

Tuesday, April 4, 2023

**BRIELLE PLANNING BOARD  
TUESDAY, APRIL 4<sup>th</sup>, 2023**

The Regular Meeting of the Brielle Planning Board was held on Tuesday, April 4<sup>th</sup>, 2023 at 7:00 p.m., in the Brielle Borough Hall, 601 Union Lane. Ms. Trainor read the OPMA compliance statement. After a moment of silent prayer and a Salute to the Flag, roll call was taken:

Present – James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice

Absent – Mayor Thomas Nicol, Councilman Frank Garruzzo, Stephanie Frith, Amber Fernicola

Also present were Mr. David Clark, Board Attorney, Mr. Alan Hilla, Board Engineer and Ms. Denise Murphy, Recording Secretary. There were 8 people in the audience.

A motion was made to approve the Minutes of March 14<sup>th</sup>, 2023, this done by Karen Brisben, seconded by Jay Jones, all ayes, no nays.

CORRESPONDENCE: January/February issue of the NJ Planner. Notice to DEP, CAFRA General Permit for Block 106, Lots 1.04 & 1.05, 1018 Quail Place to allow reconstruction of a single family home & accessory development.

OLD BUSINESS: Consideration of Resolution for Block 99.03, Lot 8, 920 Cole Drive, owned by Gina Addeo, to allow an addition/alteration.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE APPLICATION OF GINA ADDEO SEEKING VARIANCE RELIEF FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS ON THE PROPERTY LOCATED AT 920 COLE DRIVE IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 99.03, LOTS 8 AND 8.01**

**WHEREAS**, Gina Addeo (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief to construct certain improvements as described more fully herein on the property owned by the Applicant located at 920 Cole Drive identified on the tax map of the Borough of Brielle as Block 99.03, Lots 8 and 8.01(collectively, the “Property”); and

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

**WHEREAS**, the Property currently contains a two-story frame dwelling with an attached garage and other ancillary structures; and

**WHEREAS**, the Applicant is proposing to remodel the existing structures on the Property and to also install new landscaping on the Property as described more fully within the plans submitted with this application; and

**WHEREAS**, the existing and proposed use are conforming to the zone; and

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

- (a) Lot Width—100 feet required; 94.8 feet existing; and

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

- (a) Lot Coverage—20% maximum allowable; 20.9% existing; **21.42% proposed**; and

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

- (a) plot plan prepared by John W. Lord, P.L.S. dated November 29, 2022;
- (b) landscape site plan prepared by Celia Dehuff, L.L.A. dated revised November 28, 2022;
- (c) architectural plans (6 sheets) prepared by Peter D. Dorne, R.A. dated September 22, 2022;
- (d) a Zoning Permit denial letter from the Zoning Officer dated September 23, 2022 and revised on February 27, 2023; and
- (e) an application package signed by the Applicant; and

**WHEREAS**, the Board was also provided with a letter dated March 2, 2023 prepared by Alan Hilla, P.E., P.P., C.M.E. of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS**, the Planning Board held a hearing on this application on March 14, 2023 and considered the following documents presented as exhibits at the hearing:

- (a) Exhibit A-1 proposed frontage of house (document A-2.0 prepared by Peter Dorne);
- (b) Exhibit A-2 plot plan (prepared by John Lord); and

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

Attorney Keith Henderson, Henderson & Henderson, Manasquan, NJ, stated he was representing the applicant. Mr. Henderson said that the application was relatively simple with two nonconformities, one that is pre-existing and one very small variance that the applicant is seeking approval for. Mr. Henderson stated he had two witnesses to present and asked them to be sworn in. Mr. John Lord, FP&L Associates, Inc., and Mr. Peter Dorne, Peter Dorne Architects, were sworn in by Mr. Clark. Mr. Lord stated he would be testifying as both Engineer and Planner and Mr. Dorne stated he would be testifying as an Architect.

Mr. Dorne stated he was a licensed Architect in the state of New Jersey and had given professional testimony before many Planning Boards and Boards of Adjustment. Ms. Trainor announced that the Board accepted Mr. Dorne as an expert witness in Architecture.

Mr. Dorne began by displaying a document that he called A-2.0, Commission Number 6930. This exhibit was marked as A-1. Mr. Dorne described the exhibit as the proposed frontage of the home. Mr. Dorne stated that the applicant had contacted him because she wanted to change the design of the home from a Mediterranean style to a shingled style home which Mr. Dorne thought would be more appropriate for the water front. Mr. Dorne then referred to Exhibit A-1 and began to identify the changes that the applicant was proposing. Mr. Henderson referred to Mr. Hilla's letter and asked Mr. Dorne to address Mr. Hilla's concerns with attic space, drainage, and the variance needed for coverage. Mr. Dorne stated that the rooms in the attic space had been eliminated and that space would only be used for storage and for the mechanical system and said that the drainage referenced in the letter was left to Mr. Lord. Mr. Dorne then described the details of the variance that the applicant was seeking. Mr. Dorne finished by saying it was his professional opinion that the proposed plan would enhance the visual look of the house. Mr. Henderson stated he had no other questions for Mr. Dorne.

Ms. Trainor announced it was time to hear questions from the public for Mr. Dorne. Hearing none, Ms. Trainor announced it was time to hear questions from the Board. Councilman

Garruzzo asked about the inconsistency in the coverage percentages between the Zoning application and the Planning Board application. Mr. Henderson replied that the coverage they were seeking is 21.42%. Mr. Jones asked what the height of the cupola from the center was. Mr. Dorne answered it was 36.5 feet from the ridge and the cupola was another 15 feet. Mr. Henderson stated there was not a variance required for the cupola. Mr. Hilla stated he did check the Borough Ordinances and confirmed that Mr. Henderson was correct. Ms. Brisben referred to Mr. Hilla's letter and said on page two, it says that sheet A1.1 depicting Section A on sheet A3.0 was not submitted with the plans and asked if that one copy of missing sheet could be submitted to the Planning Board. Mr. Dorne stated they would supply a copy to the Board. Ms. Trainor stated that Mr. Dorne had testified that they had eliminated a side yard setback and asked Mr. Dorne to explain that in more detail. Mr. Dorne answered they had two different visions and the one they had chosen would no longer need a side yard setback variance. Mayor Nicol and Ms. Fernicola did not have any questions for Mr. Dorne.

Mr. Henderson called Mr. John Lord to testify. Mr. Lord stated he was a Professional Engineer and Professional Planner and had given testimony before Planning Boards and Boards of Adjustment in the State of New Jersey. Ms. Trainor announced that the Board accepted Mr. Lord as an expert witness in Planning and Engineering.

Mr. Henderson asked Mr. Lord if he had reviewed that coverage variance the applicant was seeking. Mr. Lord replied he had and then presented Exhibit A-2, described as the Plot Plan. Mr. Lord described the details of the exhibit to the Board. Mr. Lord stated that he had looked at the neighboring properties and said that the variance would not be visible from the street. Mr. Lord asserted that it was his professional opinion that there would not be a negative impact on the public good or the Zoning plan. Mr. Lord also said that the variance the applicant was seeking was minor and that the proposed changes would be a great improvement to the property and the house. Mr. Henderson referred to the part of Mr. Hilla's letter regarding the drainage and asked if Mr. Lord could address that. Mr. Lord said that the drainage on the lot would run to the river and said they were proposing to run all of the down spouts from the house, along the edge of the house to the river, which would take care of around 90% of the runoff. Mr. Lord referred to a comment about the street/driveway and stated that they would work with Mr. Hilla and would comply with his requests. Mr. Henderson stated he had no further questions for Mr. Lord.

Ms. Trainor announced it was time to hear questions from the public for Mr. Lord. As there were no members of the public present, Ms. Trainor closed that portion of the meeting and asked the Board if they had any questions for Mr. Lord. Mr. Jones stated he was concerned about the drainage and asked Mr. Hilla if he could make any suggestions regarding that issue. Mr. Hilla answered that Mr. Lord's testimony about the drainage was an acceptable treatment for the stormwater. Ms. Brisben asked if it were true that a drywell was not needed because the runoff would go directly to the river. Mr. Lord answered that was true. Ms. Brisben asked if the applicant was planning on removing any trees. Mr. Lord replied that they were not planning on disturbing any of the mature trees on the property and said it was their intention to save as many trees as possible. Mayor Nicol, Councilman Garruzzo, Ms. Trainor, and Ms. Fernicola did not have any questions for Mr. Lord. Mr. Henderson stated he had concluded his application.

Ms. Trainor announced as there was no public in attendance to make comments, that portion was closed and it was time to hear comments from the Board.

Mayor Nicol stated he felt it was a good application and did not have any issues to address. Councilman Garruzzo stated that he agreed with Mayor Nicol, said the variance being sought was minor, that it would be an asset to the community. Mr. Jones said he thought the property was beautiful, that the new elevations would also look beautiful but said he had some concerns with the height of the cupola. Ms. Brisben said she felt the change would be beautiful and asked Mr. Henderson if the house would be shingled. Mr. Henderson answered that the house would be shingled. Ms. Fernicola stated she thought it would be an improvement. Ms. Trainor stated she accepted the testimony of the engineer and planner in respect to the negative and positive criteria and believed the applicant had met the requirements for variance relief.

Mr. Clark then listed the stipulations that the applicant had agreed to. Ms. Trainor asked for a motion to approve the application with the stipulations Mr. Clark had listed. Councilman Frank Garruzzo made a motion, seconded by Karen Brisben, and followed by the roll call vote.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Property is located within the Borough's R-2 residential zone.
- c. The Property currently contains a two-story frame dwelling with an attached garage and other ancillary structures.
- d. The Applicant is proposing to remodel the existing structures on the Property and to also install new landscaping on the Property as described more fully within the plans submitted with this application.
- e. The existing and proposed use are conforming to the zone.
- f. The Property has the following non-conformity which is not being impacted or changed by this application: (i) Lot Width—100 feet required; 94.8 feet existing.
- g. The Applicant filed an application with the Board seeking the following variance relief (the variances sought are highlighted in bold type below): (i) Lot Coverage—20% maximum allowable; 20.9% existing; **21.42% proposed**.

- h. The existing house on the Property already exceeds the maximum lot coverage for the zone by .9% and the improvements being proposed by the Applicant will increase the lot coverage by an additional .52%. The Board considers this to be a minor deviation from the code requirements.
- i. During the hearing, the Board Engineer noted that Sheet A1.1 depicts a Section A on Sheet A3.0 which was not submitted with the plan set. The Board Engineer recommended that the Board request that this missing sheet be submitted to clarify the significant building space proposed above the second floor.
- j. During the hearing, the Board Engineer noted that the Applicant is proposing a new driveway apron adjacent to Cole Drive but has not detailed same. The Board Engineer recommended that the Board should condition any approval on the construction of the driveway so as to exclude stormwater from the gutter-line of Cole Drive. The Applicant agreed to this condition.
- k. During the hearing, questions were raised about the drainage improvements to be made to the Property. The Board Engineer acknowledged that the improvements proposed by the Applicant were an acceptable manner of addressing drainage at the site and the Applicant agreed to submit its drainage plans to the Board Engineer for review and approval prior to installation of the drainage improvements.
- l. During the hearing, the Board noted that there are mature trees on the Property and asked the Applicant whether any trees would be removed. The Applicant represented to the Board that it did not anticipate that any trees would need to be removed and that it would make good faith efforts to preserve the trees.
- m. Testimony was provided, and the Board recognizes, that this neighborhood is heavily-wooded and that the neighboring property owners likely would not be able to see most of the improvements to be constructed on the Applicant's Property.
- n. The Property is an irregularly-shaped lot which is narrower than the width required in the zone. For these reasons, the Applicant meets the hardship requirements of N.J.S.A. 40:55D-70(c)(1).
- o. Moreover, the improvements proposed by the Applicant are consistent with other development in the neighborhood and this deviation from the requirements of the zone does not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance. Indeed, these improvements will make the Property more visually consistent with the neighborhood by changing the house on the Property from a Mediterranean-styled home to a shingled-style home and the

improvements will include drainage improvements which will further the interests set forth in the Municipal Land Use Law.

- p. For these reasons, these deviations from the zone requirements meet the conditions for variance relief under N.J.S.A. 40:55D-70(c)(1).
- q. 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;
- r. The Applicant herein has presented testimony demonstrating to the satisfaction of the Board that the purposes of the Municipal Land Use Law would be advanced by granting the variance relief requested by the Applicant because, among other things, the application promotes a better visual environment and better drainage for the site and the minor deviations from the requirements of the Borough Code are consistent with other development in the neighborhood and do not cause any substantial detriment to the public good, and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
- s. For these reasons, the Board also finds that the requirements for a N.J.S.A. 40:55D-70(c)(2) variance have also been satisfied by the Applicant.

**WHEREAS**, Councilman Garruzzo moved to approve the application with the conditions listed by the Board Attorney; this motion was seconded by Ms. Brisben. At that time the application was approved by the following roll call vote:

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

Noes: None

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

- a. Within forty-five (45) days of the date of the adoption of this resolution, the Applicant shall submit four (4) sets of the missing Section A from its plans to the Board Secretary in order to clarify the building space proposed above the second floor.

- b. Prior to installing any drainage improvements on the Property, the Applicant shall submit its proposed drainage plan to the Board Engineer for review and approval and shall incorporate any changes to the plans requested by the Board Engineer.
- c. The Applicant shall also construct the driveway on the Property so as to exclude stormwater from the gutter-line of Cole Drive. The Applicant shall submit its proposed drainage plan for the driveway improvements to the Board Engineer for review and approval and shall incorporate any changes to the plans requested by the Board Engineer.
- d. The Applicant shall use commercially reasonable good faith efforts to preserve the existing trees on the Property.
- e. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- f. The Applicant shall comply with all requirements and outside approvals as may be required from the Borough of Brielle or any other governmental authority not otherwise disposed of by this application;
- g. All representations made under oath by the Applicant or her 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 Jay Jones, seconded by Karen Brisben and then by the following roll call vote:

Ayes: Corinne Trainor, Karen Brisben, Jay Jones

Noes: None

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

OLD BUSINESS: Consideration of Resolution for Housing Element and Fair Share Plan.

**RESOLUTION OF APPROVAL OF THE BRIELLE BOROUGH PLANNING BOARD,  
COUNTY OF MONMOUTH AND STATE OF NEW JERSEY WITH RESPECT TO THE  
ADOPTION OF A HOUSING ELEMENT AND FAIR SHARE PLAN**



**WHEREAS**, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. (the “MLUL”) authorizes a municipal planning board to adopt and to subsequently amend the municipality’s master plan by following the procedures set forth within the MLUL; and

**WHEREAS**, one component of a municipal master plan is the Housing Element and Fair Share Plan; and

**WHEREAS**, the Brielle Planning Board (the “Board”) has adopted a Master Plan, but has not previously adopted a Housing Element and Fair Share Plan; and

**WHEREAS**, the Board has determined that it is necessary and appropriate to consider the adoption of a Housing Element and Fair Share Plan in order to plan for the Borough of Brielle’s provision of its fair share of affordable housing as required under New Jersey’s Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (the “FHA”) and applicable case law; and

**WHEREAS**, the Borough’s engineering and planning consultant, H2M Associates, Inc., prepared a proposed Housing Element and Fair Share Plan for consideration by the Board; and

**WHEREAS**, the Board arranged for the publication of a legal notice indicating that it would hold a public hearing on the potential adoption of the proposed Housing Element and Fair Share Plan at its February 21, 2023 public meeting; and

**WHEREAS**, that proposed Housing Element and Fair Share Plan was placed on file at the office of the Brielle Borough Planning Board Secretary’s Office, 601 Union Lane, Brielle Borough, NJ 08730 at least ten days prior to the public hearing; and

**WHEREAS**, the Board held public hearings on this matter on February 21, 2023 and March 14, 2023 and considered the proposed Housing Element and Fair Share Plan as well as the following testimony presented at the hearing in connection with this application:

**February 21, 2023**

Tuesday, April 4, 2023

Ms. Trainor thanked the audience for sticking around and explained the Planning Board had gone into Closed Session for some legal advice about the last item on the agenda, "Discussion on Affordable Housing for Brielle Borough." Ms. Trainor said the Board had received a report entitled, "Housing Element & Fair Share Plan Report, Borough of Brielle, Monmouth County, NJ" from H2M Architects and Engineers. H2M was retained by the Planning Board to provide an analysis spurred by recent developments that have occurred in neighboring towns and as a result and with the advice of counsel, the Board is proactively reviewing the issue as it applies to Brielle.

Ms. Trainor then welcomed from H2M, Sanyogita Chavon. Ms. Chavon stated she was a Professional Planner in the state of New Jersey and has appeared before numerous municipalities in New Jersey. Ms. Chavon described what the Housing Element & Fair Share Plan and gave a brief overview of Affordable Housing in New Jersey, the Master Plan and the Housing Fair Share Plan. Ms. Chavon also discussed the Borough's Affordable Housing obligation, the vacant land analysis as per the Jacobson Decision and identified different sites around Brielle that were realistic for inclusionary development.

Ms. Trainor asked Mr. Clark if he had any questions for Ms. Chavon. Mr. Clark replied he did not and then the Board was asked if they had questions for Ms. Chavon. Ms. Brisben referred to the Affordable Housing Strategies portion of the handout given to the Board and stated that the area where the Shop Rite used to be and the bend around there was marked as "Mixed-Use Overlay" and asked if that meant it would be possible to add apartments there. Mr. Clark answered that the overlay zone would allow someone who proposed to redevelop or build something new could potentially be permitted to build commercial below and affordable housing above in that area. There were no other questions from the Board members.

Ms. Trainor announced that it was time to hear questions for Ms. Chavon from the public. Mr. Dan Burke, 1013 Cedar Lane, was sworn in by Mr. Clark. Mr. Burke asked if understood correctly that the Borough's obligation was 14 units. Ms. Chavon replied that the total obligation is 354 units. Ms. Chavon stated that the issue is that the Borough does not have any vacant land so there is a mechanism by which they calculate which sites have the potential to be used. Ms. Chavon stated 340 of those units have unmet needs leaving 14 units. Mr. Burke asked if the realistic developmental potential is 14 units based on their assessment even though the potential obligation is way higher but cannot be met. Ms. Chavon replied that this was correct. Mr. Burke asked if this would result in an amendment to the Borough's Master Plan and a Zoning Ordinance to which Ms. Chavon answered yes. There were no other questions from the public.

Ms. Trainor announced 45 minutes has passed and stated that this item would be carried to the next meeting on Tuesday, March 14, 2023. Ms. Trainor stated the question portion was closed and the Board would take Board and public comments at the next meeting.

### **March 14, 2023**

Ms. Trainor began by announcing that the question portion had concluded during the February meeting and it was now time to hear comments from the public with respect to Ms. Chavon's testimony and recommendations regarding the Housing Element and Fair Share Plan.

Hearing no comments from the public, Ms. Trainor announced it was time to hear comments from the Board.

Mayor Nicol stated he was satisfied with the plan and thought it was the best alternative for Brielle. Councilman Garruzzo stated he agreed with Mayor Nicol and said he had reviewed the plan and said he agreed with the plan. Mr. Jones also stated he agreed with the plan as discussed. Ms. Brisben stated she felt the plan was very well done and that the plan was something important to put into place. Ms. Fernicola stated she felt it was a good plan. Ms. Trainor stated she wanted to thank Ms. Chavon on behalf of the Planning Board and Brielle for putting in the extraordinary effort that she did and said her hard work was appreciated. Ms. Trainor stated that the proposal to create an overlay zone to plan for where affordable housing will one day be in Brielle was thoughtful and responsible.

**WHEREAS**, the Board after carefully considering the evidence presented at the hearings, makes the following factual findings and conclusions of law:

- a. The Board is empowered under the MLUL to adopt and/or o amend the Borough's Master plan.
- b. The Borough currently does not have a Housing Element and Faire Share Plan as part of its Master Plan.
- c. The adoption of a Housing Element and Fair Share Plan is a way for a municipality to plan for the provision of its fair share of affordable housing as required under the FHA and applicable case law.
- d. The Board heard evidence at the hearings from Sanyogita Chavon of H2M Associates, a licensed professional planner, who provided an outline of the State's affordable housing process and provided testimony both orally and through the proposed Housing Element and Fair Share Plan as to the Borough's estimated fair share obligation, its available vacant land, and the realistic development potential of land within the Borough.
- e. The proposed Housing Element and Fair Share Plan provides planning strategies to satisfy the Borough's unmet need for affordable housing including, among other things, the identification of certain sites within the Borough that may be appropriate for rezoning or overlay zoning to permit inclusionary development, and the amendment to an existing municipal-wide mandatory set-aside ordinance for any future development in Brielle containing five (5) or more multi-family dwellings.
- f. The Board has carefully reviewed the proposed Housing Element and Fair Share Plan prepared by H2M Associates and believes that it provides appropriate planning solutions as to how the Borough of Brielle can provide its

fair share of affordable housing as required under the FHA and applicable case law.

- g. For these reasons, the Board wishes to adopt the proposed Housing Element and Fair Share Plan and to forward it to the Borough Council for endorsement and so that the Borough Council may thereafter consider the adoption of legislation to implement the recommendations set forth within the proposed Housing Element and Fair Share Plan.

**WHEREAS**, Councilman Garruzzo moved to approve the proposed Housing Element and Fair Share Plan; this motion was seconded by Mr. Jones. At that time the application was approved by the following roll call vote:

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

Noes: None

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Board of the Borough of Brielle, that proposed Housing Element and Fair Share Plan is hereby approved by the Board and will be forwarded to the Brielle Borough Council for endorsement.

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

Ayes: Corinne Trainor, Karen Brisben, Jay Jones

Noes: None

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

OLD BUSINESS: Letter from Daniel Burke requesting extension of time for filing his Minor Subdivision deed for 409 Union Lane.

Attorney Ryan Murphy, Gertner & Murphy, LLC, stated he was representing the applicant in relation to the extension request.

Mr. Murphy stated that Mr. Burke had made an extension request of a minor subdivision plan that was approved on January 11<sup>th</sup>, 2022 and said that the deed itself was not filed until November 3<sup>rd</sup>, 2022. Mr. Murphy referred to New Jersey Statute 40:55D-47(f) which he said provides Planning Boards with the authority to grant an extension of time when a delay is caused by a governmental or quasi-governmental entity. Mr. Murphy stated there was a complete list of actions Mr. Burke

Tuesday, April 4, 2023

had taken since the Resolution had been approved and then listed those actions for the Planning Board.

Mr. Murphy stated that as part of the Resolution approving the subdivision plan, the applicant was required to demolish a shed. Mr. Murphy stated that on June 2<sup>nd</sup>, 2022, Mr. Burke sent an email asking that the demolition of the shed be reserved until the time he received the signed subdivision plan. Mr. Murphy stated that Mr. Burke had not received a response to the request. Ms. Trainor read Mr. Burke's email into the Record. Mr. Murphy stated that the shed was demolished on September 27<sup>th</sup>, 2022 and said that after the demolition, Mr. Burke received a UCC report which was submitted to the Board. Mr. Murphy stated that the time between submitting the demolition report and receiving the deeds from the Board was 7 days. The deeds were promptly sent to the Monmouth County Clerk's office and filed on November 3<sup>rd</sup>, 2022.

Ms. Trainor asked Mr. Clark if he had record of all the dates Mr. Murphy referenced during his argument. Mr. Clark replied that he would discuss that and would also discuss the timing of the application being presented. Mr. Clark stated the applicant filed a request for time extension on January 11, 2023 and asked Ms. Brisben to list the matter on the next available meeting date which was February 21<sup>st</sup>, 2023. Mr. Clark stated that shortly before the February meeting, Mr. Middleton had emergency surgery and had asked that the request be carried to the March meeting which Mr. Murphy had agreed to. Before the scheduled March meeting, Mr. Murphy had a medical issue and asked that the request be carried to April, which Mr. Middleton had agreed to. Mr. Clark stated that in terms of the referenced dates, Mr. Middleton had requested all correspondence between the Planning Board, the applicant, and his attorneys, which he supplied to Mr. Middleton and Mr. Murphy. Mr. Clark acknowledged that most of the dates that Mr. Murphy recited were accurately reflected based on his records. Mr. Clark stated the only dates he was not familiar with were when the demolition of the shed occurred, what the delays were in regard to the demolition and those types of things.

Attorney Timothy Middleton stated he was representing resident Peter Donnelly who resides on Melrose Avenue. Mr. Middleton stated that the applicant did speak about the deed and plat submitted for approval in the emails and letters and said most importantly the emails and letters reminded the applicant that before the Planning Board would sign or approve anything, the shed had to be removed which went on for six months. Mr. Middleton stated that in the January 11<sup>th</sup>, 2022 Resolution of approval, the Board required the applicant to remove the shed before the applicant would be permitted to file the deed or plat that would memorialize and perfect the subdivision. Mr. Middleton stated that a minor subdivision requires that the plat or deed be filed within 190 days to perfect it. Mr. Middleton noted that when the Board approved the application on January 11<sup>th</sup>, 2022, it did not subdivide the property, it gave the applicant the ability to subdivide by filing the deed or plat. Mr. Middleton said the applicant had until July 20<sup>th</sup> to file and as noted by the applicant's attorney, the deed was filed on November 3<sup>rd</sup>, some 296 days after the Resolution of Approval was adopted, 106 days late. Mr. Middleton referenced the NJ Statute 40:55D-47 which he said provides that the approval of a minor subdivision expires if the deed or a plat is not filed in a timely fashion.

Mr. Middleton presented to the Board a letter from H2M Associates written to the Planning Board, dated April 14<sup>th</sup>, 2022. Mr. Clark marked the letter as Exhibit O-1 and said the letter regarded

Tuesday, April 4, 2023

Resolution compliance. Mr. Middleton presented a letter from Ms. Brisben to Mr. Burke, dated May 24<sup>th</sup>, 2022. Mr. Clark marked the letter as Exhibit O-2 and said the letter regarded the subdivision. Mr. Middleton presented a letter from Ms. Brisben to Mr. Burke, dated May 31<sup>st</sup>, 2022. Mr. Clark marked this letter Exhibit O-3 and said this letter also enclosed previous letters from March 29<sup>th</sup>, May 24<sup>th</sup>, and May 25<sup>th</sup>, 2022. Mr. Middleton stated that all of the letters received by the applicant speak of removing the shed. Mr. Middleton presented to the Board an email from Mr. Clark to the applicant's attorney, Keith Henderson, dated August 2<sup>nd</sup>, 2022, marked as Exhibit O-4. Mr. Middleton stated that this email stated that the applicant had elected to perfect the subdivision by deed instead of by plat. Mr. Middleton stated that in this email, there was a reference that the shed must be removed before the deeds were released.

Mr. Middleton referenced the Statute and said it allows the Board in certain limited situations to extend the deadline if the developer was barred or prevented directly or indirectly for filing because of delays in obtaining legally required approvals from other governmental agencies. Mr. Middleton gave the Board examples of delays that could occur and said there were no issues in this case that would have prevented the applicant from timely filing a subdivision deed.

Ms. Trainor announced it was time to hear questions from the Board for Mr. Murphy and Mr. Middleton. Ms. Trainor began by asking Mr. Murphy what the date of the letter was in which Mr. Burke requested that the shed's demolition to be adjourned until a future time. Mr. Murphy said that the applicant made the request directly to the Board on June 2<sup>nd</sup>, 2022 and asked if the letter could be marked as an Exhibit A-1. Mr. Clark marked the letter and said it was a letter from the applicant to Ms. Brisben. Mr. Middleton stated that in the letter the applicant had asked the Board to delay the demolition of the shed until he received the signed subdivision plans.

Mr. Clark stated he had sent a package to Mr. Murphy and Mr. Middleton with every piece of correspondence that he had back and forth between himself, Ms. Brisben, Mr. Burke and his attorney at the time and said it gives a chronology and suggested it be marked as an Exhibit for the Record. Mr. Clark marked the package sent as Exhibit Board-1. Ms. Trainor stated it made sense especially because of the standard being discussed and if the Board caused some sort of a delay, it would be good to know that. Ms. Brisben stated she did receive the letter and said she did not see in the letter where Mr. Burke was asking for an extension and asked Ms. Trainor if she would like to read it into the Record. Ms. Trainor then read the letter into the Record.

Mr. Jones asked who caused the delay. Mr. Murphy replied that he thought there were several issues and then discussed with the Board issues with the deed and the demolition of the shed. Ms. Brisben stated that she has the certificate from the Construction Code Division which states the shed was removed on October 5<sup>th</sup>, 2022, not the date in September that had been testified to. Ms. Brisben stated that the Board was waiting for this document to prove the shed had been removed. Mr. Clark said he wanted to remind everyone that one of the conditions of the Resolution was not only to remove the shed but to also provide proof to Ms. Brisben that the shed had been removed. There were no other questions from the Board members.

Ms. Trainor announced it was time to hear questions from the public. Kim Nuccio, 711 Ashley Avenue, was sworn in by Mr. Clark. Ms. Nuccio asked if there was a request for an extension before the expiration date. Ms. Trainor answered that although this was a great question, she did

not think the statute required the request to be before the date and then read the last sentence in NJ Statute 40:55D-47(f). Mr. Clark stated that the first request was dated January 11<sup>th</sup>, 2023. Ms. Nuccio asked if the delay did not involve a governmental delay, would it matter what the delays were. Mr. Murphy read a section from NJ Statute 40:55D-47(f) and said that the Planning Board and the professionals that represent the Board are a quasi-governmental entity and that technically the delay the applicant was seeking to correct was partially because of a governmental entity. Ms. Trainor asked Mr. Murphy in the part of the Statute he referenced, does it matter who caused the delay, how the delays were caused or does it only matter that there were delays. Mr. Murphy answered that it matters only that there were delays not who caused the delays. Mr. Middleton stated he thought it was a real stretch after filing the deed 106 days late to come in and try to blame the Board. Mr. Middleton stated that the shed did not come down in time and said it did not matter when the deeds were provided to the Board because the shed did not come down in time and there was no one to blame except Mr. Burke who he stated was an expert, an engineer and a planner. Mr. Middleton stated Mr. Burke knew the shed had to come down, was reminded four or five times by the Board and still did not demolish the shed.

Mr. Daniel Burke, 1013 Cedar Lane, was sworn in by Mr. Clark. Mr. Burke stated he has been a resident of Brielle for about 60 years and said he wanted to add some information to clarify what was happening. Mr. Burke stated all of this was in the midst of Covid, Board meetings were virtual and things slowed due to Covid. Mr. Burke stated his wife was in the hospital from February 28<sup>th</sup> until March 2<sup>nd</sup> and that he was in the hospital in May which he said took some time away to pursue the approvals. Mr. Burke referred to his request to delay the shed demolition and explained that he requested this because there was a lawsuit filed against the approval. Mr. Burke stated that Mr. Middleton did not provide him with a copy of the lawsuit for 50 days which changed his outlook on how he was going to proceed. Mr. Burke said he had to hire a new attorney because his attorney did not practice litigation law. Mr. Burke then stated he worked diligently and said he received quotes in February for the removal of the shed and then again in July because the previous ones had expired. Mr. Burke said that those things were on him but were also due to Covid. Mr. Burke stated the approval of the deed from the Board was after the approval date and said that was not his fault. Mr. Burke said the time line shows that he did everything he could to move things along. Mr. Burke stated he had no control over the time it took the professionals to review things but said that it did amount to a considerable amount of time. Mr. Burke stated that on the day the shed was demolished, he sent Ms. Brisben a picture to show that it had occurred. Mr. Burke stated that Ms. Brisben asked for a UCC approval which took a week or 10 days to get the inspection and said that was something he also could not control.

Mr. Middleton asked Mr. Burke if he initially filed for a demolition permit in February. Mr. Burke replied the he sought quotes for the demolition of the shed in February. Mr. Middleton asked Mr. Burke if he had just testified that to some degree the fault lies on him for not pushing this quicker to which Mr. Burke replied that he did everything he could do to move things along and said whenever there was an action that was required of him, he did it. Mr. Middleton asked Mr. Burke if he acknowledged receipt of the emails he had referred to indicating that the shed needed to be removed. Mr. Burke answered that he was aware that the shed had to be removed.

Ms. Trainor asked if there were any questions from the public for Mr. Burke. Hearing none, Ms. Trainor asked if there were any questions for Mr. Burke from the Board.

Mr. Siano asked Mr. Burke if he could go back, would he change the condition of the approval to not remove the shed before receiving approval. Mr. Burke said he thought he had requested during the meeting not to take the shed down until everything was done. Mr. Burke said he had asked the Board to consider allowing him to post a performance guarantee. Mr. Siano asked if that was after the fact. Mr. Burke said it was part of the testimony. Ms. Trainor noted that if this was part of the testimony, it was not part of the Resolution. Mr. Burke stated the Board did not favor his request. Mr. Siano asked Mr. Burke if he was aware of the expiration date. Mr. Burke answered he was aware and that is why he was pushing things.

Mr. Tice asked Mr. Burke to acknowledge whether he received the two emails from Mr. Hilla and Ms. Brisben. Mr. Burke answered that he had received the letter from Mr. Hilla and email from Ms. Brisben.

Ms. Brisben said that in the Resolution that Mr. Henderson stated that the applicant would demolish the shed and said she thought it was the Board's opinion that the shed should come down immediately.

Mr. Burke stated he wanted to add, in regard to the delay, that he is a co-executor in the process, his brother, Todd Burke, is the other executor who in June moved to Wyoming which made the signing of documents a longer process.

Ms. Trainor asked Mr. Clark if in his research, was there case law that would indicate that it matters what causes the delay or just that a delay occurred and not-with-standing that delay the developer applied promptly for and diligently pursued the required approvals. Mr. Clark answered that the developer not only has the burden of proof on the application to extend but must show that it was barred or prevented directly or indirectly from filing because of delays and that the developer applied promptly for and diligently pursued required approvals. Mr. Clark stated that if the developer were the cause of the delay then they would not meet the standard. Mr. Clark stated it does matter what caused the delay because only delays that were caused by legally required approvals from other governmental or quasi-governmental entities are reasons that are allowed to be a cause of an extension.

Ms. Trainor stated it was time to hear comments from the public. Kim Nuccio, 711 Ashley Avenue, began by saying that everyone conducted business during Covid and said she did not feel that the Board missed a beat. Ms. Nuccio stated the approval is expired and said she opposed the extension. There were no other comments from the public.

Mr. Murphy stated that the shed is only one piece of the puzzle and said there were delays caused by a quasi-governmental entity, the deed was not approved until August 2<sup>nd</sup>, 2022 so regardless the applicant would be outside of the time and asked the Board to grant the extension.

Mr. Middleton stated that Mr. Burke made it clear that he was not blaming anyone in the municipality for the delays and said the fact of the matter is that the Statute is the Statute. Mr. Middleton stated that the shed was not demolished until well after the date and said the date is the date and there are no excuses.



Ms. Trainor stated it was time to hear comments from the Board.

Ms. Trainor stated that based on Mr. Clark's advice that causation does matter, Mr. Burke's testimony was that he did not want to demolish the shed because he was concerned how a lawsuit filed by Mr. Middleton would turn out. Ms. Trainor felt this was a decision that was squarely in Mr. Burke's control. Ms. Trainor stated she felt that the applicant had not demonstrated that he acted promptly or diligently to obtain the required approvals.

Mr. Jones stated that the shed is removed and that is what had to happen.

Mr. Stenson stated that Mr. Burke went out for bids to demolish the shed in February but waited seven months to remove it and then waited until January to ask for an extension. Mr. Stenson stated he did not feel the Board should approve the extension.

Mr. Siano said he agreed with Ms. Trainor and said he understood why Mr. Burke did not take the shed down. Mr. Siano stated that the statute is the statute and did not think it could be interpreted any differently than what Mr. Clark had explained to the Board.

Mr. Tice said he agreed with Mr. Stenson and said he felt that the circumstances were in Mr. Burke's control. Mr. Tice stated that he thought Mr. Burke should have filed for the extension earlier.

Ms. Brisben stated she would not have a problem granting the extension but said the law is the law and that the Board must abide by that law written by the State of New Jersey.

Hearing no other comments, Ms. Trainor asked if any member of the Board would like to make a motion to approve the application to extend the time to perfect the deed from the July 20<sup>th</sup> deadline to November 3<sup>rd</sup>. Hearing none, Ms. Trainor asked for a motion to deny Mr. Burke's application.

A motion to deny Mr. Daniel Burke's request for an extension of time for filing his Minor Subdivision deed for 409 Union Lane was made by Chris Siano, seconded by Charlie Tice and then by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Charlie Tice

Noes: None

#### OTHER BUSINESS:

Ms. Trainor announced that Councilman Garruzzo brought to the Planning Board's attention that it was possible, if a member was willing to serve, that the Board may need to appoint someone from the Environmental Commission to the Board.

Ms. Trainor stated the Board had only received this information today and asked Mr. Clark if he had any response. Mr. Clark stated that the law requires a member from the Environmental

Tuesday, April 4, 2023

Commission to be on the Planning Board and typically that member would be in the Class 4 category which is a resident of Brielle. Mr. Clark then said Mayor Nicol would appoint a member of the Commission to the Planning Board. Mr. Clark also said that in the Environmental Commission law, it states that the commission must have 5-7 members and that one of those members is supposed to be on the Planning Board as well.

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 8:12 p.m.

---

Denise Murphy, Recording Secretary

Approved: May 9<sup>th</sup>, 2023