

BRIELLE PLANNING BOARD
TUESDAY, NOVEMBER 7, 2023

The Regular Meeting of the Brielle Planning Board was held on Tuesday, November 7th, 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, Charlie Tice, Amber Fernicola

Absent – None

Also present were David Clark, Board Attorney, Alan Hilla, Board Engineer and Denise Murphy, Recording Secretary. There were 9 people in the audience.

A motion was made to approve the Minutes of October 10th, 2023, this done by Jay Jones, seconded by James Stenson, all ayes, no nays.

OLD BUSINESS: Resolution of approval for Block 64.03, Lot 1.01, 633 Rankin Road, owned by Michael & Casey Dambeck, to allow construction of a porch, a deck and addition to an existing home.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY APPROVING THE APPLICATION OF MICHAEL DAMBECK SEEKING VARIANCE RELIEF FOR THE PROPERTY LOCATED AT 633 RANKIN ROAD WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 64.03, LOT 1.01

WHEREAS, Michael Dambeck (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief as described more fully herein for the property located at 633 Rankin Road which is identified on the Borough tax map as Block 64.03, Lot 1.01 (the “Property”); and

WHEREAS, the Applicant the owner of the Property; and

WHEREAS, the Property is located on the southern side of Rankin Road, between William Drive and Schoolhouse Road; and

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

WHEREAS, the Property is currently improved with a two-story residential dwelling, an in-ground pool, attached garage and asphalt driveway; and

WHEREAS, the Applicant is seeking approval to modify the existing structure with 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; and

WHEREAS, the existing and proposed use are conforming for the zone; but the existing and proposed principal structures and the pool mechanical equipment are non-conforming for the zone; and

WHEREAS, the Property has the following non-conformities that are not being impacted by the development proposed by the Applicant within its application:

(a) Minimum Side Yard setback (pool equipment) – 5 feet required, 4 feet existing; and

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

(a) Minimum Front Yard setback (principal) – 40 feet required, 39.8 feet existing; **31.83 feet proposed (to new front porch)**; and

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

(a) Sketch of Survey prepared by Stanley Hans Jr., PLS, PP, dated July 8, 2022;
(b) Variance Plan prepared by Joseph Kociuba, P.E., P.P., dated February 24, 2023, last revised May 17, 2023;

- (c) Architectural Plans prepared by Paul Grabowski, R.A. dated May 10 2023;
- (d) letter of Denial from the Borough Zoning Officer dated June 19, 2023;
- (e) complete application package; and

WHEREAS, the Board was also provided with a letter dated August 29, 2023 prepared by Alan Hilla of H2M Associates, Inc. providing a technical review of the application; and

WHEREAS, the Board held a hearing on this application on October 10, 2023, and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1- a photograph of the property before the applicant purchased the home;
- b. Exhibit A-2- a rendering of the front elevation of the property;
- c. Exhibit A-3- Variance Plan prepared by Joseph Kociuba, P.E., P.P., dated February 24, 2023, last revised May 17, 2023; 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 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 engineer and planner 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 17th 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 then asked for a motion to approve the application with the stipulations Mr. Clark had listed.

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

- a. The correct fees were paid, taxes are paid to date and the property owners within two hundred (200') feet, as well as the newspaper, were properly notified.
- b. The Applicant is the owner of the Property.
- c. The Property is located on the southern side of Rankin Road, between William Drive and Schoolhouse Road.
- d. The Property is located within the R-2 Zone.
- e. The Property is improved with a two-story residential dwelling, an in-ground pool, attached garage and asphalt driveway.
- f. The Applicant is seeking approval to modify the existing structure with 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.
- g. The existing and proposed use are conforming for the zone; but the existing and proposed principal structures and the pool mechanical equipment are non-conforming for the zone.
- h. The Applicant is seeking the following variance relief through this application (the variance relief sought is shown in bold type): (i) Minimum Front Yard setback (principal) – 40 feet required, 39.8 feet existing; **31.83 feet proposed (to new front porch)**.

- i. The Board notes that the improvements that the Applicant proposes to the rear of the Property were already built pursuant to permits granted by the Borough and that no variance relief was required from the Board to construct those improvements;
- j. The only improvements proposed by the Applicant which require Board approval are the improvements to construct a covered front porch on the home on the Property that would be 8 feet in depth and 35 feet in width.
- k. The Applicant has agreed that if its application is granted, it will stipulate that it will provide the Board Engineer with a grading plan for the construction on the Property for the Board Engineer's review and approval and that it will agree that the porch will not be enclosed unless the Applicant or any successor-in-interest to the Property seeks further Board approval for any proposed enclosure.
- l. The Applicant provided testimony from its expert engineer and planner Joseph Kociuba that the proposed front yard setback of 31.83 feet is consistent with the setbacks of other houses on this street and that the neighboring property to the east of the Property has a front yard setback of 28 feet.
- m. The Applicant also provided testimony from its expert engineer and planner Joseph Kociuba that most of the homes on this street are screened by vegetation and that the home on the subject Property is one of the only homes which is visible from the street.
- n. The Applicant provided testimony, and the Board finds, that the proposed improvement of constructing a covered front porch on the home on the Property will not only improve the functionality of the home, but will also improve the visual aesthetics of the home and of the neighborhood.
- o. 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.
- p. 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 construction of a porch is a typical home improvement which will replace the flat façade of the house with a more aesthetically pleasing façade and will promote the following purposes of Municipal Land Use Law: (i) to encourage the appropriate development of lands in accordance with N.J.S.A. 40:55D-2(a); (ii) to promote adequate light,

air and open space in accordance with N.J.S.A. 40:55D-2(c); and (iii) to promote a desirable visual environment in accordance with N.J.S.A. 40:55D-2(i).

- q. The Applicant has also presented testimony and the Board finds that the 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.
- r. For these reasons, the Board finds that the Applicant has satisfied the criteria for a C(2) variance.
- s. N.J.S.A. 40:55D-70(c)(1) allows a planning board to grant variance relief upon a showing of hardship.
- t. The Applicant presented testimony that a hardship exists herein because the house has been located at this particular location on the Property since the 1950s and it is impractical to require the house to be lifted and moved in order to allow a front porch to be constructed that would conform with the front yard setback requirements and that the improvements proposed by the Applicant are consistent with other development in the neighborhood and the deviations from the requirements of the zone 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.
- u. The Board accepts this testimony and finds that the C(1) hardship variance provides an alternative basis for granting the variance relief sought by the Applicant herein.

WHEREAS, Councilman Frank Garruzzo 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: 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

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. Prior to the commencement of construction of the front porch on the Property, the Applicant shall submit a grading plan to the Board Engineer for his review and approval and shall comply with any changes to the grading plan required by the Board Engineer.
- b. The Applicant agrees and stipulates that the front porch will not be enclosed. If the Applicant or any successor-in-interest to the Applicant decides that it wants to enclose the front porch, they must first file an application with the Board seeking relief from this condition.
- c. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- d. 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.
- e. 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 Councilman Frank Garruzzo, seconded by James Stenson and then by the following roll call vote:

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

Noes: None

Not eligible to vote: Charlie Tice, Amber Fernicola

OLD BUSINESS: Resolution of approval for Block 109, Lot 2, 1007-1009 Route 70, site of Dunkin Donuts to allow a drive-thru lane.

RESOLUTION OF THE BRIELLE BOROUGH PLANNING BOARD, COUNTY OF MONMOUTH AND STATE OF NEW JERSEY APPROVING THE APPLICATION OF AKSH DONUTS, LLC SEEKING VARIANCE RELIEF AND MAJOR SITE PLAN APPROVAL FOR THE PROPERTY LOCATED AT 1007-1009 HIGHWAY 70 WHICH IS IDENTIFIED ON THE TAX MAP OF THE BOROUGH OF BRIELLE AS BLOCK 109, LOT 2

WHEREAS, AKSH Donuts, LLC (the “Applicant”) filed an application with the Planning Board of the Borough of Brielle (the “Board”) seeking variance relief and major site plan approval as described more fully herein for the property located at 1007-1009 Highway 70 which is identified on the Borough tax map as Block 109, Lot 2 (the “Property”); and

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

WHEREAS, the owner of the Property, JMZ Realty Assoc. LLC, has consented to the Applicant’s application; and

WHEREAS, the Property is located on the western side of Route 70, east of Old Bridge Road; and

WHEREAS, the Property is improved with a one-story retail coffee/donut store (Dunkin Donuts) and a gasoline service station and asphalt driveway; and

WHEREAS, the Applicant leases the portion of the Property on which the Dunkin Donuts operates; and

WHEREAS, the Property is located within the Borough’s commercial C-3 zone (the “C-3 Zone”); and

WHEREAS, the Applicant is seeking approval to modify the existing Dunkin Donuts structure and to construct a new drive-thru lane through various site modifications; and

WHEREAS, the existing use(s) are conforming for the zone, but the proposed use and the existing and proposed structures are non-conforming for the zone; and

WHEREAS, the Property has the following non-conformities that are not being impacted by the development proposed by the Applicant with its application:

- (a) Minimum Front Yard (Old Bridge Road) – 30 feet required, 16.5 feet existing (to gas canopy);

- (b) Minimum Front Yard (Route 70) – 30 feet required, 3 feet existing (to gas canopy); and

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

- (a) although the C-3 Zone allows drive-in eating establishments as a conditional use, the development proposed by the Applicant does not meet the following conditions for this conditional use: (i) Minimum Lot Area of one acre, 0.41 Acre existing; (ii) Minimum Lot Depth of 200 feet, 36.87 feet existing; (iii) Minimum Off-street parking of 20 spaces for the restaurant, 7 provided; (iv) Fenced-in trash enclosure; and (v) Perimeter fencing and buffering (three sided). Therefore, **the Applicant is seeking a variance for these deviations from the conditional use requirements of the zone under N.J.S.A. 40:55D-70d(3);**
- (b) Minimum Front Yard setback (Old Bridge Road) – 30 feet required, 29.9 feet existing, **23.33 feet proposed (to freezer/cooler);**
- (c) **approval for two (2) freestanding signs on the Property (one of which will be the menu board for the Dunkin Donuts);**
- (d) **approval for the main freestanding sign on Route 70 to be 102.25 square feet in size (where 75 square feet is permitted);**
- (e) **approval for the size of the building façade signage where 56.96 square feet is proposed and 50.5 feet is permitted;**
- (f) Minimum Front Yard setback (Old Bridge Road) – 30 feet required, 29.9 feet existing, **23.33 feet proposed (to freezer/cooler);** and

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

- (a) Boundary, Topographic, & Utility Survey prepared by Alan R. Boettger, PLS, dated November 10, 2022;
- (b) Preliminary and Final Site Plan prepared by Joseph Kociuba, P.E. set dated May 5, 2023 and Sheet 3 of 7 dated revised June 12, 2023;
- (c) letter of Denial from the Borough Zoning Officer dated May 10, 2023;
- (d) application package (including addendum for zoning variance and addendum for site plan approval); and

WHEREAS, the Board was also provided with a letter dated August 21, 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(3); and

WHEREAS, the Board held hearings on this application on September 12, 2023 and October 10, 2023, and considered the following documents presented at the hearings in connection with this application:

- a. Exhibit A-1- 3 photos (2 of the existing building and 1 photo of an existing pylon sign);
- b. Exhibit A-2- Sheet 1.0 of the Architectural Plans prepared by GKA Architects on September 11, 2023;
- c. Exhibit A-3- Sheet 2.2 of the same Architectural Plans prepared by GKA Architects on September 11, 2023 with coloring identifiers;
- d. Exhibit A-4- a sheet that shows 2 of the Elevations relating to signage;
- e. Exhibit A-5- a sheet that shows another Elevation relating to signage;

- f. Exhibit A-6- a sheet that shows the one free standing sign at the drive-through;
- g. Exhibit A-7- a colored copy of the lay-out plan with some amendments prepared by Joseph Kociuba; and

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

September 12, 2023 hearing

Attorney Keith Henderson, Henderson and Henderson, Manasquan, NJ stated he was representing the applicant and owner of the property. Mr. Henderson said that before the Board was a D-3 use variance which he said has a much lower requirement of proof than a standard D variance.

Mr. Henderson called Atul Patel to testify. Mr. Patel was sworn in by Mr. Clark. Mr. Patel stated he is one of the principals of the company that operates this Dunkin Donuts and said it is a franchise that he has operated since October 2006. Mr. Patel stated he was before the Board to request approval to change this facility to a drive-through only. Mr. Henderson stated he had no further questions.

Ms. Trainor announced it was time to hear questions from the Board for Mr. Patel. Ms. Brisben asked if this would be a drive-through only. Mr. Patel answered that was correct. Mr. Jones stated that the plans also show a walk-up window. Mr. Patel replied that there would be a walk-up window and a drive-through and said guests would not be able to enter the store. There were no other questions for Mr. Patel from the Board.

Ms. Trainor announced it was time to hear questions for Mr. Patel from the public. Hearing none, Mr. Henderson called Michael Elkin, GKA Architects, to testify. Mr. Elkin was sworn in by Mr. Clark. Mr. Elkin testified he had been an architect for 47 years and had testified before different Boards many times. Ms. Trainor stated that the Board accepted Mr. Elkin as an expert in Architecture.

Mr. Elkin presented six documents which were marked for the Record by Mr. Clark.

Exhibit A-1- described as 3 photos, 2 of the existing building and 1 photo of an existing pylon sign.

Exhibit A-2- described as Sheet 1.0 of the Architectural Plans prepared by GKA Architects on September 11, 2023.

Exhibit A-3- described as Sheet 2.2 of the same Architectural Plans with coloring identifiers

Exhibit A-4- described as a sheet that shows 2 of the Elevations relating to signage.

Exhibit A-5- described as a sheet that shows another Elevation relating to signage.

Exhibit A-6- described as a sheet that shows the one free standing sign at the drive-through

Mr. Elkin described the existing site, the current conditions of the property and the proposed changes. Mr. Elkin spoke about renovating the interior of the building, the creation of a vestibule with a public restroom, a walk-up window, a drive-through window, and a new walk-in refrigerator and freezer. Mr. Elkin said the public would not be able to access the building except to use the restroom. Mr. Elkin described the proposed changes to the exterior of the building and described the existing and proposed signage.

Ms. Trainor announced it was time to hear questions from the Board for Mr. Elkin. Ms. Brisben asked if there would be one or two bathrooms. Mr. Elkin replied that only one bathroom is required and that there would only be one bathroom. Mr. Jones referenced a particular sign and asked if Dunkin Donuts also owned Lukoil. Mr. Elkin answered that Lukoil proposed the sign and said that there is an existing Dunkin Donuts sign there. Ms. Trainor asked how someone would access the restroom. Mr. Elkin stated there would be a door in the north-west corner of the building that would open into a vestibule and the bathroom would be there. Mr. Hilla asked if the bathroom would be accessible for the public and the workers. Mr. Elkin replied that was correct. Mr. Hilla asked, from a franchise point of view, if the signs and the sizes of the signs were mandated by Dunkin Donuts. Mr. Elkin answered that they were mandated by Dunkin. There were no other questions from the Board.

Ms. Trainor announced it was time to hear questions from the public for Mr. Elkin. Hearing none, Mr. Henderson called Mr. Joseph Kociuba, KBA Engineering, Manasquan, NJ. Mr. Kociuba was sworn in by Mr. Clark. Mr. Kociuba stated he was testifying as both a Planner and an Engineer in this application. Mr. Kociuba presented a document, described as a colored copy of the lay-out plan with some amendments prepared by his office. Mr. Clark marked this document as Exhibit A-7.

Mr. Kociuba described the preexisting site and the surrounding area and stated that Lukoil was the owner and Dunkin was the tenant and said the applicant was proposing to amend the southern end of the site to allow for a drive-through. Mr. Kociuba said the site is 4.11 acres, was an odd, shaped lot with primary frontage on Route 70, and said the property was in the C-3 Zone. Mr. Kociuba said the proposal was to reduce the size of the building to create a drive-through with a walk-up window which he said would decrease traffic and said they would also create 4 angled parking stalls. Mr. Kociuba stated the drive-through aisle was proposed as 12 feet wide with an ample radius around the southern side of the building. Mr. Kociuba discussed setbacks, curbing, grading, drainage, landscaping, lighting improvements, parking and the circulation of traffic through the site. Mr. Kociuba also discussed the way the proposed drive-through lane would work. Mr. Kociuba stated there would be a total of 10 parking stalls. Mr. Kociuba referenced Mr. Hilla's letter and said two other changes made were that the applicant

would be supplying a fenced refuse enclosure on the property and they would add a striped 14 x 40 foot loading area. Mr. Kociuba stated he had finished his engineering and site related items and asked the Board if he should continue to the use variance portion of his presentation. Ms. Trainor replied that there was 5 minutes left of the Board's 45-minute rule and suggested that Mr. Hilla ask Mr. Kociuba questions from the testimony that had been presented so far.

Mr. Hilla stated that the old center line of Old Bridge Road was the dividing line between Brielle and Wall Township and asked if there had been any communication with Wall Township. Mr. Kociuba answered that they had attended an informal meeting in Wall Township to discuss the application and ask if there were any approvals necessary. Mr. Kociuba said the improvement is in the NJ DOT right-of-way and that Wall Township said that their separate approval was not necessary. Mr. Henderson stated that Wall Township said they had no interest. Mr. Hilla asked if there had been any filing with the NJ DOT in regard to the traffic pattern change on the site, the modification of the jug handle and the driveways. Mr. Kociuba said they were aware they need approval from the NJ DOT and that approval is pending.

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

Mr. Stenson said he wanted to confirm that there would be 7 parking spaces around the building. Mr. Kociuba answered that was correct and said one of them would be handicapped accessible.

Mr. Siano asked if vehicles would only be able to exit onto Route 70. Mr. Kociuba responded that they could technically circulate up to the Old Bridge Road exit but said they anticipate that this would be the least favorite option.

Ms. Brisben asked about the overhead height and asked how tall it would be. Mr. Kociuba answered it would be 9 feet.

Mr. Jones asked how many feet would be eliminated from the building. Mr. Kociuba replied that he believed it would be 12 feet on the south side and 7 feet on the north side.

Ms. Trainor asked if Mr. Kociuba could explain how the employee parking would happen. Mr. Kociuba stated they would have 3 vehicle parking stalls at the north end, 2 of them are stacked and 1 is an individual spot and said they anticipate 1 employee for the gas station and 2 for the facility.

Ms. Trainor announced that the 45 minutes had passed and that the application would be carried to the next meeting.

October 10, 2023 hearing

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 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.

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, JMZ Realty Assoc. LLC, has consented to the Applicant's application.
- d. The Property is located on the western side of Route 70, east of Old Bridge Road.
- e. The Property is improved with a one-story retail coffee/donut store (Dunkin Donuts) and a gasoline service station and asphalt driveway.
- f. The Applicant leases the portion of the Property on which the Dunkin Donuts operates.
- g. The Property is located within the Borough's C-3 Zone.
- h. The Applicant is seeking approval to modify the existing Dunkin Donuts structure and to construct a new drive-thru lane through various site modifications.
- i. The existing use(s) are conforming for the zone, but the proposed use and the existing and proposed structures are non-conforming for the zone.
- j. The Property has the following non-conformities that are not being impacted by the development proposed by the Applicant with its application: (i) Minimum Front Yard (Old Bridge Road) – 30 feet required, 16.5 feet existing (to gas canopy); (ii) Minimum Front Yard (Route 70) – 30 feet required, 3 feet existing (to gas canopy).
- k. The Applicant is seeking the following variance relief through this application (the variance relief sought is shown in bold type): (i) although the C-3 Zone allows drive-in eating establishments as a conditional use, the development proposed by the Applicant does not meet the following conditions for this conditional use: (1) Minimum Lot Area of one acre, 0.41 Acre existing; (2) Minimum Lot Depth of 200 feet, 36.87 feet existing; (3) Minimum Off-street parking of 20 spaces for the restaurant, 7 provided; (4) Fenced-in trash

enclosure; and (5) Perimeter fencing and buffering (three sided). **Therefore, the Applicant is seeking a variance for these deviations from the conditional use requirements of the zone under N.J.S.A. 40:55D-70d(3); (ii) approval for two (2) freestanding signs on the Property (one of which will be the menu board for the Dunkin Donuts); (iii) approval for the main freestanding sign to be 102 square feet in size (where 75 square feet is permitted); (iv) approval for the size of the building façade signage where 56.96 square feet is proposed and 50.5 feet is permitted; and (v) Minimum Front Yard setback (Old Bridge Road) – 30 feet required, 29.9 feet existing, 23.33 feet proposed (to freezer/cooler).**

- l. 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(3).
- m. N.J.S.A. 40:55D-70d(3) provides that an applicant can obtain variance relief for deviations from the conditions applicable to a permitted conditional use.
- n. In order to obtain a variance under N.J.S.A. 40:55D-70d(3) for deviations from the conditions applicable to a permitted conditional use, an applicant must demonstrate that the variance relief 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.
- o. The Applicant's expert planner and engineer Joseph Kociuba provided testimony indicating that there is no substantial detriment to the public good by granting the variance relief from the conditional use requirements. Mr. Kociuba provided testimony indicating that the deviations sought from the conditions of this conditional use may be granted because the Property can support the proposed use, the Property is uniquely shaped and configured, the parking space deviation is not significant because the Dunkin Donuts will be limited to drive-through and mobile order customers only and there will be no seating or service in the interior of the building, and the improvements proposed through this Application, such as providing a trash enclosure where one did not exist before and providing a buffer area of green space along Old Bridge Road where currently there is unrestricted ingress and egress to the Property, will improve the traffic circulation and overall use of the Property. Mr. Kociuba also testified 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.
- p. The Board accepts the testimony provided by Mr. Kociuba and finds that the Applicant has met the criteria for D(3) variance relief for the deviations that it is seeking from the conditions applicable to this conditional use.

- q. The Applicant is also seeking the following bulk variances (C variances) in its application: (i) **approval for two (2) freestanding signs on the Property (one of which will be the menu board for the Dunkin Donuts);** (ii) **approval for the freestanding menu board sign to be 102.25 square feet in size (where 75 square feet is permitted);** (iii) **approval for the size of the building façade signage where 56.96 square feet is proposed and 50.5 feet is permitted;** and (iv) Minimum Front Yard setback (Old Bridge Road) – 30 feet required, 29.9 feet existing, **23.33 feet proposed (to freezer/cooler).**
- r. The Board finds that the Property is an irregularly-sized and shaped lot which arguably has two frontages. Additionally, the deviations from the requirements of the zone are minimal 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. Indeed, these improvements to the signs will improve the location and visibility of the signage on the property, while the setback being sought to the freezer/cooler is substantially similar to the pre-existing setback condition on the Property. For these reasons, the Applicant has met the criteria for a N.J.S.A. 40:55D-70(c)(1) variance for the bulk variances sought through this application.
- s. 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.
- t. 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 parking and circulation 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.
- u. The Board therefore finds that the Applicant has met the criteria for a N.J.S.A. 40:55D-70(c)(2) variance for the bulk variances sought through this application.

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:

November 7, 2023

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

Noes: None

Absent: Charlie Tice, Amber Fernicola

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 thirty (30) days of the adoption of this resolution, the Applicant shall submit four sets of revised plans to the Board Secretary with the revisions described during the testimony provided by the Applicant's witnesses.
- b. The Applicant shall install an "exit only" sign at the curb cut from Route 70 on the westerly side of the Property is the NJDOT allows the installation of this sign.
- c. The Applicant shall provide striping and other visual indications, as approved by the Board Engineer, on the pavement near the curb cut from Route 70 on the easterly side of the Property indicating that this curb cut is "entrance only" and on the curb cut on the westerly side of the Property indicating that this curb cut is "exit only".
- d. The Applicant shall pay all taxes and other applicable assessments, costs and fees to date, as applicable.
- e. 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
- f. 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 James Stenson, seconded by Chris Siano and then by the following roll call vote:

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

Not eligible to vote: Mayor Thomas Nicol, Councilman Frank Garruzzo, Charlie Tice, Amber Fernicola

NEW BUSINESS:

Site Plan application for Block 18.01, Lot 11, 405 Union Avenue (Rt. 71), to allow restoration work on outdoor Lighting system, Site Plan review required by the Planning Board (Section 23-1.5). Existing nonconformity – Front Yard Setback – 30 feet required, 25.3 feet existing.

Thomas Letizia from the law firm Troutman Pepper Hamilton Sanders, Princeton, New Jersey stated he was representing the applicant and tenant, Bank of America National Association. Mr. Letizia said that the applicant was proposing to upgrade their external lighting at the bank in order to comply with the New Jersey Security Lighting Standards for banks that have automated teller machines. He said the scope of the lighting changes include replacing existing lighting fixtures with LED lights and installing five new light poles also with LED fixtures. Mr. Letizia stated that state law mandates certain lighting levels for safety and security of the public accessing ATM facilities and said the NJ Statute is called the Electronic Fund Transfer Privacy Act and is set forth at N.J.S.A 17:16K. Mr. Letizia referenced “Section 10 of the Law” of this law and gave the board a detailed description of which lighting is required and where the lighting is required to be placed. He said that it was important to point out that this Act supersedes and preempts all codes and requirements of the county or the municipality pertaining to lighting levels for ATM’s and said that this was the code that banks must comply with.

Mr. Letizia called Brad Petrick, Petrick Real Estate Services, to testify. He was then sworn in by Mr. Clark. Mr. Petrick recited his educational background, said he became a Licensed Engineer in NJ in 2015, has completed multiple exterior lighting projects within the state and for the bank and has testified as an expert in boards across the New Jersey. Ms. Trainor stated that the Board accepted Mr. Petrick as an expert in civil engineering.

Mr. Petrick presented five documents which were marked as Exhibits by Mr. Clark. They were:

Exhibit A-1, described as document C-100.

Exhibit A-2, described as four photos showing the existing conditions of the site.

Exhibit A-3, described as a document showing a foot candle as a light measurement.

Exhibit A-4, described as document C-300, shows the various foot candles proposed.

Exhibit A-5, described as photos of the rear of the property, drive through ATM and walk up ATM.

Mr. Petrick spoke about a 6 foot tall white vinyl fence and large 20-30 foot tall evergreen trees that are located in the rear of the property. He then described to the Board what a foot candle was and how it is measured. Mr. Petrick stated that per the requirements, they would need to light within 50 feet of the ATM in the rear of the building as well as inside of the building. He then described to the Board the different proposed light levels around the site and the adjacent lots. Mr. Petrick stated that the existing lighting would be removed and new lighting would be installed but said some existing poles would remain and 5 new poles would be added. He said that along the rear of the property line they have tried to reduce the intrusiveness of the light onto the adjacent property by including light shields on the fixtures, which block the light from going in an unwanted direction. Mr. Petrick was asked if the trees belonged to the bank. He replied that the trees belong to the neighbor.

Mr. Petrick stated that the applicant was proposing to place a dumpster with an enclosure in its current location. Mr. Petrick stated that to create enough space for the dumpster enclosure, they would have to reduce the size of the 6 adjacent parallel parking spaces by 2 feet each. He said the existing spaces are 25 feet long and said 22 feet is required so this would create enough area for the dumpster enclosure. Mr. Hilla asked if the dumpster enclosure would be on the side of Harris Avenue. Mr. Petrick answered that it could go on either side of Harris or Borrie Avenues. Mr. Letizia asked Mr. Hilla if he had a preference where it should be placed. Mr. Hilla stated he thought the Borrie Avenue side was preferable because most dumpsters are front load and this would not impact the traffic pattern on the site. Mr. Petrick said he agreed that the Borrie Avenue side would provide better circulation.

Mr. Petrick said that the applicant has agreed to repair the pot hole adjacent to the curb. Mr. Petrick then summarized his testimony and thanked the Board for their time. Mr. Letizia stated he had no further questions for Mr. Petrick.

Ms. Trainor said it was time to hear questions for Mr. Petrick from the Board. Mr. Siano asked Mr. Petrick to show him where the 5 proposed light poles would be. Mr. Petrick referenced Exhibit A-4 and pointed to the light poles. Mr. Jones asked if the new light poles would be 10 feet high. Mr. Petrick replied that there would be a mixture of 10 foot and 20 foot poles. Mr. Jones asked if the light shield was like a collar to which Mr. Petrick answered that it was basically a three-way collar. Ms. Brisben asked if the light poles on Harris Avenue would be 20 feet high and asked if the lights would have a shield on them. Mr. Petrick replied that they would not because they need to light backwards and said there shouldn't really be any light spillage based on their calculations. Ms. Brisben asked if they would be digging up the parking lot for the new electric. Mr. Petrick answered that they would be digging a trench about 3 foot wide. Ms. Trainor asked if when the foot candles on Lot 12 were measured, did they take into account the trees. Mr. Petrick answered they had taken that into account. There were not any other questions from the Board.

Ms. Trainor said it was time to hear questions for Mr. Petrick from the public. Dan Burke, 1013 Cedar Lane, was sworn in by Mr. Clark. Mr. Burke asked if the lights would be LED lights and what the color temperature would be. Mr. Petrick answered the lights would be LED and the color temperature would be white. There were no other questions from the public.

Ms. Trainor asked if there were any comments from the public. Eleanor Fox, 608 Harris Avenue, was sworn in by Mr. Clark. Ms. Fox stated that she was the owner of 602-604 Harris Avenue, Lot 12 which she said was behind the fence. Ms. Fox said she was concerned about the brightness of the light and thought it could be a problem at nighttime. She said she was concerned about the 20 foot pole and asked if it could be reduced to 10 feet. She also was concerned about side light and asked if the pole could be turned. Mr. