A-2A through A-2D.

Mr. Gasiorowski stated to the Board that the earlier Resolution clearly states that the approval is subject to the removal of the existing house. Mr. Gasiorowski stated that he felt that the only way to handle this application is to have Mrs. Centrella remain in the home and if she were to vacate the house, for whatever reason, it would be demolished.

Mr. Gasiorowski called Robert Burdick, RC Burdick & Associates, Point Pleasant, NJ who was sworn in by Mr. Clark. Mr. Burdick stated he would be testifying as a Professional Engineer and Professional Planner and had appeared before the Board in regard to this lot. Ms. Trainor announced that Mr. Burdick was accepted by the Board as an expert witness in Engineering and Planning.

Mr. Burdick began by saying that he had prepared and submitted the previous application which was approved by the Planning Board. Mr. Burdick stated that the only difference between this application and the prior application was that the applicants are now proposing that the existing house not be demolished and that Mrs. Centrella would continue to reside in the home. Mr. Burdick stated that the request for the house demolition in the previous application was not made by the Planning Board but was made by the applicant. Mr. Burdick stated the property is a corner lot on Crescent Drive and Donnelly Place which is a paper road. Mr. Burdick stated that Donnelly Place provides access to the lot to the south and some access to their parcel and said there is no future plan for the road to be extended. Mr. Burdick stated that the applicant was before the Board for a 3-lot subdivision and then changed to a 2-lot subdivision. Mr. Burdick stated the applicant has approached the NJ DEP and has received tentative approval for riparian rights for each of the lots.

Mr. Burdick stated they had looked at some historical aerials of the property and said the existing house has been there since about 1953 and added that there was also a guest cottage at one time which had been removed. Mr. Burdick reviewed why he believed the existing house was a pre-existing non-conforming use. Mr. Burdick stated it was his opinion that the existing house

was older, not modern and would anticipate that within 20 years or so there would be two big, beautiful homes that would be fully conforming. Mr. Gasiorowski stated that the application they are presenting to the Board is specifically contingent on the fact that if Mrs. Centrella were to move out or sell the house, the approval would be vacated and what would remain is two totally conforming lots. Mr. Gasiorowski stated that he had no other questions for Mr. Burdick.

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

Mr. Stenson asked if the applicant was before the Board with the request to tear down the existing house and have two conforming lots. Mr. Burdick answered that the previous approval was to demolish the existing home.

Mr. Siano asked if the applicant was proposing that if Mrs. Centrella vacated the home, it would have to be demolished. Mr. Gasiorowski replied that it was his understanding if Mrs. Centrella vacated the home she would not be able to rent it to a third party, therefore the house would be demolished.

Ms. Brisben asked Mayor Nicol if it was true that the Borough had no desire to do anything to Donnelly Place. Mayor Nicol answered that was correct.

Mr. Burdick stated he believed there was a letter from the Tax Assessor stating that the same lot numbers in the previous approval would be used and said they would be filed by deed and said they would provide that to the Board Attorney and Engineer.

Ms. Trainor asked Mr. Gasiorowski how a restriction on Mrs. Centrella stating no other person would live on the property be memorialized. Mr. Gasiorowski answered that he proposed that in the Resolution of approval there would be specific language dealing with the variance and how it could be vacated and if Mrs. Centrella did not adhere to the approval she could be subject to the Code Enforcement. Mr. Gasiorowski stated it could also be a deed restriction. Ms. Trainor asked, if in the alternative, was the applicant asking the Board to accept that this is an existing non-conformity and to approve the subdivision and not require the house to be demolished in the future.

Mr. Gasiorowski replied that it would be subject to the provisions presented. Ms. Trainor asked Mr. Gasiorowski why it would have to be subject to the provisions and said she was concerned that it would create more problems for the future Planning Board members, Mayors and Code Enforcement Officers that are necessary. Ms. Trainor asked if it was a requirement to demolish the existing house to approve the subdivision to which Mr. Gasiorowski answered it was not.

Ms. Brisben asked Mr. Clark if it were true that the variance runs with the land and if Mrs. Centrella sold her home and the person wanted to keep the existing home, they could. Mr. Clark replied that the variance does run with the land and if the Board granted that variance then it would run with the land but if the Board granted a variance with the deed restriction that Mr. Gasiorowski is proposing then that would not be the case.

Mayor Nicol stated that he did not think it was fair to involve the Borough in the legal matters of the applicants and said he did not think it was good for the future of the Borough, future politicians and future Planning Boards. Mayor Nicol stated it should not hinge on requiring someone to live in the house and if they move they have to tear it down.

WHEREAS, the Board after carefully considering the evidence presented by the Applicants at the hearings 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 minor subdivision sought relates to a specific piece of property;
- c. The Property is 46,618 square feet in size and currently has a one-story residential dwelling on it, but the two lots comprising the Property are not dimensionally conforming and would not currently allow for the development of two homes;
- d. The Applicant previously filed an application for the minor subdivision of the Property and for design waivers which the Board granted through the March 9, 2021 Resolution.
- e. The March 9, 2021 Resolution included a condition requiring the Applicant to demolish the structure on the Property prior to the deadline for the perfection of the subdivision.
- f. The Applicant failed to demolish the structure on the Property and did not take the actions necessary to timely perfect the subdivision approved through the March 9, 2021 Resolution.
- g. Consequently, the approval granted through the March 9, 2021 Resolution expired.
- h. The Applicant subsequently filed this application seeking the variance relief necessary to retain the existing structure on the Property in its current location.
- i. The Applicant is therefore seeking the following variance relief through this application (the variances sought are highlighted in bold type below): (i) Side Yard Setback (Lot 6.04) – 10 feet required, 2.57 feet existing, **2.57 feet proposed (to remain)**.
- j. The remainder of this application sought the same relief that was previously granted within the March 9, 2021 Resolution—namely, (i) to subdivide the

existing lots (i.e. Lots 6.01 and 6.02) into two dimensionally conforming building lots (proposed Lots 6.03 and 6.04) along with two associated riparian lots (Lots 6.05 and 6.06), and (ii) to obtain a design waiver from the Board waiving the requirement in Section 24-9.2(d) of the Borough Code that “All streets shall not be less than fifty (50) feet wide between property lines, and waiving the requirement in Section 24-9.2(f) that “Subdivisions that adjoin or include existing streets that do not conform to width as shown on the Master Plan or the street width requirements of this Ordinance shall dedicate additional width along either one or both sides of said road. If the Subdivision is along one (1) side only, one-half (1/2) of the required extra width shall be conveyed to the municipality”.

- k. The Board concluded within the March 9, 2021 Resolution, and concludes again herein, that it is appropriate to grant these design waivers because requiring strict compliance with the Borough Code requirements would not be in the public interest because (i) the Borough’s acquisition of the additional right of way contemplated under the Borough Code would create an irregularly-shaped lot rather than having two dimensionally-conforming lots, (ii) it would also increase the amount of impervious cover in an area which already has sufficient impervious coverage and would be deleterious to the drainage in the area, and (iii) there is already sufficient Borough right of way in this area to serve the adjoining properties.
- l. The Board concluded within the March 9, 2021 Resolution, and concludes again herein, that the Applicant has sufficiently demonstrated that its request for the approval of a minor subdivision application should be granted.
- m. 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.
- n. The Board finds that the size of the residential lots proposed for this subdivision conform with the requirements of the R-3 Zone.
- o. The Board further finds that the one variance sought by the Applicant—a side yard setback variance—relates to a pre-existing condition (i.e. the location of the existing structure on the Property in relationship to the side boundary of the lot) which is not being exacerbated or changed through this application.
- p. The Board notes that no members of the public raised any objections to the variance relief sought by the Applicant.

- q. The Board further concludes that the purposes of the Municipal Land Use Law would be advanced by granting the variance relief requested by the Applicant and that there are no detriments caused by the variance relief proposed as the proposed lots in the subdivision meet all other setback and development regulations for buildable residential lots, such as lot coverage, building coverage and building setbacks, and the zoning anticipates the development of properties in this manner. The Board also finds that granting this variance relief will not impair the intent of the zone plan and zoning ordinance and that the variance relief can be granted without any substantial detriment to the public good.

WHEREAS, Chris Siano made a motion to approve the variance relief sought by the Applicant; this motion was seconded by Councilman Frank Garruzzo. A roll call vote was then taken on the motion as follows:

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

Noes: None

WHEREAS, Chris Siano made a motion to approve the design waiver sought by the Applicant; this motion was seconded by Councilman Frank Garruzzo. A roll call vote was then taken on the motion as follows:

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

Noes: Jay Jones

WHEREAS, Chris Siano made a motion to approve the minor subdivision application sought by the Applicant; this motion was seconded by Councilman Frank Garruzzo. A roll call vote was then taken on the motion as follows:

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

Noes: None

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Brielle, that the Applicants' application for minor subdivision approval with design waivers is hereby approved and granted subject to the following conditions:

- 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. The Applicants shall perfect this subdivision within 190 days of the date of the adoption of this resolution by filing deeds in forms approved by the Board Attorney;
- d. The lot numbers to be assigned to the lots created through this subdivision may change and are subject to the final approval of the Borough Tax Assessor; and
- e. All representations made under oath by the Applicant or his agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

A motion to approve the above Resolution was made by Chris Siano, seconded by James Stenson then by the following roll call vote:

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

Noes: None

Not eligible to vote: Charlie Tice, Amber Fernicola

OLD BUSINESS: Consideration of approval of a Resolution for a Major Subdivision for North Tamarack Drive & Route 70, Brielle Shores, Inc. to create 5 residential lots & a drainage basin.

RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF BRIELLE SHORES, INC. SEEKING MAJOR SUBDIVISION APPROVAL AND VARIANCE RELIEF FOR THE PROPERTY LOCATED AT 924-926 HIGHWAY ROUTE 70 WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 120, LOTS 13.01 AND 15 AND FOR THE

PROPERTY LOCATED AT RIVERVIEW DRIVE WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 104.01, LOT 7.02

WHEREAS, Brielle Shores, Inc. (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking major subdivision approval and variance relief for the property located at 924-926 Highway Route 70 identified on the Borough tax map as Block 120, Lots 13.01 and 15 and for the property located at Riverview Drive identified on the Borough tax map as Block 104.01, Lot 7.02 (collectively, the “Property”); and

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

WHEREAS, the Property is located within the Borough’s single-family R-2 residential zone (the “R-2 Zone”); and

WHEREAS, the Property is currently divided into three tax lots which are located on the western side of the loop between North and South Tamarack Drives and are backing up to State Highway Route 70; and

WHEREAS, the portion of the Property located at Block 120, Lot 13.01 is 40,637 square feet in size and currently contains one single-family dwelling and a detached garage; and

WHEREAS, the portion of the Property located at Block 120, Lot 15 is 10,277 square feet in size and is currently vacant; and

WHEREAS, the portion of the Property located at Block 104.01, Lot 7.02 is 130,575 square feet in size and is also currently vacant; and

WHEREAS, the Applicant is proposing to demolish the existing residence and detached garage located on Block 120, Lot 13.01 and to subdivide the Property into five (5) residential lots and one utility lot that will contain a drainage basin; and

WHEREAS, the Property was originally located within the Borough’s R-6 Townhouse Zone and had a preliminary approval to be developed with townhouses; and

WHEREAS, the Borough Council subsequently re-zoned the Property to include it within the R-2 Zone so that it can be developed in a manner consistent with the properties surrounding this Property; and

WHEREAS, the proposed subdivision creates conforming residential uses for the R-2 Zone, but the Applicant's plans propose non-conforming conditions that will require variance relief from the requirements of the Borough Code; and

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

(a) Minimum Lot Area (proposed Lot 7.08)—15,000 square feet required; **14,499 square feet proposed;**

(b) Minimum Lot Depth (proposed Lot 7.08)—125 feet required; **67.95 feet proposed;**
and

WHEREAS, the Applicant is also seeking a waiver of the requirement to submit an Environmental Impact Statement and a Traffic Report for this application; and

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

(a) Plat of Major Subdivision prepared by William H. Doolittle, P.L.S. dated June 23, 2021 (last revised March 8, 2022);

(b) Outbound Survey prepared by William H. Doolittle, P.L.S. dated May 10, 2017 (last revised September 29, 2020);

(c) Stormwater Management Report prepared by Jeffrey J. Carr, P.E., P.P. dated June 21, 2021 (last revised March 9, 2022);

(d) Preliminary and Final Subdivision Plans (9 sheets) prepared by Jeffrey J. Carr, P.E., P.P. dated June 23, 2021 (last revised February 22, 2022);

(e) Application package; and

WHEREAS, the Board was also provided with a letter dated June 6, 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 hearings on this application on October 11, 2022, November 8, 2022, and December 13, 2022 and considered the following documents presented at the hearings in connection with this application:

d. Exhibit A-1 site plan; and

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

October 11, 2022 hearing

Mr. Henderson stated he was representing the applicant and began by expressing there was a threshold issue in regard to the variances required for what he called the basin lot. Mr. Henderson stated that he was looking to resolve the issue with the Board because the testimony provided would be dependent of the outcome of that ruling. Mr. Henderson stated that Mr. Hilla had ruled that the retention basin lot must conform with the bulk requirements of the zone which creates two variances that the applicant thinks should not apply. Mr. Henderson then listed his reasons why this particular lot should not require the same variances as the other lots. Ms. Trainor asked Mr. Henderson if he had sent anything in writing to the Board secretary in regard to this issue to which Mr. Henderson answered he had not. Mr. Clark stated he felt that in fairness to the public, the Board and the Board's professionals, Mr. Henderson should submit a brief to the Board so it can be considered and reviewed. Ms. Trainor indicated to Mr. Henderson that anything he or the public wished to submit to the Board in regard to this argument would be required to be submitted by Thursday, November 3rd in keeping with the Planning Board's rules.

Mr. Henderson called Professional Engineer and Planner, Charles Lindstrom, from Lindstrom, Diessner & Carr, P.C., Brick Township, NJ., to testify. Mr. Lindstrom stated he was testifying as an engineer and a planner in this application and said that he had testified before the Board before. Mr. Lindstrom was then sworn in by Mr. Clark. Mr. Henderson asked if the Board accepted Mr. Lindstrom as an expert in engineering and as a planner. Ms. Trainor answered the Board did find Mr. Lindstrom an expert in those fields.

Mr. Lindstrom began by presenting Exhibit A-1, the site plan, previously submitted to the Board. Mr. Lindstrom used the exhibit to explain to the Board what the applicant was proposing and then explained the tree save conservation. Mr. Lindstrom stated that the NJ DEP requires a conservation restriction against the removal of any trees within the area that was shaded on the exhibit. Mr. Lindstrom described the stormwater basin that was proposed and the location of it in comparison to the proposed homes. Mr. Lindstrom stated the stormwater basin would not really be near any residential lots. Mr. Lindstrom said there are five residential lots that are significantly oversized for the zone and one undersized lot that was designed to accommodate the stormwater basin. Mr. Lindstrom stated he did not believe they should be required to seek variances for the basin lot because there would not be a home built there. Mr. Lindstrom stated the stormwater basin was designed with NJ DEP rules and regulations, had been completely approved and that a CAFRA permit for the project had been received. Mr. Lindstrom stated that the NJ DEP basically said that no water could drain towards North and South Tamarack, which is contrary to normal developmental patterns, but because so little water comes off the site in its pre-developed condition, the NJ DEP insisted that the water be collected, taken to a basin, treated in terms of stormwater quality, and then discharged less than what was coming off the property in its pre-developmental conditions. Mr. Lindstrom stated they had met all that criteria and felt there would be no impact on Tamarack Drive or the neighbors in terms of stormwater because all of the stormwater would be directed to a basin in the back of the site, not near the homes.

Mr. Henderson asked Mr. Lindstrom to address the variance that may be required for the stormwater basin lot in terms of lot size. Mr. Lindstrom said that in terms of lot area they are very close, that they could add 500 square feet, making the lot 15,000 square feet and the 150-foot depth of this would severely impact the residential lots adjacent to it. Mr. Lindstrom said the footage is not needed for a lot that is not going to be developed in any way except to have a stormwater basin. Mr. Lindstrom said the basin would be part of a Homeowner's Association that would be owned and maintained by the Association. Mr. Lindstrom stated that in his view there would not be a negative impact and would serve the 5 homes in a manner that the NJ DEP saw fit. Mr. Henderson asked Mr. Lindstrom if, in terms of the lot depth variance, he was satisfied that it met the goal of the Municipal Land Use Act. Mr. Lindstrom answered that he was satisfied. Mr. Henderson asked Mr. Lindstrom if he knew who was responsible for the Zoning change of multi-family to a single-family zone. Mr. Lindstrom replied that Bill Rathjen requested the change because to him it made sense that it should be a single-family development instead of a multi-family development.

Mr. Henderson referenced Mr. Hilla's letter and asked Mr. Lindstrom to comment on any other details of the letter that the applicant would need to comply with, other than the two variances which had been previously discussed. Mr. Lindstrom referenced certain items regarding the drainage and the calculations of the drainage and said that the calculations were done and approved by the NJ DEP and said that the basin would have some additional capacity. Mr. Henderson asked Mr. Lindstrom to explain where the water going through system would go. Mr. Lindstrom replied that the water collected from the roof drains and in front of the driveways would be collected and piped to the basin, flow to Route 70 in a very slow rate and what water that did not permeate would run down Riverview Drive and into an inlet that was built many years ago by Mr. Rathjen and then run to the Manasquan River.

Mr. Henderson asked Mr. Lindstrom if the subdivision was fully compliant in all other respects with Brielle's Ordinances. Mr. Lindstrom answered yes and said that the lots are extremely oversized and meet all of the requirements. Mr. Henderson asked Mr. Lindstrom if there were any other stipulations in Mr. Hilla's letter that the applicant would agree to. Mr. Lindstrom stated Mr. Hilla recommended that the road be overlayed because there would be some cuts in the road for the water and sewer service for the 5 lots, and said that the applicant would agree to that. Mr. Lindstrom stated there would be a small retaining wall along the 50-foot tree save area that would be installed to collect water that would then run off the site. Mr. Lindstrom stated there would not be any fill brought in for the project, that there would not be any new road construction, and that water and sewer already exist. Mr. Lindstrom stated that the applicant has received a CAFRA permit, Monmouth County approval, NJ DOT approval, and is working on approval from Freehold Soil. Mr. Henderson asked Mr. Lindstrom if the NJ DEP invented the tree save term. Mr. Lindstrom answered they did not, he thought Mr. Rathjen invented the term and said that Mr. Rathjen has been building that way as long back as the 1980's, and that the tree saves have been restrictions written in the titles. Mr. Henderson stated he had no further questions for Mr. Lindstrom.

Ms. Trainor asked Mr. Hilla if he had any questions or clarifications to make. Mr. Hilla referenced the various drainage pipes that are internal to the lots and asked if there would be an easement for any of those. Mr. Lindstrom replied that they thought that each individual homeowner would be responsible for their own roof drainage and said they have not added an overall drainage easement to the common collector pipe but it could be added to the back so that could be maintained. Mr. Hilla stated there would be pipes that cross certain properties closer to the basin that could create problems for houses further away. Mr. Lindstrom agreed and said they could provide easements to those. Mr. Hilla asked if they would tie them together to the Homeowner's Association because the Borough would not want to inherit the enforcement of people not maintaining this stuff. Mr. Henderson stated he would submit that to Mr. Hilla for review. Mr. Hilla asked Mr. Lindstrom to describe the security around the basin. Mr. Lindstrom answered they would agree to provide a fence around the basin to prevent anyone from entering the area of the basin and added that it would be a dry basin for the most part. Mr. Hilla asked where the access for the basin would be. Mr. Lindstrom replied that access would be from Route 70 which would be drawn on the plan. Mr. Hilla asked if the NJ DOT was privy to the fact that they were going to discharge into the right-of-way. Mr. Lindstrom answered that this was all submitted to the NJ DOT and that the NJ DOT had issued a subdivision permit for this. Mr. Hilla stated there would need to be a maintenance and repair plan for the basin. Mr. Lindstrom answered that they did that through the NJ DEP so they would provide that to the Board. Mr. Hilla asked for detail about the outlet structure. Mr. Lindstrom answered that if it were not on the plan, they would add that because the intention is to have one. Mr. Hilla asked if there would be an opportunity to create onsite parking or staging for trucks, personal vehicles, and materials to ensure that Tamarack Drive would remain passable and not create any traffic issues. Mr. Lindstrom answered that he thought that would be possible.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Lindstrom. Councilman Garruzzo asked how a problem with the basin would be discovered and who ultimately would discover it. Mr. Lindstrom answered that the Stormwater Maintenance Manual they had to create for the NJ DEP has a reporting requirement and an inspection requirement that

has to be done on a regular basis, so the Homeowner's Association would have to designate people to do that. Councilman Garruzzo stated the reason he raised the question was because there are not a lot of retention basins in Brielle and said that one of them has been neglected at times. Mr. Henderson stated that if the Borough ever felt like the Homeowner's Association was not handling the basin properly, the Borough would have the right, not the obligation to step in and do what needed to be done. Councilman Garruzzo asked if the homes would be built all at the same time or would they sell each lot separately. Mr. Henderson answered that they did not know yet and said these homes would not be spec homes that would fly up overnight, they would be custom homes.

Mr. Stenson asked Mr. Lindstrom to explain how the water in the drainage pipes under the homes gets to the basin. Mr. Lindstrom replied that each house would have roof leaders connected to piping underground that would run by gravity to the back of the lots and along the back of the lots and drain by gravity into the basin.

Mr. Siano asked to confirm that Mr. Lindstrom said that the basin is designed for a 100-year storm and asked for the definition of what constitutes a 100 year storm. Mr. Hilla answered that it is 9.5 inches over a 24-hour period. Mr. Siano asked if that was a NJ DEP requirement. Mr. Lindstrom answered that it was a requirement.

Mr. Jones stated he wanted to get more information on lot coverage for the primary structure. Mr. Lindstrom stated that the lots are large but added that he did not know how large the homes would ultimately be and said they were going to go back through the numbers and model the basin on what could potentially be built there and get the answers.

Ms. Brisben stated that there is a drainage lot on South Tamarack drive, known as Lake Arlene, which has created problems over the years with lack of maintenance. Ms. Brisben said the Code Enforcement Officer was out there because the fencing was in disrepair and no one was taking care of it. Ms. Brisben said Mr. Rathjen said it was not his responsibility, it was the Homeowner's Association's responsibility and that it was written in the deeds. Ms. Brisben said she looked at some of the old deeds at the County and there is no Homeowner's Association. Ms. Brisben stated she wanted to make sure that this would not happen with this retention basin and asked Mr. Henderson if he had an opinion on that. Mr. Henderson stated he did not have an opinion but said that when those homes were originally built it was probably not a requirement but currently it is a requirement. Ms. Brisben stated she was told by Mr. and Mrs. Rathjen that there was a Homeowner's Association on South Tamarack. Ms. Brisben asked Mr. Henderson if the Homeowner's Association would be reflected in the deeds to which he replied that it would be. Ms. Brisben said she was mentioning this now so the Board is aware and that this does not happen again. Mr. Clark interjected and stated that the Board wants to be sure that if a lot is built that is going to be a detection basin lot that would serve the other lots that there would be some responsible party to take responsibility for the lot. Mr. Clark said it could be an individual person or a Homeowner's Association and if it is a Homeowner's Association, the Board could require as part of its approval that as part of the subdivision that Mr. Henderson will submit the Homeowner's Association deeds to be reviewed by the Board.

Ms. Trainor stated that Mr. Lindstrom had suggested that if they adjusted the depth for the basin lot that it would mean that the basin would automatically be moved closer to the road and the other homes and asked why the basin would have to be moved if they increased the depth of the lot. Mr. Lindstrom answered that it would not necessarily have to be increased but the lot lines would have to come 50 feet closer to the road which would impact two lots pretty severely and make them irregularly shaped but the basin could stay where it is. Ms. Trainor referred to Exhibit A-1 and asked Mr. Lindstrom what was on the other side of Route 70 and if they had considered any drainage issues or contributions that may be caused to the basin based on the other side of Route 70. Mr. Lindstrom replied they had not because their basin takes water in from their site only and said there was not a way for water from the other side to get into their basin. Ms. Trainor asked what the elevation of Route 70 was. Mr. Lindstrom answered that it is 55 in that area, the spillway is 58 but it would not backflow into their basin based on the models of a 100-year storm to which Ms. Trainor responded that it was not based on the models for a 500-year storm. Ms. Trainor asked Mr. Lindstrom if he could explain where the Rathjen water runoff system drains, through which neighborhoods and where it flows into the river. Mr. Lindstrom replied that he was not originally involved in that and that said he did not know the full extent of it but said that Mr. Rathjen told him he built the drainage system that runs into the Manasquan River. Ms. Trainor asked if there would be an insurance requirement for the Homeowner's Association. Mr. Henderson responded that he believed there was but would like to reference his files. Ms. Trainor asked how, in respect to the Homeowner's Association, the statutes address the solvency or insolvency of the Homeowner's themselves and the Association. Mr. Henderson answered he did not think they did and said most people use a not for profit 15A corporation.

Ms. Fernicola asked if they would be building the basin at the same time as the lots. Mr. Lindstrom replied that the basin would have to be in effect before the lots are built and impervious coverage starts forming on the lots.

Ms. Brisben asked Mr. Lindstrom to explain the reason they are asking for a waiver on the environmental impact statement. Mr. Lindstrom responded the main reason was because they had already gone through a rigorous review by the NJ DEP and they saw fit to approve it. Mr. Lindstrom added that the NJ DEP not only looks at the drainage but they also look at the development, the environment, and threatened and/or endangered species. Ms. Trainor stated that because the application had gone beyond the 45-minute timeframe and because the Board had asked for some new information, it was her suggestion that Mr. Henderson ask Mr. Lindstrom to return to the next meeting to present any additional information. Ms. Trainor stated that then the Board could ask any other questions they may have. Mr. Henderson agreed with Ms. Trainor's suggestion.

November 8, 2022 hearing

Ms. Trainor began by explaining in detail the manner in which Planning Board meetings in New Jersey are heard. Ms. Trainor said that the reason meetings are conducted this way is so everyone has a chance to be heard.

Ms. Trainor started by saying that she understood that the Board would be revisiting a motion Mr. Henderson presented at the October meeting and said that it was her understanding

that Mr. Henderson had submitted something in writing to Mr. Clark. Ms. Trainor stated she had asked Mr. Clark to review that submission and provide a recommendation to the Board with respect to the motion.

Mr. Clark stated that after the last meeting, he had received from Mr. Henderson a written outline of his client's position, which he had distributed to the Board members and secretary. Mr. Clark said that what he had received was essentially citations to various things, many of which Mr. Henderson had already put on the Record orally at this last meeting. Mr. Clark stated Mr. Henderson cited what the definition of a lot and a detention basin is under the Municipal Land Use Law. Mr. Clark stated that when these issues were first raised, Mr. Hilla, Board Engineer, had determined that two variances were needed, one for Lot size and one for Lot depth because there were five lots being proposed for residential use and one lots for a detention basin. Mr. Clark stated it was Mr. Hilla's position was that there is no distinction between a lot being developed as a house and a lot being developed as a detention basin and if the Borough code states all lots must be a certain size or a variance would be required, then that is what is needed. Mr. Clark stated it was his recommendation that the Board deny Mr. Henderson's motion and explained to the Board in detail the reasons for his recommendation. Mr. Clark stated that he felt if the motion was denied and if Mr. Henderson needed to supplement the applicant's testimony to address these variances, that it should be provided with that opportunity.

Ms. Trainor asked the Board members if they had any questions about Mr. Clark's recommendation. Hearing none, Ms. Trainor asked for a motion to accept the recommendation of the Board Attorney, Mr. Clark. James Stenson made a motion, seconded by Councilman Garruzzo, and followed by the roll call vote.

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

Noes: None

Mr. Henderson stated he would like to reserve his right to make arguments on the Board's decision and said he thought he had already presented evidence but would like to think about it while he was proceeding with the rest of the case. Mr. Henderson stated he believed that they had left off with a number of stipulations they had made based upon Mr. Hilla's review letter and then listed the item numbers 4, 5, 6, 7, 8-stipulated as needed based on Mr. Hilla's inspections, 9, 10, and 11. Mr. Henderson said that he believed at the end of the prior meeting the Board had asked them to specifically address if the drainage system and the enforcement of the drainage system were adequate.

Mr. Henderson called Mr. Lindstrom, who had been previously sworn in by Mr. Clark, to testify. Mr. Lindstrom began by saying that at the end of the last meeting, he was asked to look at the drainage regarding the basin and the development of the lots. Mr. Lindstrom stated he was asked to show the lots developed at a higher percentage than what is shown on Exhibit A-1. Mr. Lindstrom displayed Exhibit A-1 and described those changes and calculations to the Board. Mr. Lindstrom stated that the basin could handle the changes and said that the basin is oversized for the amount of water that would go into it.

Mr. Henderson asked Mr. Lindstrom if, in his professional opinion as a Planner and an Engineer, was the applicant's discussion with the Board of what could be included and excluded reasonable and balanced. Mr. Lindstrom answered that he thought that what the applicant proposed was reasonable, if not overly conservative, because under the Ordinance, lots are allowed 20% and they were proposing 20% for the houses but 30 % for the rest of the Lots so people could put in other impervious items. Mr. Lindstrom stated the Lots are extremely large, much larger than the Ordinance requires with the exception of the basin lot which he said does not have to be any larger to serve its purpose. Mr. Henderson asked Mr. Lindstrom if one of the purposes of the Municipal Land Use Law is to prevent flooding and if this detention basin was an aid to prevent flooding, to which Mr. Lindstrom responded yes. Mr. Henderson then asked if the basin would advance the purpose of the Municipal Land Use Law and if there were any negatives associated with the basin lot bearing in mind that the Board has determined that two variances were required. Mr. Lindstrom stated he did not think that there were any negatives and explained his reasoning to the Board.

Mr. Henderson asked Mr. Lindstrom to confirm that the basin lot would be deed restricted, would be used only as a drainage basin, would have a stipulation that a house could never be built on the lot, and that whoever inherits the job of maintaining the basin lot would follow the operational manual submitted to CAFRA with reporting and inspection requirements reported to the local government. Mr. Lindstrom confirmed that what Mr. Henderson said was correct.

Mr. Henderson stated to the Board that he would submit to Mr. Clark for review a copy of the governing documents dealing with the Homeowner's Association, the enforceability which is essentially through a lien which could be enforced by the Borough. Mr. Henderson stated they had considered putting the basin on one of the other lots but NJDEP would not allow that so that was not an option. Mr. Clark asked Mr. Henderson if the NJDEP accepts the proposal of a Homeowner's Association to which he replied that they did.

Ms. Trainor asked if Mr. Lindstrom had any other testimony to present to the Board, Mr. Henderson said he did not and that they were finished. Ms. Trainor asked if any Board members had any questions based on the testimony provided this evening.

Ms. Brisben asked Mr. Henderson if he had received the letter dated October 26, 2022 from Freehold Soil Conservation District asking for revised plans. Mr. Lindstrom answered that they had received the letter and are in the process of responding to that letter.

Ms. Trainor asked for more information about the drainage into the river. Mr. Lindstrom stated he remembered that he had been asked about the drainage on Route 70 and said Route 70 is divided in that area so there would not be anything from the other side of the road. Mr. Lindstrom stated there would be a very small flow from the basin down onto Route 70 right-of-way down to an inlet on Riverview Drive and then to the river. Mr. Lindstrom used Exhibit A-1 to demonstrate this to the Board. Ms. Brisben stated Riverview Drive is a county road and asked if the County would be involved in any part of it. Mr. Lindstrom answered that they did submit everything to the Monmouth County Planning Board and they did approve the plans.

Mayor Nicol, Councilman Garruzzo, James Stenson, Chris Siano, Jay Jones, Stephanie Frith, and Amber Fernicola did not have any questions for Mr. Lindstrom.

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

Mr. Daniel Burke, 1013 Cedar Lane, asked Mr. Lindstrom if the storm water report provides for the flow rates in the new proposed NJDEP regulations. Mr. Lindstrom replied that they started working on this five years ago and have been working with the NJDEP during that time. Mr. Lindstrom stated that the applicant's system was not designed for those flow rates because they were not in effect at that time. Mr. Lindstrom stated the current Ordinance and current rules and regulations are met with the design they have created. Mr. Burke asked how the basin lot would be landscaped. Mr. Lindstrom replied that generally it would be a natural vegetative slope on the edges of the basin and that the bottom would be a sand bottom to allow infiltration down to the bottom. Mr. Burke asked if a buffer could be provided from the highway to Lots 7.07 and 7.06. Mr. Lindstrom answered that he did not think they could provide a tree save buffer on the Route 70 side because it is basically a graded area. Mr. Lindstrom stated they did attempt to reduce the buffers near the adjacent residential homes on Lot 7.07 and Lot 7.03 but the NJDEP would not let them change the deeded easement. Mr. Burke asked who is in control of the deeded easements. Mr. Lindstrom answered that the NJDEP is in control of them. Mr. Burke asked if Lot 7.03 would be a part of the Homeowner's Association. Mr. Lindstrom replied that it would because the NJDEP considers the project to be an entire development and insisted that all five lots must have a common Homeowner's Association. Mr. Burke asked if the retaining wall proposed was suitable for the intended purpose. Mr. Lindstrom replied they would defer that determination to Mr. Hilla and would make any repairs or replacements of the wall if necessary.

Mr. Jeremy Leary, 19 South Tamarack Drive, was sworn in by Mr. Clark and asked Mr. Lindstrom to explain what the treatment for the new water filtration system would be. Mr. Lindstrom described to Mr. Leary how the proposed basin would work. Mr. Leary asked what the fence on the basin lot would look like. Mr. Lindstrom answered that they had not yet finalized what type of fence would be used.

Mr. Daniel Turak, 21 South Tamarack Drive, was sworn in by Mr. Clark. Mr. Turak asked based on the calculation of runoff, what figures were used for the size of the homes. Mr. Lindstrom answered Mr. Turak's question by describing the figures that were used. Mr. Turak asked how many different Homeowner Associations exist in the neighborhood already. Mr. Henderson suggested to Mr. Turak that if he gathered some representatives from the neighborhood, he would be happy to meet with them and go through the paperwork. Mr. Turak stated he would be happy to do that.

Mr. Jeff Nissim, 10 North Tamarack Drive, was sworn in by Mr. Clark. Mr. Nissim asked if there would be parking on the street for the 5 houses. Mr. Lindstrom answered that he could not control the street but the lots will have driveways and garages.

Ms. Dorothy Schulze, 1010 Shore Drive, was sworn in by Mr. Clark. Ms. Schulze asked if the variances for the basin were denied what other plans would the applicant have. Mr. Lindstrom replied that he felt the variances should be granted and did not have any contingency plans if they

were not granted. Ms. Schultz stated to Mr. Lindstrom the variances had already been denied by the Board to which Mr. Clark explained that the Board had not yet determined whether the variances would be granted or not.

Ms. Ann Nissim, 10 North Tamarack Drive, was sworn in by Mr. Clark. Ms. Nissim referred to the tree save plan and asked if there was a plan to replace any trees that were knocked down during the development of the homes. Mr. Henderson said there is a replacement plan for trees in the tree save. Ms. Nissim referenced noise from the highway and asked if there was any consideration of what types of replacement trees would be planted. Mr. Lindstrom answered that this would almost be self-regulating and said that the houses would experience most of the noise and in fact the houses would block a lot of the noise. Ms. Nissim asked if after the houses are developed and a bunch of trees die a year or two later, how would they go about replacing those trees. Mr. Lindstrom answered that the Conservation Restrictions are in favor of the NJDEP so if the trees come down in that area, that would be a violation and could be turned over to the NJDEP and they could require some replanting of the trees.

Ms. Trainor asked if there were any other questions from the public. Hearing none, Ms. Trainor closed the public question portion of the application and stated that in light of the conversations Mr. Henderson had offered to have with members of the community it would make sense to carry the application to the next meeting to allow time for those conversations to occur. The hearing on this application was therefore adjourned for the evening and carried to the December meeting.

December 13, 2022 hearing

Attorney Keith Henderson, Henderson & Henderson, Manasquan, NJ, stated he was representing the applicant. Mr. Clark stated that Mr. Lindstrom had finished his testimony, was questioned by the Board and by the public and believed that Mr. Henderson had stated he had no other witnesses to present to the Board. Ms. Trainor then announced it was time for comments from the public.

Daniel Burke, Cedar Lane, was sworn in by Mr. Clark. Mr. Burke expressed concerns with the tree save, drainage basin, the retaining wall and storm water maintenance.

Jeff Clayton, Aldrin Lane, was sworn in by Mr. Clark. Mr. Clayton stated that some of his concerns were already addressed by Mr. Burke and then added other concerns with regard to the trees, sound, and the basin lot.

Anne Nissim, 10 North Tamarack, was sworn in by Mr. Clark. Ms. Nissim expressed concerns with noise, the 50-foot tree save and asked if a traffic study could be done.

Denise Clayton, Aldrin Lane, was sworn in by Mr. Clark. Ms. Clayton expressed concerns with the proposed Homeowner's Association, the drainage basin, traffic, and parking of construction vehicles.

Tuesday, January 10, 2023

Hearing no other comments, the public comment portion was closed and it was time for comments from the Board.

Mayor Nicol stated he did not have any major problems with the application and felt that any drainage concerns could be worked out between the Board Engineer and the applicant. Mayor Nicol also said that the applicant has a reputation of leaving as much vegetation on a lot as possible. Mayor Nicol stated there was a report submitted by the traffic expert in the Police Department that stated that there they were confident that the traffic would be controlled correctly.

Councilman Garruzzo stated he had heard the concerns from the residents and felt that Mr. Lindstrom had addressed many of the questions and thought his analysis was very well presented. Councilman Garruzzo stated he did have similar concerns with the Homeowner's Association and stated that Mr. Henderson did say that there are now laws in place to make the Homeowner's Association work, with consequences if not maintained. Councilman Garruzzo stated he did not have too many concerns with the application and felt that Mr. Henderson and his expert, Mr. Lindstrom, had done a good job presenting the application.

Mr. Stenson stated he had concerns with the Homeowner's Association and felt that the Board needed to make sure there were documents in place to cover the maintenance of the H.O.A. and when the houses are bought, it is understood what is expected. Mr. Stenson also stated he wanted to make sure that the water calculation for run-off that was presented was for 20%.

Mr. Siano stated he agreed with Mr. Stenson and stated he felt there were some loose ends that needed to be tied up in regard to the Homeowner's Association.

Mr. Jones began by saying he remembered when the area was all woods and what a shock it was when the building had started back then so he understood the neighbors' concerns. Mr. Jones stated he felt it was important to have the tree-save buffer for the noise. Mr. Jones stated the lots are large and said he believed the homes would be very nice.

Ms. Frith stated she had three things that were concerning to her, the enforcement of the Homeowner's Association, the drainage and the tree save buffer.

Ms. Brisben stated she also remembered when the area was all woods and said that the applicant had received approval from the Planning Board for a major subdivision, done in pieces, in the 1980's. Ms. Brisben stated that the applicant has been very good regarding the tree easement and it has been listed in the deeds. Ms. Brisben stated she believed that Mr. Henderson had said that the basin was created under NJ DEP rules and regulations and thought that the state could override any decisions by the Board in regard to that. Ms. Brisben stated she did have concerns about the Homeowner's Association but felt that Mr. Clark would make sure it was done properly. Ms. Brisben referenced the traffic report and said the Police Department stated they have no concerns and said the Planning Board does not have any jurisdiction with what goes on with public streets. Ms. Brisben stated she felt that the application was covered very well and did not have any issues with it.

Ms. Trainor stated that due to the fact that the Police Department had submitted a letter to the Board stating there were no traffic safety concerns, she felt a traffic study was not necessary. Ms. Trainor stated she did hear the comment regarding construction traffic and thought that this had been addressed at a prior meeting and said there was a kind request that the construction vehicles would be parked on the lots being developed to the extent that it could be arranged. Ms. Trainor stated the Board could have requested an environmental impact study but said she did not think it was necessary given the NJ DEP had reviewed this application at length. Ms. Trainor stated that Mr. Hilla had also reviewed the plans and had advised the Board that the NJ DEP did approve the basin as proposed to the Board. Ms. Trainor stated that what the Board is being asked to approve is the variance for the size of the lot where the basin sits. Ms. Trainor referenced the proposed Homeowner's Association and said she accepts the representation from Mr. Henderson that the rules have changed in the matter of documentation and the Homeowner's Association would be part of a deed restriction for each of the properties. Ms. Trainor stated she found Mr. Lindstrom's testimony credible and was unchallenged in the manner he described the drainage and the elevations of the drainage.

Ms. Trainor asked Mr. Henderson if he had any closing remarks to make. Mr. Henderson began by saying that he thought the largest concern was the enforcement issue and said there was a document filed with CAFRA which is a manual that deals with the Homeowner's Association that he would submit to the Planning Board and the Borough. Mr. Henderson stated that because the application is under the jurisdiction of the NJ DEP, the applicant was required to seek a CAFRA permit and said the CAFRA permit is what generates the need for the detention basin. Mr. Henderson stated that the Stormwater Management Operation Maintenance Manual is very well defined to what has to be done, maintenance of the structure, ongoing maintenance, equipment needed and the cost. Mr. Henderson stated that the applicant has been doing tree saves for much longer than CAFRA. Mr. Clark listed for the Board the stipulations that the applicant had previously agreed to in respect to Mr. Hilla's letter. Mr. Hilla and Ms. Trainor listed other stipulations that were not addressed by Mr. Clark. Mr. Henderson confirmed that the applicant had stipulated to those items listed.

Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had listed. Karen Brisben made a motion, seconded by Jay Jones, and followed by the roll call vote.

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

- r. 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.
- s. The Applicant is the owner of the Property.

- t. The Property is located within the R-2 Zone which permits the development of lots with single-family housing meeting the zone's bulk and size requirements.
- u. The Property is currently divided into three tax lots which are located on the western side of the loop between North and South Tamarack Drives and are backing up to State Highway Route 70.
- v. The portion of the Property located at Block 120, Lot 13.01 is 40,637 square feet in size and currently contains one single-family dwelling and a detached garage.
- w. The portion of the Property located at Block 120, Lot 15 is 10,277 square feet in size and is currently vacant.
- x. The portion of the Property located at Block 104.01, Lot 7.02 is 130,575 square feet in size and is also currently vacant.
- y. The Applicant is proposing to demolish the existing residence and detached garage located on Block 120, Lot 13.01 and to subdivide the Property into five (5) residential lots and one utility lot that will contain a drainage basin.
- z. The Property was originally located within the Borough's R-6 Townhouse Zone and had a preliminary approval to be developed with townhouses.
- aa. The Borough Council subsequently re-zoned the Property to include it within the R-2 Zone so that it can be developed in a manner consistent with the properties surrounding this Property.
- bb. The proposed subdivision creates conforming residential uses for the R-2 Zone, but the Applicant's plans propose non-conforming conditions that will require variance relief from the requirements of the Borough Code.
- cc. The Applicant is seeking the following variance relief through its application (the variance relief sought is shown in bold type): (i) Minimum Lot Area (proposed Lot 7.08)—15,000 square feet required; **14,499 square feet proposed**; (ii) Minimum Lot Depth (proposed Lot 7.08)—125 feet required; **67.95 feet proposed**.
- dd. The Applicant is also seeking a waiver of the requirement to submit an Environmental Impact Statement and a Traffic Study for this application.
- ee. The Board finds that it is appropriate to grant a waiver of the requirement for the Applicant to submit a Traffic Study since the Borough Police Department had submitted a letter to the Board stating there were no traffic safety concerns relating to this subdivision.

- ff. The Board also finds that it is appropriate to grant a waiver of the requirement for the Applicant to submit an Environmental Impact Statement since this project has already been reviewed and approved by the NJDEP and CAFRA.
- gg. 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.
- hh. The Board finds that the five residential lots proposed for this subdivision are all oversized lots conforming to all of the requirements of the R-2 Zone.
- ii. The Board also finds that the Detention Basin Lot has certain non-conformities from the lot size requirements of the R-2 zone requiring variance relief, but that testimony was provided demonstrating that the Detention Basin Lot is appropriately sized for its intended use as a detention basin and that the Detention Basin Lot, as designed, furthers one of the purposes of the Municipal Land Use Law (i.e. prevent flooding) and that there are no negative impacts caused by these deviations.
- jj. 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.
- kk. The Board has not identified any detriments caused by the variance relief proposed as the proposed lots in the subdivision meet all other setback and development regulations for buildable residential lots, such as lot coverage, building coverage and building setbacks, and the zoning anticipates the development of properties with lots of this size, and developments of this size require a detention basin.
- ll. The Board also finds that granting this variance relief will not impair, and rather will further, the intent of the zone plan and zoning ordinance for the reasons set forth herein; and
- mm. For these reasons, the Board finds that the purposes of the Borough Code and the Municipal Land Use Law would be advanced by this proposed development and the benefits of the variances sought outweigh any detriments.

WHEREAS, Karen Brisben moved to approve the application with the conditions as described herein; this motion was seconded by Jay Jones. At that time the application was approved by the following roll call vote:

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

Noes: Stephanie Frith, Chris Siano

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

- a. The Applicant shall obtain final lot numbers for the subdivided lots from the Borough Tax Assessor and, if the lot numbers are different from those currently shown on the Applicant's plans, then the Applicant shall revise its plans to reflect the lot numbers assigned by the Tax Assessor and shall submit the revised plans to the Board Secretary as further described within these conditions.
- b. The deeds for the subdivided residential lots shall contain deed restrictions requiring that the owners of all of the residential lots located within the subdivision shall be members of a homeowner's association homeowner's association that will be adequately funded and adequately insured in conformance with industry standards and that such homeowner's association will be responsible for insuring and maintaining all of the common areas of the Property, including but not limited to the Detention Basin Lot and the common collector pipes that are part of the subdivision's drainage system. These deed restrictions must also indicate that the members of the homeowner's association shall comply with the inspection and maintenance requirements set forth within the Stormwater Management Operation Maintenance Manual included as part of the CAFRA permit for this project. The deeds for the residential lots shall be submitted by the Applicant to the Board Attorney for review and approval prior to title being conveyed to any purchasers of the subdivided residential lots.
- c. The deed for the Detention Basin Lot shall include a deed restriction requiring that the lot shall remain as a utility lot and never be used for the development of a residential use. The deed for the Detention Basin Lot shall be submitted by the Applicant to the Board Attorney for review and approval prior to title being conveyed to the homeowner's association for the subdivision.
- d. The Applicant shall install a fence around the Detention Basin Lot to prevent unauthorized access. The size, location and materials used for the fence shall comply with Borough Code requirements and will be reviewed and approved by the Board Engineer. Access to the Detention Basin Lot will be from the Route 70 side of the lot.

- e. This memorializing resolution setting forth the terms and conditions of the Board's approval of this subdivision shall be referenced within and appended to the deeds of conveyance for all of the subdivided lots.
- f. The formation documents for the homeowner's association that will be created to take ownership of the common areas of this subdivision shall be submitted to the Board Attorney for review and approval prior to the creation of the homeowner's association.
- g. The Applicant's site plans shall be revised to reflect the modifications regarding the sanitary sewer lateral details described within paragraph #4 of the technical review letter dated June 6, 2022 issued by the Board Engineer.
- h. The water service connection detail in the Applicant's site plans site shall be revised to show the inclusion of a saddle with two stainless steel straps as described within paragraph #4 of the technical review letter dated June 6, 2022 issued by the Board Engineer.
- i. The Applicant agrees and stipulates that no outside fill shall be used in the development of this Property.
- j. The Applicant shall provide full width paving of any portions of the roadway on North Tamarack or South Tamarack impacted by construction of this subdivision as directed by, and to the satisfaction of, the Board Engineer.
- k. The Applicant shall comply with the Tree Save requirements described within its plans, shall record easements for the Tree Save areas, and shall arrange to replace in kind any trees located within the Tree Save areas which are removed, damaged, or that die.
- l. Within ninety (90) days of the date of the adoption of this resolution, the Applicant shall obtain concurrence from the New Jersey Department of Transportation (the "NJDOT") for the design of the Detention Basin Lot and shall file such proof of NJDOT concurrence with the Board Secretary.
- m. The Applicant shall revise its plans to include detail of the outlet structure from the detention basin on the Detention Basin Lot.
- n. Within ninety (90) days of the date of the adoption of this resolution, the Applicant shall submit its revised drainage calculations to the Board Secretary showing that the detention basin on the Detention Basin Lot has sufficient capacity to address the anticipated drainage from the residential lots in the subdivision.
- o. The Applicant shall limit, to the extent practicable, its use of the public streets during the construction phase of this subdivision and shall locate construction

materials and vehicles on the Property whenever possible. In furtherance of these efforts, the Applicant shall submit a staging plan for its construction activities to the Board Engineer for his review and approval, and the Applicant shall comply with the Board Engineer's directives regarding the staging of this construction.

- p. The Applicant shall also, to the extent practicable, manage the rate of soil removal from the Property so as to reduce or eliminate any adverse impact on drainage from the Property to neighboring properties during the construction phase of the project, and shall comply with any directives from the Board Engineer regarding this issue.
- q. Within ninety (90) days of the date of the adoption of this resolution, the Applicant shall submit the Stormwater Management Operation Maintenance Manual inspection for the Detention Basin Lot to Board Secretary.
- r. Within ninety (90) days of the date of the adoption of this resolution, the Applicant shall submit five (5) sets of revised plans to the Board Secretary memorializing all of the revisions to the plans described within these conditions.
- s. The Applicant shall record and file a subdivision plat conforming to the requirements of the Municipal Land Use Law within the time period required under N.J.S.A. 40:55D-54, unless such time period is extended as authorized under N.J.S.A. 40:55D-52.
- t. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- u. The Board's approval of this application is expressly conditioned upon the approval of this application by all other outside agencies whose approvals may be required for this project, including but not limited to CAFRA, the NJDEP, the NJDOT, and Monmouth County.
- v. 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.
- w. All representations made under oath by the Applicant or its agents shall be deemed conditions of this approval, and any misrepresentations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of this approval.

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

Tuesday, January 10, 2023

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

Noes: None

Not eligible to vote: Chris Siano, Charlie Tice, Amber Fernicola

NEW BUSINESS: Application for Minor Subdivision for Block 43.01, Lot 3, 626 Cedarcrest Drive, owned by 626 Cedarcrest Drive, LLC, to create 3 buildable lots.

Attorney Keith Henderson, Henderson & Henderson, Manasquan, NJ, stated he was representing the applicant. Mr. Henderson stated that the applicant was before the board seeking a minor subdivision. Mr. Pat Ward, InSite Engineering, Wall Township, NJ was called to testify. Mr. Ward was sworn in by Mr. Clark. Mr. Ward stated he was a Professional Engineer and would be testifying as such, and stated that he had testified before this Board and others before. Mr. Ward was accepted by the Board as an expert in engineering.

Mr. Henderson began by asking Mr. Ward if he prepared the required subdivision plat for this application and if he had seen Mr. Hilla's review letter to which he replied he had. Mr. Ward described to the Board which items in Mr. Hilla's letter the applicant had agreed to comply with. Mr. Henderson stated that Mr. Hilla's letter was only two pages long so there was no need for a lot of comment and said they were now prepared to answer any questions or hear any suggestions from the Board in regard to the application.

Ms. Trainor asked Mr. Hilla if he had any clarifying points to add to which Mr. Hilla replied that he did not. Ms. Trainor then announced it was time to hear questions from the Board. Ms. Brisben referred to Mr. Hilla's letter, item 1 stating that the Subdivision Plat was not signed. Ms. Brisben added that when the applicant submits revised plans, she would need 5 sets that are signed and sealed. Mayor Nicol, Councilman Garruzzo, Mr. Stenson, Ms. Trainor, Mr. Siano, Mr. Jones, Mr. Tice, and Ms. Fernicola did not have any questions.

Ms. Trainor announced it was time to hear questions from the Public for Mr. Ward. Hearing none, Ms. Trainor asked Mr. Henderson if he had anything else to add. Mr. Henderson stated he did not and he respectfully asked the Board to take a vote and approve the application.

Ms. Trainor announced it was time to hear comments from the public with respect to the application. Hearing none, Ms. Trainor announced it was time to hear comments from the Board. Councilman Garruzzo, Mr. Stenson, Mr. Jones, stated they did not have any issues with the application. Mayor Nicol, Ms. Trainor, Chris Siano, Ms. Brisben, Mr. Tice, Ms. Fernicola stated they had no comments to make.

Mr. Clark then listed for the Board the stipulations that the applicant had agreed to with respect to Mr. Hilla's letter.

Tuesday, January 10, 2023

Ms. Trainor asked for a motion to approve the application with the conditions Mr. Clark had listed. James Stenson made a motion, seconded by Karen Brisben, and followed by the roll call vote.

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

Noes: None

NEW BUSINESS: Application for Major Subdivision (& possible Use Variance) for Block 62.02, Lots 3 & 7, 704-708 Rathjen Road & 801 Schoolhouse Road, Rathjen Road property owned by Christie, A.B. et al & W. Rathjen, Sr., Schoolhouse Road property owned by Sean & Beth Ann Savage; Applicant — Roger Mumford Homes, Brielle, LLC. Proposed Major Subdivision to create 12 Single Family dwelling lots & 2 Open Space Lots. Request of Waiver for 1) identification of individual trees with a diameter of 6 inches or greater; 2) Traffic Report; and 3) Environmental Impact Statement. Board to determine if Use Variance applies.

Michael Rubino, Esq. came forward to represent the applicant in this matter. Before starting, James Stenson had to recuse himself and to step down from the dais because he lives within 200 feet of this property. Mr. Clark also wanted to inform the Board that the first phase of this application is to hear the applicant's request for interpretation of certain Borough Code provisions as that will impact whether the applicant requires use variance relief on its application or not. Since a request for interpretation can only be made by a Zoning Board of Adjustment, both the Mayor and the Councilman will have to step off the dais and not participate in this phase of the application. Once this phase of the application is completed, then a determination can be made as to whether D variance relief is needed (in which case, the Board of Adjustment will continue to have jurisdiction and the Mayor and Councilman will not participate in the hearings), or whether this application does not require such variance relief (in which case, the Planning Board will have jurisdiction and the Mayor and Councilman can participate in the hearings).

