

October 10, 2023

BRIELLE PLANNING BOARD  
TUESDAY, OCTOBER 10<sup>th</sup>, 2023

The Regular Meeting of the Brielle Planning Board was held on Tuesday, October 10<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 – Mayor Thomas Nicol, Councilman Frank Garruzzo, James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones

Absent – Charlie Tice, Amber Fernicola

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer and Denise Murphy, Recording Secretary. There were 12 people in the audience.

A motion was made to approve the Minutes of September 12<sup>th</sup>, 2023, this done by Chris Siano, seconded by James Stenson, all ayes, no nays.

OLD BUSINESS: Resolution of approval for Integrated Healthcare Management, 629 Higgins Avenue.

**RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY APPROVING THE APPLICATION OF INTEGRATED HEALTHCARE MANAGEMENT SEEKING USE VARIANCE AND OTHER VARIANCE RELIEF FOR THE PROPERTY LOCATED AT 629 HIGGINS AVENUE WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 65.01, LOTS 6.01 AND 8**

**WHEREAS**, Integrated Healthcare Management (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking a use variance and other variance relief as described more fully herein for the property located at 629 Higgins Avenue in Brielle which is identified on the Borough tax map as Block 65.01, Lots 6.01 and 8 (the “Property”); and

**WHEREAS**, the Applicant is a tenant who leases a portion of the Property; and

**WHEREAS**, the owner of the Property, M. Holtzman Realty LLC, has consented to the Applicant’s application; and

**WHEREAS**, the Property is approximately 4.26 acres in size and is located on the south side of Higgins Avenue immediately east of the Brandywyne East residential development; and

**WHEREAS**, the Property is improved with a one-story building and an asphalt parking lot; and

**WHEREAS**, a portion of the Property is currently being used as a health and fitness center and a portion of the Property was previously used as the site of a liquor store; and

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

**WHEREAS**, the C-1A Zone does not allow medical offices as a permitted use within the zone; and

**WHEREAS**, therefore the existing and proposed health club use is conforming to the zone, but the existing and proposed medical office use is not conforming to the zone; and

**WHEREAS**, the testimony presented by the Applicant at the hearing revealed that the Applicant has leased a portion of the Property since 2017 and has been using its leased space for chiropractic, physical therapy and acupuncture uses; and

**WHEREAS**, these existing chiropractic, physical therapy and acupuncture uses on the Property appear to be medical office uses that would not be authorized in the C-1A Zone without a use variance; and

**WHEREAS**, the Applicant is proposing to relocate its leased space in the Property to the space formerly occupied by the liquor store and to expand the medical office uses that it provides to include primary care and podiatry services; and

**WHEREAS**, the Applicant recognizes that these primary care and podiatry services are medical office uses which require use variance relief from the Board; and

**WHEREAS**, the Applicant represented during the hearing on its application that the use variance relief that it is seeking is for medical office use only and is not for hospital use and that the Applicant will not use the Property for ambulatory, urgent care, or emergency care services; and

**WHEREAS**, the Applicant further represented and stipulated that it will agree to a condition that its hours of operation shall not exceed 7:00 a.m. to 7:00 p.m.; and

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

(a) the proposed principal use (i.e. medical office use) is non-conforming to the zone; **therefore, the Applicant is seeking a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1);**

(b) the proposal requires 242 off-street spaces where 223 parking spaces are existing/proposed; **the Applicant is seeking a variance for this proposed non-conformity (deficit of 19 off-street spaces);** and

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

(a) parking plan set (2 sheets) prepared by Joseph J. Kociuba, PE, PLS dated April 10, 2023;

(b) architectural drawings (1 sheet) prepared by Serdar Kayman, A.I.A., dated April 20, 2023;

(c) application package (including addendum for zoning variance) application; and

**WHEREAS**, the Board was also provided with a letter dated May 31, 2023 prepared by the Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

**WHEREAS**, the Board is a combined Planning Board and Zoning Board which is hearing this application as a Zoning Board of Adjustment because the application is seeking variance relief under N.J.S.A. 40:55D-70d(1); and

**WHEREAS**, Board member Stephanie Frith recused herself from hearing this application and did not participate in the hearing; and

**WHEREAS**, the Board held a hearing on this application on September 12, 2023, and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1 parking plan prepared by Joseph Kociuba;
- b. Exhibit A-2 photo of the front of the facility; and

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

Attorney Keith Henderson, Henderson and Henderson, Manasquan, NJ stated he was representing the applicant and the owner. Mr. Henderson called Joseph Saponaro to testify and stated that Mr. Saponaro was the existing tenant and the operator of the facility. Mr. Saponaro was sworn in by Mr. Clark and said that Integrated Health Care has been at this site since 2017 practicing chiropractic, physical therapy and acupuncture. Mr. Saponaro stated that currently the business is characterized as a health and fitness use and said they are before the Board asking for approval to expand to a medical use.

Ms. Trainor stated it was time to hear questions from the Board for Mr. Saponaro.

Mr. Stenson asked if they were occupying the space where the liquor store was. Mr. Saponaro answered yes and said that they were before the Board asking for approval to expand the other side for medical services. Mr. Jones asked what services would be added if approved. Mr. Saponaro answered primary care services and podiatry. Ms. Brisben asked if there would only be one doctor added to which Mr. Saponaro replied that was correct. There were no other questions from the Board.

Ms. Trainor asked if there were any questions for Mr. Saponaro from the public. Hearing none, Mr. Henderson called Mr. Joseph Kociuba, KBA Engineering, Manasquan, NJ. Mr. Kociuba was sworn in by Mr. Clark. Mr. Kociuba said he was a Licensed Engineer and Planner and had

testified previously and had been accepted as an expert by this Planning Board. Mr. Kociuba was accepted by the Board as an engineering and planning expert.

Mr. Henderson asked Mr. Kociuba to describe the current condition of the site. Mr. Kociuba said that the existing conditions on the site are shown on a document he called the parking plan, prepared by his office on April 10, 2023. Mr. Clark marked this document as Exhibit A-1. Mr. Kociuba then described the existing facility, the size of the facility, the parking lot, and the parking stalls. Mr. Kociuba stated that up until recently the site contained the Brielle Sports Club and a liquor store and said that the application was to convert the liquor store space to a medical use. Mr. Kociuba spoke in detail about the number of parking stalls and said it was his opinion that the parking is adequate and is consistent for the proposed use.

Mr. Henderson asked Mr. Kociuba if a use variance was required. Mr. Kociuba answered that the application does require a D-1 use variance because medical use in the Borough's Ordinance is not a permitted use in the C-1A Zone, it is only permitted in the C-1 Zone. Mr. Kociuba stated that the proposed D-1 use variance could be granted and stated that the applicant is seeking the approval under the special reasons category. Mr. Kociuba then reviewed those special reasons to the Board. Mr. Kociuba stated he believed the site was particularly suited for the use and said that it promotes a number of the purposes of Zoning found in Section 2 of the Municipal Land Use Law. Mr. Kociuba referenced the Borough's 2016 Gateway Redevelopment Plan and said that aesthetically this keeps the cohesive corridor and said that the look of this facility is an improvement from the liquor store.

Mr. Kociuba displayed a document he called a photo of the front of the facility. Mr. Clark marked this document as A-2. Mr. Kociuba discussed with the Board the details of the second section of the Master Plan 2016 Reexamination Report. Mr. Kociuba stated he felt there was no negative criteria and said it was his opinion that there was no substantial detriment to the public good by allowing the use and said that Higgins Avenue has a variety of uses including another medical use. Mr. Kociuba said any improvements would be to the interior, traffic would be the same if not less than what existed at the liquor store and said there would be no nuisance or noise. Mr. Kociuba stated it was also his opinion that there would be no detriment to the Zoning Plan or Zoning Ordinance.

Mr. Henderson referenced Mr. Hilla's review letter and asked Mr. Kociuba to review that letter with the Board and asked him to state what the applicant would and would not comply with. Mr. Kociuba discussed with the Board items number 1 through 8.

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

Mr. Siano asked what the hours of operation would be. Mr. Saponaro replied that the standard hours for medical services and primary care are between 9:00 and 5:00. Mr. Siano asked Mr. Saponaro if there was an intention to increase the number of providers or services at the facility. Mr. Saponaro answered that in their other facility they only have primary care and podiatry. Mr. Saponaro stated that if a specialist is needed, they would only come once a month. Mr. Jones asked how many rooms there were. Mr. Saponaro answered that on the medical side there were 7 examination rooms. Mr. Jones referenced the parking and said the parking lot was

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unsightly. Mr. Saponaro said they have spoken with the owner of the gym who is willing to get on board with them and said that within one year he felt they could fix it.

Ms. Trainor asked Mr. Saponaro how long the facility had been there. Mr. Saponaro replied that they had been on the other side of the gym since 2017.

Mr. Hilla asked if the trash enclosure would be only for this the applicant, the tenant or would it be for the health club as well. Mr. Saponaro responded that it would be for both together and said they would also redo the fence. There were no other questions for Mr. Saponaro.

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

Scott Kenneally, 624 Locust Road, was sworn in Mr. Clark. Mr. Kenneally asked if the applicant would be changing the number of parking spaces and what the hours were for the other uses of the facility. Mr. Kociuba stated that they would not be adding parking spaces and Mr. Saponaro answered the hours would be from 9:00 to 7:00. There were no other questions from the public.

Mr. Henderson summarized by saying that this property had been developed and redeveloped a number of times and said he felt the present proposal was the most appropriate use of the site with very little expansion. Mr. Henderson stated that the only issue was a minor parking variance which he said was de minimis considering the size of the property and finished by saying that he hoped that the Board would consider the application favorably.

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

Scott Kenneally said he felt that the property had not been maintained, said the fence was in bad condition, asked if the air conditioning units could be addressed and if the dumpster and landscaping could be cleaned up.

Mr. Saponaro stated that on their side of the building, they had already spent \$300,000 on brand new HVAC units that are low profile and located to the rear of the building. There were no other comments from the public.

Ms. Trainor announced it was time to hear comments with respect to the application from the Board.

Mr. Stenson said he felt the fencing should be addressed and the air conditioning should be moved.

Mr. Siano stated that the applicant is the tenant and said he did not think it was fair to burden the applicant with all of this. Mr. Siano asked Mr. Hilla if a fence is required on this commercial property. Mr. Hilla replied that the fence is required. Mr. Siano then said he thought the property maintenance should be more of a code enforcement issue that should be addressed with the owner of the property unless of course the applicant has agreed to maintain his portion of

the property. Mr. Henderson stated to the Board that he would contact the owner of the property and explain to him the Board's concerns and suggest to him that it would be a good idea to be a good neighbor.

Ms. Brisben stated that the request for a time frame for the parking lot should not be longer than one year. Mr. Henderson stated that one year was recommended in Mr. Hilla's letter. M. Brisben stated she agreed with that recommendation.

Mr. Jones stated he agreed with Mr. Siano and said someone should bear the responsibility for the property upkeep.

Ms. Trainor stated she was confused if the use variance the applicant was seeking was for the new space or if it was for both uses in both spaces. Mr. Henderson said he thought the use that is presently running there should be legalized with the new use and said there had not been any issues with that facility. Ms. Trainor stated she was not suggesting that any of it was a problem, she would just like to clean it up while his clients were before the Board. Mr. Hilla stated that considering the whole thing as a medical use regardless of whether it is cardiologists, chiropractors or primary care physicians, it is all being treated the same by this application, both from a use perspective and a parking perspective.

Ms. Trainor asked if the use variance that was being sought is applicant specific or is it for this space in perpetuity. Mr. Clark answered that any variances run with the land so it would be for the space. Ms. Trainor stated that as a result of that, the concern she had was for the operational issues, such as hours of operation and said that it seemed to her that the other uses that are approved in the C1-A Gateway Zone are for uses that would be daytime uses. Ms. Trainor stated that one of the concerns was if the Board approves a use for a medical office, would that include ambulatory or emergency care centers, and said the approval would not be just to this particular applicant would want to use the site for what it is currently, it would be approving the site for in perpetuity. Mr. Henderson stated it was his personal opinion that the Planning Board ask the Governing Body to create a definition of medical uses because there currently is not one.

Mr. Hilla asked if an agreement could be made for hours of operation so it does not end up being a 24 hour medical facility. Mr. Saponaro stated the current hours of operation are from 7:00 a.m. to 7:00 p.m. and would agree that these would be the hours going forward with their 20-year lease. Mr. Kociuba stated that there is an Ordinance that has a hospital definition that would probably be for a 24-hour facility that ambulatory services would fall under. Mr. Kociuba stated he did agree the Ordinances were not great in this area but this is listed.

Ms. Trainor said she is encouraged that this applicant has been successfully in operation since 2017 and has been so successful that he is looking to expand which she said is a good use of this particular space. Ms. Trainor said she believed this would be a compliment to the town and be helpful to the C1-A Gateway Zone.

Ms. Trainor asked Mr. Clark to review the items that the applicant had agreed to. Ms. Trainor asked for a motion to approve the application with the stipulations Mr. Clark had listed. Chris Siano made a motion, seconded by James Stenson, and followed by the roll call vote.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicant is a tenant who leases a portion of the Property.
- c. The owner of the Property, M. Holtzman Realty LLC, has consented to the Applicant's application.
- d. The Property is approximately 4.26 acres in size and is located on the south side of Higgins Avenue immediately east of the Brandywyne East residential development.
- e. The Property is improved with a one-story building and an asphalt parking lot.
- f. A portion of the Property is currently being used as a health and fitness center and a portion of the Property was previously used as the site of a liquor store.
- g. The Property is located within the Borough's Gateway Zone (the "C-1A Zone").
- h. The C-1A Zone does not allow medical offices as a permitted use within the zone.
- i. The testimony presented by the Applicant at the hearing revealed that the Applicant has leased a portion of the Property since 2017 and has been using its leased space for chiropractic, physical therapy and acupuncture uses.
- j. These existing chiropractic, physical therapy and acupuncture uses on the Property appear to be medical office uses that would not be authorized in the C-1A Zone without a use variance.
- k. The Applicant is proposing to relocate its leased space in the Property to the space formerly occupied by the liquor store and to expand the medical office uses that it provides to include primary care and podiatry services.
- l. The Applicant recognizes that these primary care and podiatry services are medical office uses which require use variance relief from the Board and it has filed this application seeking the grant of a use variance under N.J.S.A. 40:55D-70d(1).



- m. The Applicant represented during the hearing on its application that the use variance relief that it is seeking is for medical office use only and is not for hospital use and that the Applicant will not use the Property for ambulatory, urgent care, or emergency care services.
- n. The Applicant further represented and stipulated that if its application for variance relief is granted by the Board, that the Applicant will agree to a condition that its hours of operation shall not exceed 7:00 a.m. to 7:00 p.m.
- o. The Applicant also agreed and stipulated to certain conditions to be placed upon any Board approval of this application which are described in more fully within the conditions section of this resolution.
- p. The Applicant is seeking the following variance relief through this application (the variance relief sought is shown in bold type): (i) the proposed principal use (i.e. medical office use) is non-conforming to the zone; therefore, **the Applicant is seeking a use variance for this proposed change of use under N.J.S.A. 40:55D-70d(1)**; and (ii) the proposal requires 242 off-street spaces where 223 parking spaces are existing/proposed; **the Applicant is seeking a variance for this proposed non-conformity (deficit of 19 off-street spaces)**.
- q. The Board is a combined Planning Board and Zoning Board which is hearing this application as a Zoning Board of Adjustment because the application is seeking variance relief under N.J.S.A. 40:55D-70d(1).
- r. In order to obtain a variance under N.J.S.A. 40:55D-70d(1) for a change in use of the Property, the Applicant has the burden of proof to show that all of the elements supporting such variance relief have been satisfied. In particular cases and for special reasons, a zoning board may grant “D” variance relief to an applicant. In order to show that special reasons exist, an applicant must satisfy what is commonly known as the positive and the negative criteria.
- s. One of the ways that an applicant can satisfy the positive criteria is to rely upon the “site suitability” test to satisfy the positive criteria for variance relief; that is, whether the proposed use will promote the general welfare and whether the development of the property is particularly suited for the use proposed.
- t. The Applicant herein provided testimony from its expert engineer and planner Joseph Kociuba that this application satisfies the “site suitability” test because the proposed use will promote the general welfare and is particularly suited for the use proposed.
- u. Specifically, Mr. Kociuba testified that with regard to the promotion of the general welfare, the proposed use will promote, among others, the following purposes of the Municipal Land Use Law which are enumerated within N.J.S.A.

40:55D-2: (i) to encourage municipal action to guide the appropriate use or development of lands in the State in a manner promoting the general health, safety and welfare; (ii) to provide adequate light, air and open space. Additionally, Mr. Kociuba provided testimony about how the proposed use is consistent with the Borough's 2016 Gateway Redevelopment Plan as the proposed medical office is an improvement from the previous liquor store use and it will ensure that this corridor is aesthetically cohesive.

- v. Mr. Kociuba also testified that the site is particularly suited to the use proposed. First of all, he indicated that the proposed use of the Property is consistent with the uses in the surrounding area as the zone is zoned for retail and office uses and this proposed use is an office use. Additionally, there is one other medical office located in this zone. Secondly, in terms of the qualities of the site, this Property is the largest lot in the C-1A Zone and has ample parking so the qualities of the site show that it is particularly suited for this medical office use. Finally, with regard to the appropriateness of the use on the site, not only is the proposed use an office use, but the type of use proposed is inter-related to the health and wellness goals promoted by the health club which leases the other portion of the Property.
- w. The Board accepts the testimony provided by Mr. Kociuba and finds that the Applicant has satisfied the "site suitability" test because the proposed use will promote the general welfare and is particularly suited for the use proposed.
- x. In order to obtain the variance relief sought herein, the Applicant also must prove that a "D" variance can be granted (i) without substantial detriment to the public good, and (ii) that it will not impair the intent and purpose of the zone plan and zoning ordinance. This is commonly referred to as the negative criteria.
- y. Mr. Kociuba provided testimony indicating that there was no substantial detriment to the public good by allowing this proposed use and said that Higgins Avenue has a variety of office uses including another existing medical office use. Mr. Kociuba said any improvements would be to the interior of the leased premises and that traffic would be the same if not less than what existed at the liquor store, and that there would be no nuisance or noise. Mr. Kociuba also testified that it is his opinion that there would be no detriment to the Zoning Plan or Zoning Ordinance if the use variance relief sought through this application is granted by the Board.
- z. The purpose of the C-1A Gateway Zone is to provide a multi-use overlay zone that dovetails with the "Main Street" theme of the reconstructed Higgins Avenue corridor. It is intended to promote themed retail/professional use development with limited conditional residential aspects.

- aa. The Board finds that this proposed use is not inconsistent with purposes of this zone as medical office use is a retail/professional use development, there is already another medical office use in the zone, and the proposed use will complement the existing health and wellness use of the remaining portion of the Property. For these reasons, as well as the reasons, provided by Mr. Kociuba within his testimony, the use variance sought by the Applicant will not impair the intent and purpose of the zone plan and zoning ordinance.
- bb. With regard to the parking variance sought by the Applicant, Mr. Kociuba provided testimony that there is adequate parking at the Property for the existing use and the proposed use because, among other reasons, the health club patrons typically use the Property in the morning and the evening while the medical office patrons will use the Property during the course of the business day. The Applicant provided testimony that the parking lot is rarely full to capacity and that there is no need for additional parking. The Board accepts this testimony and agrees that the parking space variance sought by the Applicant is warranted and can be granted without any substantial detriment to the intent and purpose of the zone plan and zoning ordinance.

**WHEREAS**, Chris Siano moved to approve the application with the conditions as described herein; this motion was seconded by James Stenson. At that time the application was approved by the following roll call vote:

Ayes: James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Jay Jones, Amber Fernicola

Noes: None

Absent: Mayor Thomas Nicol, Councilman Garruzzo, Charlie Tice

Not Eligible to vote: Stephanie Frith

**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 one year from the date of the adoption of this resolution, the Applicant shall re-pave and/or substantially repair the parking lot at the Property in order to address and correct all of the issues raised within the Board Engineer's technical review letter. Such re-paving and/or repair shall be reviewed and approved by the Board Engineer.

- b. Within one year from the date of the adoption of this resolution, the Applicant shall make the improvements to the dedicated dumpster location and to the pavement at the rear of the Property as described within the Board Engineer's technical review letter, and all such improvements shall be reviewed and approved by the Board Engineer.
- c. Within one year from the date of the adoption of this resolution, the Applicant shall renew and replace, as necessary, the landscaping and fence surrounding the Property, with all such improvements being reviewed and approved by the Board Engineer.
- d. Within one year from the date of the adoption of this resolution, the Applicant shall make such further repairs and/or improvements that are necessary, as directed by the Board Engineer, to clean and renew the façade of the building on the Property and to screen the rooftop mechanicals.
- e. The Applicant agrees that the hours of operation for the medical office approved through this application shall not exceed 7:00 a.m. to 7:00 p.m. daily.
- f. The Applicant agrees that its approved use of the Property shall be for a medical office use only and is not for hospital use and that the Applicant will not use the Property for ambulatory, urgent care, or emergency care services.
- g. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable;
- h. 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;
- i. 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 Chris Siano, seconded by James Stenson and then by the following roll call vote:

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

Noes: None

Absent: Charlie Tice, Amber Fernicola

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

NEW BUSINESS: Application for variance relief for Block 64.03, Lot 1.01, 633 Rankin Road, owned by Michael & Casey Dambeck, to allow construction of a one-story covered front porch, a one-story addition on the rear southeast corner and a one-story covered rear deck on the southwest corner. Minimum Front Yard Setback – 40 feet required, 39.8 feet existing, 31.83 feet proposed. Existing nonconformity: Minimum Side Yard Setback (pool equipment) – 5 feet required, 4 feet existing. Grading Plan required for disturbance of more than 500 square feet, none submitted.

Attorney Keith Henderson, Henderson and Henderson, Manasquan, NJ stated he was representing the applicant and then called the applicant, Michael Dambeck, to testify. Mr. Dambeck was sworn in by Mr. Clark. Mr. Dambeck stated that he and his wife own the property and said they were before the Board to request approval to build a front porch. Mr. Henderson did not have any other questions.

Ms. Trainor asked if there were any questions for Mr. Dambeck from the Board. Ms. Brisben stated that it says on the Tax Map that the house was built in the 1950's and asked if that were true because she said it did not look like it. Mr. Dambeck answered that he believed it was built in 1956 or 1957 and said about 10 years ago the prior owners gutted it and added a second story. There were no other questions from the Board members.

Ms. Trainor asked if there were any questions for Mr. Dambeck from the public. Hearing none, Mr. Henderson called, Paul Grabowski, Virtuoso Architecture, Sea Girt, NJ as the next witness. Mr. Grabowski was sworn in by Mr. Clark. Mr. Grabowski began by saying he has been a licensed Architect for over 25 years and has given testimony before Boards throughout New Jersey. Mr. Grabowski was accepted as an expert in Architecture.

Mr. Grabowski displayed two documents which were marked as Exhibits A-1 and A-2. Mr. Grabowski described A-1 as a photograph of the property before the applicant purchased the home and A-2 as a rendering of the front elevation of the property and said that the applicant was proposing a covered front porch that would be 8 feet in depth and 35 feet in width. Mr. Grabowski said he felt the porch would improve the aesthetics of the home because the existing home has an old transition with the roof line from the original addition and said the porch would help to conceal that. Mr. Henderson asked Mr. Grabowski to confirm that all the other work done on the home that had been referenced had been done without the need for variances. He answered that this was correct and that they had received all the necessary permits. Mr. Henderson stated he did not have any other questions for Mr. Grabowski.

Ms. Trainor announced it was time to hear questions for Mr. Grabowski from the Board. Ms. Brisben asked if the porch would be screened in. Mr. Grabowski replied that the porch would be open with columns. There were no other questions for Mr. Grabowski.

Ms. Trainor announced it was time to hear questions for Mr. Grabowski from the public. Hearing none, Mr. Henderson called Joseph Kociuba, KBA Engineering, Manasquan, NJ to testify. Mr. Kociuba was sworn in by Mr. Clark. Mr. Kociuba was accepted as an expert planner and engineer by the Board.

Mr. Kociuba began by saying that the lot was in the R-2 Zone, was a conforming lot, and that the only variance being requested was for the front porch and said there were some existing non-conformities with the pool equipment, 4 foot existing, 5 feet required which the applicant was not proposing to change. Mr. Kociuba said that he had taken a look at the front setbacks of the other properties in the area and said that the house next door had a setback of 28 feet and said the applicant was proposing a front yard setback of 31.8 feet. Mr. Kociuba displayed a document he called the variance plan prepared by his office dated May 17<sup>th</sup> which was marked as Exhibit A-3 by Mr. Clark. He referenced the C-1 and C-2 criteria and explained to the Board how it pertained to the application and said that he felt the variance could be granted, would be a benefit and said it was his opinion that there would be no detrimental impact to the visual environment and no substantial impact to the Zoning plan or Zoning Ordinance. He stated that the applicant would agree to provide a grading plan as indicated in Mr. Hilla's review letter. Mr. Henderson stated he did not have any other questions for Mr. Kociuba.

Ms. Trainor announced it was time to hear questions for Mr. Kociuba from the Board. Hearing none, Ms. Trainor asked if there were any questions from the public for Mr. Kociuba. Hearing none, Mr. Henderson stated he did not have any other witnesses to present and requested, based on the testimony presented, that the Board grant the application.

Ms. Trainor announced it was time to hear comments in respect to the application from the public. Hearing none, Ms. Trainor asked to hear comments in respect to the application from the Board. Councilman Garruzzo said he did not have any issues with the application, said he thought the porch would be a nice addition to the home and would be aesthetically nice for the neighborhood. Mr. Stenson said he agreed with Councilman Garruzzo and said it would be a benefit to the neighborhood. Mr. Siano said that he was in favor of the application due to the fact that the applicant was willing to do a grading plan and that there were not any neighbors present to complain about the existing pool equipment not being compliant. Mr. Jones said he felt the porch would be a nice addition to the home. Ms. Brisben said she thought the porch would look very nice and asked if Mr. Dambeck would agree to never enclose the porch to which he did agree. Ms. Brisben then asked if it would be all right with the Board to add that to the Resolution. Ms. Frith thought the porch would look beautiful. Ms. Trainor said she accepted Mr. Kociuba's testimony in regard to the C-2 variance and said she agreed with the comments made by the other Board members and thought the porch would look beautiful.

Ms. Trainor asked Mr. Clark to review the items 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 James Stenson, 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

Noes: None

Absent: Charlie Tice, Amber Fernicola

OLD BUSINESS: Continuation of hearing for a Minor Subdivision for Block 81.01, Lot 1, 409 Union Lane, owned by Daniel & Todd Burke, co-Executors, to allow a two-lot subdivision. All Front Yards to front on a 50-foot Right-of-Way, 40-foot Right-of-Way on Melrose Avenue proposed. Minimum Lot Depth, proposed Lot 1.02, 125 feet required, 86.63 feet proposed. Existing Non-Conformity – Maximum Building Height, 2 ½ stories allowable, 3 stories existing.

Councilman Garruzzo announced it was necessary to recuse himself from the remainder of the meeting. Mr. Siano announced that he would not be participating with this application because he had missed a number of Board meetings with respect to this application and did not intend to listen to the audio of those meetings.

Ms. Trainor stated that at the end of the last meeting, Mr. Middleton was about to present his case. Mr. Middleton began by calling Peter Donnelly, 409 Melrose Avenue, to testify. Mr. Donnelly was sworn in by Mr. Clark. Mr. Middleton displayed a document described as a tax map which was marked as Exhibit O-6 by Mr. Clark. Mr. Middleton asked Mr. Donnelly to identify his house on the tax map and asked him how many houses were on the north and south side of the street. Mr. Donnelly pointed to his house and said there were 5 houses on the north and 4 houses on the south.

Mr. Middleton asked Mr. Donnelly how long he had lived in his home, when he had purchased it and then asked him to describe his home. Mr. Donnelly replied that he had lived in the home for 11 years, purchased it in 2011 and described the home as a 4-bedroom house on a dead-end street with a 2-car garage. Mr. Middleton asked Mr. Donnelly what attracted him to living at the end of a dead-end street. He answered a better quality of life for his family, no through traffic, safety and more privacy. Mr. Middleton stated that the right of way from Melrose Avenue is 40 feet and asked Mr. Donnelly if he had the opportunity to measure the width of the pavement in front of his house towards the dead end. He answered that he had measured it multiple times and said that in front of his house was 26-26 ½ feet.

Mr. Middleton displayed a document described as photographs which was marked as Exhibit O-7 by Mr. Clark. Mr. Donnelly said that one of the photos in the Exhibit depicted a layout of Mr. Angelo's house and a different house that was under construction and stated that both of the houses were sold by the Burkes. Mr. Middleton asked when the photo was taken to which Mr. Donnelly replied that it may have been taken the day before. Mr. Donnelly stated that he believed construction had started on the house 18 months prior and said he had not seen a worker there, two days in a row in over a year. Mr. Middleton referenced a photo of Lot 8 and asked if the garage and driveway were located closer to the Burke property would they have to enter and exit closer to the end of the dead end. Mr. Donnelly answered that was correct. He said he felt that adding a third new house at the end of the dead end would impact the quality of his life and said that when multiple vehicles are parked on Melrose Avenue, no other vehicles could fit down the street. Mr. Donnelly said that he worried about emergency vehicles being able to fit down the road and described one instance when a fire truck had to pull in backwards. He said it has been a major inconvenience and has been going on for multiple years.

Mr. Middleton displayed a document described as a series of photos of cars parked at the dead end which were marked as Exhibit O-8 by Mr. Clark. Mr. Donnelly described the location where the photos were taken and described his concern while referencing the vehicles in each photo. Mr.

Middleton asked Mr. Donnelly if he thought there would be a conflict between entering and exiting the proposed lot and the other house at end. He answered he absolutely thought there would be a conflict. He said he wanted to let the Board know that Mr. Angelo's home has two curb cuts which has impacted the on-street parking resulting in more people and less parking spots. He stated there would be a total of 5 curb cuts at the dead end and said that he was very concerned about that and said it defeats the purpose of even living on a dead end. Mr. Middleton asked Mr. Donnelly if it concerned him that Mr. Burke did not provide any testimony regarding where the proposed house would be located, the size of the proposed house, which way the house would face, or where his driveway would be. Mr. Donnelly replied it was very concerning to him. Mr. Middleton asked if all of the houses on Melrose face Melrose Avenue in a north-south direction. Mr. Donnelly answered that was correct and said that any which way the proposed house faced would affect the quality of his life but especially if the front of the house faced his. Mr. Middleton asked Mr. Donnelly if he felt the creation of Lot 1.01 would be out of character with the other homes. Mr. Donnelly answered that he did feel that it would be out of character with the other homes.

Mr. Middleton asked Mr. Donnelly if he reached out to Mr. Burke when he received notice of the subdivision application filed by Mr. Burke. Mr. Donnelly stated that he had approached Charlotte Burke and told her if she ever considered selling to let him know because he said he was trying to protect the quality of his life. He said when it came to Mr. Burke selling off the lots, he offered him \$350,000 cash. He stated that Mr. Burke did not accept his offer and said that it was worth \$550,000 and said he never made a counter offer. He finished by saying he wanted the Board to know that the reason he was before the Board was because he loves Brielle, his family loves Brielle, said he moved onto this street because it was a dead end and said if the application was approved it would absolutely diminish his value of the home he lives in and would make it so he would not want to live on there anymore based on the dead end becoming a through street. Mr. Middleton stated he did not have any other questions for Mr. Donnelly.

Ms. Trainor asked Mr. Burke if he had any questions for Mr. Donnelly. Mr. Burke asked Mr. Donnelly to explain his comment about the street becoming a through street. Mr. Donnelly replied that if a driveway were put where the dead-end sign is, it would no longer be a dead end. Mr. Burke referenced the Exhibit and asked Mr. Donnelly if there were any lots that had less than two off-street parking spaces. Mr. Donnelly responded that he had not measured them. Mr. Burke referenced two vehicles in Exhibit O-8 and asked whose vehicles they were. Mr. Donnelly answered that they were his vehicles. Mr. Burke asked Mr. Donnelly if he thought he had sufficient room to park two vehicles in the roadway in front of his house. Mr. Donnelly answered, no. Mr. Burke said that Mr. Donnelly stated that he made an offer and never received a counter offer but also said that a counter was made of \$550,000. Mr. Donnelly replied that is was not a counter offer and said that the house was never listed and said the house was not even approved to sell. Mr. Burke stated that he did not have any other questions.

Ms. Trainor asked if there were any questions for Mr. Donnelly from Ms. Nuccio or the public. Hearing none, Ms. Trainor announced it was time to hear questions for Mr. Donnelly from the Board. Ms. Trainor asked if he was the one who took the pictures in Exhibit 0-8. Mr. Donnelly replied he took one or two of them and a neighbor took one or two of them as well. Ms. Trainor asked if the cars were moved between taking the pictures. Mr. Donnelly responded that the pictures were taken in the same location at a different angle. Ms. Trainor asked Mr. Donnelly if he took the



pictures in Exhibit O-7. Mr. Donnelly responded that he had taken them. There were no other questions from the Board.

Mr. Middleton called Richard DiFolco, JKR Engineering and Planner Service, Freehold, NJ, to testify. Mr. DiFolco was sworn in by Mr. Clark. Mr. DiFolco stated he was a Licensed Engineer since 1977 and was a Licensed Planner since 1981 and had over 50 years of experience in the Civil Engineer/ Planner field. Mr. DiFolco stated he had appeared before various Planning Boards in Monmouth County and Ocean County and had been certified as an expert over 100 times. Ms. Trainor stated the Mr. DiFolco was accepted as an expert in Engineering and Planning.

Mr. DiFolco said he had looked at the application, plans and photos of the property and he had a concern with the signed plans submitted, they are supposed to be done and signed by a Professional Licensed Land Surveyor and they were prepared by Mr. Burke with no Land Surveyor signature and seal. He presented a copy of the New Jersey Administrative Code, Section 13:40-5.1, which was marked as Exhibit O-9. He stated that N.J.A.C. 13:40-5.1, subsection M, states that "subdivision plats, whether major or minor, shall be prepared by a professional licensed land surveyor". He also said the plans are to be drawn from an up-to-date survey, but the survey submitted with the plan is 20 years old and the Board should have received a topographic survey; these items jumped out at him as not being in accordance with the Statute.

He also received what was a Monmouth County aerial of the property but there was no topographic survey and there was one submitted for the property across the street which showed a 3-inch change in grade at the corner, a change to a lower grade to the Burke home about 100 feet away which can cause a drainage issue. He felt this may show a need for underground piping but did not see any on the plan. Mr. Middleton asked him about a proposed driveway and Mr. DiFolco said none was shown on the subdivision plan and he felt this is a problem as there is no turn around planned here, this driveway comes right off the dead end of Melrose Avenue. He felt that there are questions on how a person will come out of that driveway, back out and then do a K-turn on Melrose Avenue or back into someone's driveway. He was also concerned that the plan does not show where the proposed home will front, it appears it will front on the stub end of Melrose Avenue and is really not a frontage, it is the end of the right-of-way; a frontage has to run along a street. Mr. Middleton referred to the tax map shown as he and Mr. DiFolco explained that the homes on Melrose Avenue all front on a street and this new lot will not have any frontage on a street.

Mr. Middleton then read from the Zoning Ordinance Section 21-9.13 "all front yards must face a 50-foot-wide right-of-way or at least 40 feet of the right-of-way line." Mr. DiFolco commented that none of the typical Borough standards apply here due to this lot's location and configuration, there is no right-of-way line. He added to what Mr. Middleton had read from Section 21 that "if there is a cul-de-sac or dead end turn-around, the front must be at least 30 feet along the line that has been improved". The end of Melrose Avenue is a dead end and not a dead-end turn-around and Mr. DiFolco said the words "turn-around" were left out of the commentary by Mr. Burke. Mr. Middleton mentioned the word "hammerhead" for a turnaround situation and Mr. DiFolco said this term only applies to multi-family dwellings or commercial and it takes up a lot of room.

At this point, Ms. Trainor noted that more than 50 minutes have gone by and Mr. Middleton and Mr. DiFolco said there is more to be testified to and they will be back for the November meeting to continue. Ms. Brisben then told Mr. Middleton there will be some changes to the Board come January, as Boards do their reorganization then, and she hoped this application can be finished by December; Mr. Middleton felt that the November meeting should finish their testimony.

OLD BUSINESS: Continuation of hearing for Use Variance for Block 109, Lot 2, 1007-1009 Route 70 (Site of Dunkin Donuts), owned by JMZ Realty Corporation, LLC (Applicant – AKSH Donuts, LLC) to allow a Drive-Thru lane. Minimum Front Yard Setback (Old Bridge Road), 30 feet required, 29.9 feet existing, 23.33 feet proposed (to freezer/cooler). Parking Spaces not any closer than 20 feet from street Right-of-Way Line – 3 parking spaces on east side of the building do not conform. Off-Street Parking Spaces – 22 required, 9 proposed. Paving not permitted within 5 feet of the property Line – 2 feet proposed for drive-thru lane. Existing Non-Conformities: Minimum Lot Area – 1 acre required, .41 acres existing. Minimum Lot Depth – 200 feet required, 36.87 feet existing. Loading Zone – 14x55 feet required, none existing/proposed.

Mayor Nicol announced that he needed to recuse himself from this application. Attorney Keith Henderson, Henderson and Henderson, Manasquan, NJ stated he was representing the applicant and called John Rea, McDonough-Rea Associates, Manasquan, NJ to testify. Mr. Rea was sworn in by Mr. Clark. Mr. Rea stated that his specialty is Traffic Engineering and that he has been a Licensed Engineer for 49 years, has been performing consulting work in NJ since 1985, and has appeared before many different Planning and Zoning Boards.

Mr. Rea displayed Exhibit A-7 and said that he was asked to assist Mr. Kociuba with developing the site plan that would provide for the safe, efficient circulation for the installation of the drive through window and the NJDOT permit application. Mr. Rea stated that to allow for a drive through window they would have to remove approximately 500 square feet from the building to accommodate the counterclockwise flow for the proposed drive through window. Mr. Rea said that the NJDOT was also concerned about the queue stacking out to Route 70 requiring them to have a 10-car queuing lane for the drive through window. Mr. Rae said that the 10-car queuing lane is essentially what is needed for developing most Dunkin Donuts. Mr. Rae stated they would not be able to maintain the southern access from Old Bridge because they would be extending the curbing for the drive-through lane and said there would be changes to the northern access as well. Mr. Rae explained the changes that were proposed regarding the number of parking spaces. Mr. Rae discussed traffic counts and said they had conducted morning and afternoon counts during the summer season and non-summer season and then explained the details of those counts. Mr. Rae stated he thought the plan works from a circulation point of view and if approved, it will operate safely and efficiently and said he thought the changes would be approved by the NJDOT. Mr. Henderson stated he did not have any other questions for Mr. Rea.

Ms. Trainor asked Mr. Hilla if had any questions. Mr. Hilla stated he did not have any questions. Ms. Trainor then asked to hear questions for Mr. Rea from the Board. Mr. Stenson asked if the location of the drive-through queue could impact people getting gas at the gas station. Mr. Rae answered that even if there were 10 cars in the queue someone coming in to get gas would still have unfettered access to the gas pumps. Mr. Stenson asked where people utilizing the walk-up window would park. Mr. Rae replied that there are 4 parking spaces on the north side of the

building and 3 on the east side including a handicap space. Mr. Jones asked if there would be an ingress and egress off of Old Bridge. Mr. Rae answered that someone could enter and exit there. Mr. Hilla asked if there is anything that could be done with the egress driveway to make it less inviting for someone to enter there. Mr. Rae said with the new layout of the site, entering there would be a last resort. Ms. Brisben asked if an entrance only sign could be put there and at the next one put an exit sign. Mr. Kociuba stated the issue would be that any signage put there would be in the state right-of-way and a short distance off of the road. Mr. Kociuba did say that they could show on the plans and indicate to the state that they would like to place a do not enter sign at that entry, subject to NJDOT approval.

Ms. Trainor referenced a grassy area on the Exhibit and said there really wasn't a radius component for that area at the end of the grassy area. Mr. Kociuba stated they intentionally did not radius to maximize the stacking and to force people in to the site, many people can make the turn into that entry but will also turn in to access the gas station. Ms. Trainor asked Mr. Rae if he would expect during a very busy time that people leaving the gas pumps would exit onto Route 70 and turn around on Old Bridge Drive if, for example, they were coming back into town. Mr. Rae answered that this is what they are hoping people would do and said during their traffic study they found there were 45 entries in the morning at the two Route 70 driveways and 15 entries from Old Bridge. Ms. Trainor asked Mr. Rae what the numbers were at the exit to which he replied the numbers were about the same percentages. There were not any other questions from the Board for Mr. Rae.

Ms. Trainor announced it was time to hear questions from the public for Mr. Rae. Hearing none, Mr. Henderson called Joseph Kociuba to testify. Mr. Clark stated that Mr. Kociuba had been sworn in previously. Mr. Kociuba said there were two types of variances being requested, both a D Variance and a C Variance. Mr. Kociuba described the conditions of the Borough Ordinance and discussed the positive and negative criteria of the application to the Board. Mr. Kociuba spoke of a proposed trash enclosure on the site, proposed restroom, and fencing along the southern side, adjacent to the building. Mr. Kociuba said he felt that this use was a good addition and utilizes the site challenges well and said he thought the D-3 variance could be granted. Mr. Kociuba stated that there are 3 signs that need variances. Mr. Kociuba described the signs and their sizes to the Board and said these signs would be an improvement to the site and would provide better visibility. Mr. Kociuba referenced the walk-in freezer in the back and said it would be in about the same location as the one that is there today. Mr. Kociuba stated it was opinion that the C variances could be granted under the C-1 and C-2 criteria.

Mr. Hilla asked what the plans were for the shed, dumpsters and the port-o-john. Mr. Kociuba stated that the port-o-john would be removed, the dumpster would be placed in the trash enclosure and said that he thought it would be removed but it is owned by the gas station so he would have to confirm with them. Mr. Hilla referenced the loading zone to which Mr. Kociuba stated that they would provide a 30-foot-long loading zone which is non-compliant due to the size. Mr. Kociuba said that this size is the typical size for a box truck which is the anticipated means of delivery to the site.

Ms. Trainor announced that it was time to hear questions for Mr. Kociuba from the Board. Mr. Jones asked a question about the 15-foot turn radius that was addressed. Mr. Kociuba answered

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that they have a 15-foot radius on the interior and on the exterior and said they do that intentionally to allow larger vehicles to be able to make the turn.

Ms. Trainor announced that it was time to hear questions for Mr. Kociuba from the public. Hearing none, Mr. Henderson gave his closing remarks and asked the Board to approve the application. Ms. Trainor stated it was time to hear comments from the public. Hearing none, it was time to hear comments from the Board. Mr. Stenson stated he did not have any issues with the application. Mr. Siano said that he felt they did a great job working with the existing lot. Mr. Jones said that the landscaping would be an improvement and thought the turn ratio was a little tight. Ms. Brisben said she was glad to see that the site would look more modern and said she was for the approval of the application. Ms. Frith said she felt the layout was better and thought the flow would be a big improvement. Ms. Trainor said she felt that the applicant demonstrated the necessary criteria needed for variance relief, thought that the flow would be better and said she hoped the business would do well.

Ms. Trainor asked Mr. Clark to review the conditions that the applicant had agreed to. Ms. Trainor asked for a motion to approve the application with the conditions that Mr. Clark had listed. James Stenson made a motion, seconded by Chris Siano, and followed by the roll call vote:

Ayes: James Stenson, Corinne Trainor, Chris Siano, Karen Brisben, Stephanie Frith, Jay Jones

Noes: None

Absent: Charlie Tice, Amber Fernicola

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 9:05 p.m.

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Denise Murphy, Recording Secretary

Approved: November 7<sup>th</sup>, 2023