Mr. Rubino wanted to bring to the Board's attention that he had represented Board Member Mr. Siano for a Minor Subdivision in the beginning of 2022, but that the matter in which he represented Mr. Siano is now closed and completed. After a discussion between the attorneys and Ms. Trainor, it was decided that Mr. Siano did not have a conflict of interest and was eligible to hear this matter and Mr. Siano agreed. Ms. Trainor then asked if anyone in the audience had any objection to Mr. Siano hearing this application, there was no response from the audience but Roger McLaughlin, Esq., an Attorney from Wall, came forward to state that he was representing two contiguous property owners (Mr. and Mrs. Coyle and Mr. and Mrs. Stenson) as an objecting attorney, and that he had no issue with Mr. Siano participating in this case.

Mr. Rubino said he sent out a rather long notice to property owners within 200 feet and felt this was a little confusing, but they were here tonight asking the Board for an interpretation as to whether or not Article 10 of the Ordinance, which has Cluster Housing provisions, applies to this application or not. Ms. Trainor asked Mr. Rubino if he was asking for clarification for all of Article 10 or certain parts of it. Mr. Rubino said there are 3 parts of the subsection he wanted to address under Article 10; Section A (21-53.4), which states in part that: "A cluster residential development

for single-family dwelling purposes occupying 20 acres or more shall be a permitted use in an R-1 Zone.” He then addressed Section C (21-53.4) regarding 25% common use, and Section E “portion of land to be donated for public purposes shall be a useable, single, five-acre tract.” Ms. Trainor also referred to 21-12.1 and Mr. Rubino said he was addressing that as well, Section C.

Ms. Trainor then asked Mr. Clark to explain this for the audience, before Mr. Rubino started the presentation of the applicant’s testimony, and Mr. Clark indicated that one of the powers of the Board of Adjustment is to review a request from an applicant to interpret Code provisions and give its interpretation of those Code provisions, and that this interpretation is necessary so that the applicant knows what proofs to present on the merits of its application. The Board has to determine if some of the sections Mr. Rubino referred to are applicable to this application and, if so, the applicant will need a “D” Variance, a Use Variance, to obtain relief from those Code provisions. On the other hand, if these Code provisions are found not to be applicable, then there would be no need for variance relief. There are certain guidelines in the interpretation of statutes and ordinances and the Board herein should review the Ordinances and determine if there are inconsistencies between the requirements of the Ordinances and, if so, then the Board may identify the inconsistency and try to interpret the Ordinance in a way that will eliminate that inconsistency. All this is to show the applicant what they need to prove during the merits phase of its application. Mr. Clark further indicated that he had given written guidance to the Board in accordance with what Mr. Rubino submitted, this in regard to Cluster Zoning which is allowed in two zones in town, R-1 Zone and R-2 Zone (the property being considered is in the R-2 Zone). If there is Cluster Zoning, it is referred to in Article 10. At this time Ms. Trainor asked if the public has the chance to question any witnesses and Mr. Clark felt that since there is a right for the public to ask questions for any other development application, that same procedure should be used for this request for an interpretation as well. Even if there were no witnesses testifying, the public would still have the opportunity to speak; objectors would have the right to do the same. Mr. Clark added that the Board may have to break down the vote on several subsections to decide if that particular subsection applies or not, with a roll call vote.

Mr. Rubino agreed with the procedure outlines provided by Mr. Clark and started the applicant’s testimony by speaking about the Board Engineer’s report and open items in that report but he wanted the Board to hear testimony and then decide on this. He then asked that Roger Mumford testify so the Board can hear what he is proposing and after that he had a Planner to testify. Roger Mumford, Roger Mumford Homes, the applicant, then came forward and was sworn in; he had an exhibit showing his plans for the cluster housing and also had one to face the audience so they could follow along. Mr. Clark marked the Exhibit as A-1, plan done by French & Parrello, sheet 9 of 17, two identical plans just color coded a little differently. Mr. McLaughlin had an objection to this but Mr. Rubino said this was part of what was submitted to the Board; Ms. Trainor verified that it is part of what has been submitted to the Board and overruled Mr. McLaughlin’s objection.

Mr. Mumford said that, when they originally looked at this property, they analyzed it and looked at the constraints in regard to the highway, drainage, etc. and this is why he hired French & Parrello as they are very experienced in this type of application. The plans he was showing were referred to as “the Cluster”, the lots are larger than conventional lots, as another exhibit he had, which was marked as A-2, sheet 1 of 1, Rathjen Road Development, showing the plan without cluster housing. Mrs. Brisben, Board Secretary, noted this was submitted to the Board members. Mr. Mumford

said the conventional plan has twelve homes and the cluster housing has twelve homes, this is to show there really are not profound differences, other than having a shorter cul-de-sac for the cluster housing as they did not want to take trees down where they didn't have to for noise mitigation along the highway. They also wanted to maximize the difference between the homes and neighbors, and also wanted to have a situation where Rathjen Road is extended and housing started not right at the beginning of the project, he referred to this as "elegant design". He explained that "cluster" does not mean more homes--rather, it refers to the density of the homes—and that cluster housing that allows them to do things that are beneficial for the neighbors vs. the conventional plan. He again stated these are not wildly different plans and this is what he wants to show to everyone, the cluster will have a shorter roadway and less impervious coverage.

As Mr. Mumford was done with his testimony the hearing was opened for questions to Mr. Mumford and Mr. Siano wanted confirmation that he was showing both cluster and conventional and Mr. Mumford said yes; Mr. Siano asked Mr. Mumford if he was definitely proposing cluster housing and the answer was yes. As no other Board members had questions for Mr. Mumford the public was asked if had questions for Mr. Mumford. Mr. McLaughlin had no questions. John R. Tassini of 815 Rathjen Road then came forward and was sworn in. Mr. Tassini said that he was trying to understand this portion of the application as the two color renderings presented by Mr. Mumford, who said they were the same, are not the same and he questioned this, the one plan showed a basin and the second one did not. Mr. Mumford agreed that one does say basin and one says sand basin. Ms. Trainor asked that the exhibits are marked again so they can be different and Mr. Clark marked the original Exhibit A-1 as A-1a (facing the Board) and Exhibit A-2 as A-2a (facing the audience). Mr. Tassini noted the first exhibit had basins and the second one does not show them, Mr. Mumford said that was correct. Mr. Tassini then asked if there were going to be 14 lots, 12 with single family homes & Mr. Mumford said yes. Mr. Tassini then asked if they would have two-car garages and Mr. Mumford said yes. Mr. Rubino spoke at this time and objected, he felt this was beyond the scope of the presentation this evening for interpretation, the plans are just showing what is being preliminary proposed and not getting into details of what the homes are going to look like. Mr. Tassini felt this was in the scope of what is being presented. He then said the Ordinance calls for open recreational space by way of a single parcel and this plan does not show this. Mr. Mumford started to explain but Mr. Tassini wanted a yes or no answer and there then was a discussion among Ms. Trainor and Mr. Rubino on the scope of these questions, Ms. Trainor reminded Mr. Rubino that he is the one that wanted to go with Mr. Mumford first and not the Professional Planner. Mr. Rubino still felt this was beyond the scope of this presentation.

Mr. Tassini then asked about retaining walls and catch basins and Mr. Mumford said this is shown on both plans. At this time Ms. Trainor asked Mr. Tassini to please move on as there were others that had questions and she would like to hear from them, she told Mr. Tassini he would have opportunities at a later time to come forward again. She then asked if anyone else had questions only to Mr. Mumford at this time and Mr. John Sheehan, 719 Schoolhouse Road came forward and was sworn in. He said the applicant has requested no environmental plan, no traffic study and Mr. Rubino said they are here tonight for an interpretation of the Ordinance, the rest will be addressed at a later time and Ms. Trainor agreed with Mr. Rubino; she said that, depending on the decision made this evening by the Board, these other issues will be determined on a later date. Once this determination is made on the request for interpretation, the Board will then hear the

substantive information on this application and at that time his questions will be right on point. Mr. Sheehan then had one more question, has the Brielle Environmental Commission been involved in this. Ms. Trainor said the Board has not gotten to that part of the application as yet, they are going step by step and he can be heard again when the time is appropriate.

As there were no more questions, that portion of the hearing was closed. Mr. Rubino then asked the Planner, Ms. Cofone, to come forward and Mr. McLaughlin had an objection to this, he spoke about what Mr. Clark had explained earlier, this hearing is about interpretation of a Statute, to be made by the Board. He was not aware of any authority that would allow the Board to consider testimony of a Professional Planner in determining interpretation of an Ordinance. On this basis he objected to the testimony of a Professional Planner. Mr. Rubino responded and felt the Board, put in this position, certainly has the right to look outside the words written and to listen to an expert trained in that law as to what is proposed. He felt it would be wise to listen to her testimony. Ms. Trainor then asked Mr. McLaughlin if he submitted anything to the Board in writing prior to this hearing and he did not, he did send an email to Mr. Clark but no written information to the Board. He again said he did not feel listening to a Professional Planner was part of this request for interpretation, there is no ruling on this. At this time Ms. Trainor asked the Board Attorney, Mr. Clark, his thoughts on this. He said he did not know what Ms. Cofone will be actually testifying about, it is possible that some of the testimony may be further descriptions that will help the Board in regards to the Ordinance, how many acres are required and in regard to this project, things like that; he did agree with Mr. McLaughlin that ultimately the decision is a legal determination and the Board is sitting as a Judge and it can decide what may be proper or not in testimony. He felt this was up to the Board but was not sure what the Planner would be testifying on and if it goes beyond the legal issues. Ms. Trainor then asked Mr. Rubino if he wanted to proceed and he did, they are not going into Planning testimony and felt Ms. Cofone's statement are important to help frame the issues here. Ms. Trainor was going to hold Mr. McLaughlin's objection for now and this can be decided at a later time depending on the testimony.

At this time Christine Nazzaro-Cofone came forward and was sworn in, 135 Half-Mile Road, Red Bank, N.J., Cofone Consulting Group, LLC, she is the Principal and Owner. She has been testifying as a Planner in the State of NJ for almost 28 years, was qualified in Brielle a long time ago and has been qualified by over 450 Boards in the State as an expert witness in the field of Planning. She also stated other positions she has held and was accepted as an expert witness. Mr. Rubino clarified she was here tonight to speak on Article X (10) of the Ordinance and its application as to cluster housing in the R-2 zone.

Ms. Cofone started speaking of Section 21-53.4 and if that applies to the subject tract, but said she had to step back to Section 21-12 which governs the R-2 single family residential zone. Section 21-12.1 deals with the permitted uses in that Zone; detached one-family dwelling as a principal structure. 21-12-12.1A, Section B goes on to list the accessory buildings, Section C reads the following uses are permitted subject to the approval of the Planning Board and the special conditions of Article 10 of this chapter; No. 1 of that says Cluster, detached, one-family dwellings. Then there is another section, 21-12.2, Development Standards which goes on to set the first part of that with subsection A. Single-family (non-cluster), then it goes on under item 1. Principal Buildings, item 2, Accessory Uses. The Ordinance goes on to subsection B. Single-family (cluster), this is the section of the Ordinance that she believed was applicable to the subject

property. She did not think there was a need to go into the Conditional Use Standards that are in Article 21-53.4. In that section, #A and the way it reads: “A cluster residential development for single-family dwelling purposes occupying 20 acres or more shall be a permitted use in the R-1 Zone. Nothing in this section shall be construed to allow a development of this type to exceed the number of lots which would be permissible under normal development procedures.” She went on to say the subject property is not in the R-1 Zone and is not 20 acres so she had a difficult time, as a Planner, applying that section to this tract or any other tract in the R-2 Zone. Further, the Ordinance, as she reads it, sets up at 21-12.1 the permitted uses in the R-2 zone; she then read 21.12.2 about creating development standards. Those development standards, at Section b. set for the bulk standards at (a) through (j) for a cluster development and puts a parenthesis around the word “cluster.” This clearly shows an intent in that Ordinance that these are a permitted use and tends to treat this differently than with bulk standards.

She then addressed why clustering is allowed, it doesn’t change the yield, if you are allowed 10 lots that is what you are allowed in conventional zoning or in cluster zoning, so you are not using cluster to get more lots, you are using it to come up with a more efficient lot layout with less impervious coverage and less tree clearing. She felt that Brielle would allow this, under Section 21-53.4, subsection E. – “a portion of the land to be donated for public purposes shall be at least a usable, single, five acre tract.” She said that these standards are intended to apply to those tracts of land that are 20 acres or more that are more appropriate for these standards and not to the tract in question. She felt the clustering view is clear as well as non-cluster development in the R-2 Zone.

As Ms. Cofone was done, Ms. Trainor noted it was past the 45 minutes allowed but she wanted to go forward as the room was full of people wanting to hear this and the Board agreed. The hearing was opened to the objecting attorney and Mr. McLaughlin did have questions. He asked Ms. Cofone to agree with him that, under the Municipal Land Use Law, there are several kinds of uses along with permitted uses and she did agree with him. He then said that permitted uses are allowed without special provisions and Ms. Cofone answered, “sometimes yes and sometimes no”, she has seen Ordinances that are not so cut and dry. Mr. McLaughlin then said a Conditional Use is one that is permitted in a Zone subject to certain specified conditions and Ms. Cofone said yes. He also asked her to agree with him in looking at the Ordinance the first thing to look at is the plain language of that Ordinance and she did not understand his question. He said that the first thing is to look at an Ordinance to see if its language is clear and Ms. Cofone agreed. He then referred to 21-12.1 and noted she pointed out subsection C. as well as mentioning A. and B. He asked if a single-family structure is permitted in the zone and she said yes. He then went to subsection C. regarding uses permitted subject to approval by the Planning Board and special conditions of Article 10 and Ms. Cofone agreed that is what it reads. Subsection (1) is cluster one-family dwellings and she agreed. Mr. McLaughlin then noted the cluster development is allowed in the R-2 Zone subject to the conditions of Article 10, Ms. Cofone again agreed.

Mr. McLaughlin said Article 10 of Chapter 21 starts off with Section 21.53.4, Ms. Cofone said yes; he then noted that provision of Article 10 refers to cluster residential development and Ms. Cofone said that was correct. He said this section of the Ordinance contains 9 special conditions and Ms. Cofone agreed; so Mr. McLaughlin said if the plain language of this is taken, Section 21-12.1C says the cluster housing is subject to the special conditions of Article 10 and he wanted to know if those 9 conditions are applicable here? Ms. Cofone supposed it can be looked at this way

but noted the language about this applying to the R-1 zone with 20 acres or more. Mr. McLaughlin said that was not his question and Ms. Cofone was pontificating, Mr. Rubino objected to this and Ms. Trainor felt the question was asked and she was giving her answer. Mr. McLaughlin said his question pertained to Section 21-12.1-C.1 and wasn't the plain language of that subject to the provision of Article 10? Ms. Cofone then read the plain language of the Ordinance; she said one of the special conditions of Article 10 is that the tract is 20 acres or more and shall be a permitted use in the R-1 Zone; the is one of the special conditions of the Ordinance. Mr. McLaughlin said her testimony was that none of those 9 special conditions should apply to a cluster development in the R-2 Zone. Ms. Cofone said that was absolutely correct and referred to Section 21-12.2, subsection B.

Mr. McLaughlin then asked what does Section 21-12.1-C.1 mean, if anything? She said that cluster family is permitted in the R-2 zone that was 20 acres or more and then the 9 special conditions can be applied. It is counter-intuitive to apply this when there is another part of the Ordinance that applies to cluster development in the R-2 zone. Mr. McLaughlin then asked again what does Section 21-12.1 mean? Ms. Cofone said it applies to tracts of 20 acres or more and felt this was an inarticulate method to use to try to apply this to the property in question.

As Mr. McLaughlin had no further questions, Ms. Trainor asked Mr. Rubino if he had any comments and he did not, so the hearing was now open for Board questions. Ms. Trainor started by saying Mr. Rubino had asked for an interpretation of subsection C. at the start of this evening and she heard no testimony on this from Ms. Cofone and asked her about this, Section 21-53.4C. Ms. Cofone did have an opinion and read this: "The number of dwelling units permitted shall be determined by multiplying the number of acres times the permitted number of dwelling units per acre in this zone . . . this percentage shall not include street or other paved facilities." Her opinion was that this is not applicable to this tract of land of the application; this is clearly intended for larger tracts and not for the R-2 zone. Ms. Trainor asked if some of the conditions can be applied and others not and Ms. Cofone said no, it is either all or none and the application before the Board is not for a Conditional Use, if these are applied it becomes a "D" variance. She again said she did not think this Statute applies. She then went over her previous testimony on cluster housing and non-cluster housing and Article 10 on a tract over 20 acres. She felt that this Ordinance was for larger tracts of land but then had provisions for smaller area of Brielle to encourage cluster housing.

The Board then had a turn for questions. Mr. Jones and Mr. Siano had no questions, Mrs. Brisben commented that she keeps getting thrown off by Ms. Cofone referring to the R-1 zone when this property is in the R-2 zone, no other Board members had any questions so the hearing was opened to the public for questions to Ms. Cofone.

Mr. Tassini came forward again and asked for confirmation that this application is for a Major Subdivision R-2 Zone Cluster Residential Development and Ms. Cofone answered this is for an interpretation to be followed by a Major Subdivision application. Mr. Tassini then asked if she knew what type of application this is and she said it is an interpretation, she did not offer any testimony on the merits of a Major Subdivision or plan, this is related to the Major Subdivision plan but this part is an interpretation of the Zoning Ordinance. Mr. Tassini then asked if she was here in support of this application and Ms. Cofone said yes, for an interpretation. Mr. Tassini said

that, among the conditions of the Borough's Ordinance, there are various types of conditions for this type of development, correct? Ms. Cofone said she assumed he was speaking of a Major Subdivision and the answer was yes, there is a checklist that has to be gone through. Mr. Tassini was not satisfied with this answer and felt his question required a yes or no answer and he repeated it; her answer was no, it provides a checklist of items that have to be submitted. He asked if she agreed that one of the conditions is for open recreational space, she said that was not applicable to this application, it would only apply if the Conditional Use Section of the Ordinance was used. Mr. Tassini then asked it be put on the record that the exhibit shown by Mumford Homes does not show a parcel for recreational open space. As there were no other questions for Ms. Cofone from the audience or Board, her testimony was considered done and Ms. Trainor thanked her for her time.

Mr. Rubino said he had no other witnesses this evening and neither did Mr. McLaughlin so the hearing was opened for public comments and then the legal arguments. Ms. Trainor again explained to the audience that this is not for the subdivision application, it is public comments on the legal issue of how the Ordinance is interpreted, this is the only issue at this time. Mr. Tassini came forward again and said that administrative agencies, such as this Board, find the facts and apply the law and are consistent with the Ordinance. The Governing Body passes an Ordinance for a reason, they do it with intent and with conditions because it means something to the plans and quality of life in Brielle, and that the Board applies the law of the Governing Body. The conditions, in this case, are significant to the quality of life here and the Ordinances in town.

Alice Kavanaugh, 838 William Drive, then came forward and was sworn in. She wanted to echo what Mr. Tassini indicated, there is no sense in her repeating it, the Board has to be very careful in deviating from the plain meaning of the language. As there were no more comments from the audience, that portion of the hearing was closed and Ms. Trainor opened the meeting to the legal arguments from the attorneys.

Mr. McLaughlin, attorney for the objectors, then spoke and started by stating he had no qualms regarding Ms. Cofone and her qualifications, she is an excellent Professional Planner and does a great job; her interpretation of the Ordinance, however, leaves something to be desired. The truth of the matter is you can't interpret an Ordinance by skipping sections that hurt your argument, it doesn't work that way. Ms. Cofone says we should look at 21-12.1 and read A, B doesn't apply, jump over C and jump over to 12.2, this is not the way to interpret an Ordinance. He further stated that Section C of 21-12.1 is there for a reason and the very plain reason is to make Cluster housing as detached one-family dwellings a Conditional Use and not a Permitted Use in the R-2 zone. He asked the Board to look at the Ordinances and noted that Article 10 speaks of Cluster housing in the R-1 zone subject to the conditions in that Chapter. He felt the Ordinances for R-1 and R-2 are set up the same way and have the same meaning; this is a Conditional Use and not a Permitted Use and he felt this was clear. The question becomes the 9 conditions that are listed in Ordinance 21, one can make the argument as to whether there is an ambiguity there because it refers to R-1 zone and not the R-2 zone. There are 9 separate conditions and Ms. Cofone did not go through all of them but they can be applied to any property of any size. The argument that the 20 acre provision that is in paragraph A should or should not apply to the R-2 zone and that is a different argument. But one can't argue that cluster, one-family dwellings are, in fact, a Conditional Use and not a Permitted Use in the R-2 Zone. If they are not, then subsection C has no meaning. A Statute

means something, it means what it says and they are not written to mean nothing and the only way the Board can accept the Applicant's position in respect to this type of development is if the Board completely ignores subsection C. This can't be done and this is, in fact, a Conditional Use and it does not comply with all 9 conditions; the applicant needs a Use Variance. The applicant can come back and make arguments about whether or not they think there is an ambiguity there and whether or not those conditions should apply wholly or in part but there is no question that the Ordinance says that this is a Conditional Use and subject to the conditions of Article 10; there is no way to get around that and there are no rules about skipping provisions in an Ordinance, there are no rules that say it is okay to skip a section because it doesn't meet with the rest of your interpretation. The Board is required, by the rules of Statutory Construction, to read every provision and to assume what every provision means and was put into the Ordinance for a reason, then the plain language is taken and, if there is an ambiguity it is tried to be resolved. Ms. Trainor asked if there is, under the Rules of Statutory Construction, a rule indicating that one can sever the improper or illegal or nonsensical items and Mr. McLaughlin said no, he felt she was referring to a provision that most Ordinances, when they are adopted, will say something about any clause or provision or chapter of the Ordinance being determined invalid by a Court of Competent Jurisdiction, that shall not affect or impair or invalidate any other provision of the Ordinance. This rule does not necessarily apply to Statutory Construction but it means that, even if a Court is looking at it and feels a section violates the Constitution, the rest of the Ordinance is not thrown out, the rest of the Ordinance is applied. In this case it is not a question of any section being invalid, a section cannot be thrown out and has to be complied with. Ms. Trainor asked about this provision about sections being invalid and Mr. McLaughlin said that Ordinances can be amended at times if they are inconsistent, it is not in the Code itself.

Mr. Clark felt he could add some light to this and he had asked the Borough Administrator to give the Board the legislative history of the cluster housing provisions of the Borough Code. The Borough Administrator provided an Ordinance adopted in 1972 and amended through Ordinance 255 and Ordinance 592, which is a large Ordinance and which has a Section 89-68 which states that "if any section, subsection, paragraph, clause, phrase or provision of the Ordinance that is deemed invalid it shall not affect the validity of the Ordinance"; he thought this is the type of clause that Mr. McLaughlin was referring to.

Mr. McLaughlin finished his argument and Mr. Rubino asked for a brief period to speak to his client and he was granted two minutes. Mr. Rubino came back and thanked all who participated, he and his client appreciated all the comments made. He felt that Ms. Cofone's testimony was clear and logical, the provisions under the R-2 Ordinance have clearly defined standards as to what applies, lot sizes, and so forth for Cluster Housing. There is a provision, and this is where you get an ambiguity, the provision in Article 10, Section 21-53.4, and it starts off with the intent of the Ordinance, which he felt applies to the Golf Course (which is in the R-1 zone) as he did not know of any other 20 acre open space in town. This opens with Cluster development for single family development purposes occupying 20 acres or more shall be a permitted use in the R-1 zone. This is where the ambiguity comes in because the property for tonight is in an R-2 zone and there are no lots in town that are 20 acres; they don't believe that 21-53.4 applies in the R-2 zone and it applies to lots that are 20 acres or more. If you have a 5 or 6 acre lot and have to set a 5 acre tract aside for public purposes it makes no sense. There are standards in the R-2 zone that enumerate the lot sizes, frontages, etc. He again said this section 21-53.4 does not apply.

Ms. Trainor then turned to Mr. Hilla, as it was his report that first raised these issues, and Mr. Hilla indicated that he believes that the R-2 Ordinance, as applied to this development, calls for this to be a Conditional Use, Section 21-12.1C and the conditions that Article 10 would apply, this is his interpretation as shown in Item 1 of his review letter. The applicant has chosen to seek an interpretation as to whether that is correct or not and the Board heard from both sides as to the relative merits one way or the other.

Mr. Clark then spoke and went over the basic principles; when there is an interpretation of an Ordinance, such as Mr. McLaughlin speaking about Statutory Construction, the Board acts as both a fact-finder and a finder-of-law, making legal conclusions for variances about whether or not Zoning Standards have been met. There is a principle in law that when the Board is reviewing a Statute or Ordinance that the Board should attempt to give all of the words and sections of the Ordinance meaning and, to the extent practical, the Board should not disregard any sections, however, there can be instances where there are words or sentences that are ambiguous and require further interpretation, and there can be times where there are inconsistencies, as may be here, where one section says one thing and one that says another, and in that case the Board has to resolve that inconsistency. In terms of the issues presented tonight, he would note that, and Mr. McLaughlin brought this up as well, that if the Board looks at Section 21-11.1, which is permitted uses in the R-1 zone, it has pretty much the mirror language of what is later in the R-2 zone, subsection D which speaks of uses subject to the approval of the Planning Board and the special conditions of Article 10 and Cluster Housing is spoken of. Then looking at Section 21-12.1, subsection C, it is essentially the mirror image for the R-2 zone which the same language; so, both the R-1 and R-2 are directed to Article 10, that is the way he reads this and feels this interpretation honors the plain language of those two sections. When you go to Article 10, Section 21.53.4, there are 9 conditions and Mr. Clark felt these are important and quoted subsection A which spoke of the R-1 zone and he did not feel it was applicable to the R-2 zone. But the beginning section does not say the 9 conditions apply only to the R-1 zone, it is only a modifier of subsection A. "The purpose of this section is to provide a method of development of residential land which will nevertheless preserve desirable open spaces, including flood plains, school sites, recreation and park area and lands for other public purposes, by reducing the lot sizes without increasing the number of lots permitted." Essentially, in Mr. Clark's view, it is a statement of what cluster housing is and then it lists a number of conditions. Subsection A, the first of the 9 conditions, does not seem to apply as it speaks of the R-1 zone. He then referred to subsection E that speaks of a 5 acre tract to be donated for public use; he felt this was clear but was something the Board will have to decide; there also is, in subsection C a clause that speaks of 25% of the gross acreage be set aside for common use and noted that 25% of 20 acres, as noted in subsection A, would be 5 acres, as told in subsection E. The property in question this evening is 7 acres so this leads to questionable results as far as the subsections go. He felt there may be an inconsistency between the conditions but, otherwise, his interpretation is similar to Mr. Hilla's, in that the Cluster Housing is subject to Article 10 and, if the Board goes condition by condition, some of those conditions may not make sense to apply to this tract.

He concluded by stating these are his general thoughts by reading the Borough Code provisions based on his understanding of the law. He did agree with Mr. McLaughlin on the severance clauses spoken about and that a Court may invalidate a part of an Ordinance but try to keep the rest and

only remove that which is inconsistent. He did remind the Board again that this is their decision, the power is with them for the interpretation. He did note that Mr. Rubino, in the beginning, was only addressing subsections A, C & E of Section 21-53.4 for interpretations, but, it seems from the testimony, is they are now asking for a determination for Article 10 entirely and that the 9 conditions of Article 10 are not applicable to this application. If the Board agrees with this, the applicant will not need a D variance but if there is found a need for variance relief in this matter, it becomes a D variance application and will be heard by the Zoning Board and not the Planning Board.

Ms. Trainor told Mr. Rubino that she understood, at the outset, that only subsections A, C & E were being addressed and Mr. Rubino said that Ms. Cofone completely disagrees with that. Ms. Trainor asked for a clarification as Mr. Clark said that the entire Article 10 was being asked for an interpretation. Mr. Rubino said the memo he had send to the Board addressed part or all of 21.53-4 and, specifically, if the Board finds whether or not subsections A, C & E apply. Ms. Cofone believed that, because of the way the Ordinance is set up, none of that applies. Ms. Trainor wanted to hear Board comments and do a series of motions to try to answer the interpretation question. Ms. Trainor started with her comments, Mr. McLaughlin made an objection at the outset to Ms. Cofone's testimony and she reserved, with respect, that objection and she was going to overrule his objection and consider Ms. Cofone's testimony in respect to this application. She accepted some of what Mr. McLaughlin has put forward, she accepted that the intent of subsection C is to make Cluster one-family dwellings a Conditional Use subject to Article 10. Also, in her opinion, the preface of Article 10 looks like it applies; however, there are certain provisions that are nonsensical and can't apply as Mr. Clark identified, such as subsection A which refers to the R-1 zone. Mr. Rubino also asked about subsection E, which spoke of a 5 acre tract and Ms. Trainor felt this applied to subsection A, C & E together. She did note that is to be a certain percentage set aside for open space. Therefore, she did not feel, under the circumstances of the current application and parcel, it makes sense to set aside 5 acres for open space but she did feel, as the Ordinance reads, there is to be 25% set aside for open space. She felt that Mr. Hilla's letter, dated 12/15/22, also made that clear. Mr. Jones felt this was quite a lot to digest and he was going to go back home and review the codes, he had no comments at this time. Mr. Siano agreed with Ms. Trainor's commentary 100%, there are conditions and there is a gray area where certain things apply and the Board has to take it at face value as it comes to the application. Mrs. Brisben agreed with Mr. McLaughlin about this being a Conditional Use as well as Mr. Hilla's report, there are too many gray areas here and she felt the applicant was pushing things to make them apply here for a Permitted Use. She felt this was a Conditional Use and needed a Use Variance. Mr. Tice agreed with Mrs. Brisben's comments and with the need for 25% being set aside, this does call for a Conditional Use. Ms. Fernicola agreed with what was said by the other Board members and it is a Conditional Use.

Mr. Clark said that the applicant has asked for a ruling that Article 10, Section 21-53.4 does not apply to this application. So even though it sounds like the Board does not agree with that, there should be a motion and a second and if everyone votes no, that answers the ruling. Then there can be another vote on what applies and what doesn't apply as to the subsections. At this time Mrs. Brisben made a motion to rule upon the applicant's request for Section 21-53.4 and that it does not apply to this application, she did this to get the vote done. However, there was no second so the Board turned to a second motion to construe that Section 21-53.4 does apply to the Mumford

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application; there was no response. Ms. Trainor then asked for someone to make a motion that Section 21-53.4A does not apply to the application and this was done by Mr. Siano, seconded Mrs. Brisben and then by the following roll call vote:

Ayes: Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Ms. Trainor then asked for a motion that 21-53.4E does not apply to the Mumford application; a motion was made by Mr. Siano, seconded by Mrs. Brisben and then by the following roll call vote:

Ayes: Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Ms. Trainor then asked for a motion to construe subsection C as requiring a 25% set aside with respect to Article 21-53.4. This motion was made by Mr. Siano, seconded by Mr. Tice and then by the following roll call vote:

Ayes: Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice, Amber Fernicola

Noes: None

Ms. Trainor then asked Mr. Rubino if there was any other question he would like answered and he asked for a blanket opinion on the other provisions of this Section. Mr. Clark said subsection A was ruled out, subsection C was ruled in so the rest can be voted on, but Ms. Trainor said the Board did not hear about the rest of the 9 provisions, Mr. Rubino had asked for the Board to address subsections A, C & E, the other were not spoken about; Ms. Trainor again reminded Mr. Rubino that she had asked him at the beginning on this. Mr. Rubino said they can comply with the rest and Mr. Clark added this may be a moot issue anyway. Mr. Rubino summarized that subsection A is out, E is out and the rest are in. There was then a discussion as Ms. Trainor again said the Board did not address the rest and voted on subsection C, which was in.

Mr. Clark had a question for Mr. Rubino and said that Mr. Rubino had requested a Special Meeting and the Board has given him January 24th for this, but, given the rulings tonight, are they going to be ready to proceed on the 24th and Mr. Rubino said they would like to carry this to another date, Mrs. Brisben asked him if he wanted to carry this to the February meeting which will be on Feb. 21st, the 3rd Tuesday, due to the Winter Break the week before when school is closed and some members will not be present. After a brief discussion with the applicant, Mr. Rubino asked to be present at the February 21st meeting, the next regular meeting and cancel the Jan 24th Special Meeting date which Mr. Rubino said he had noticed for.

Mr. Clark announced to the audience that the January 24th meeting has been cancelled and this hearing will continue at the next regular meeting of the Board which will be Tuesday, February

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21st, 2023 at 7:00 at the Borough Hall, no further notice will be given unless there is a substantial change to the plans.

At this time Ms. Trainor asked if any member of the public wanted to address the Board on any other business not on the agenda and there was no response. As there was no other business to come before the Board a motion to adjourn was made and seconded with unanimous vote, all aye. The meeting was adjourned at 9:34 p.m.

Denise Murphy, Recording Secretary

Approved: February 21st, 2023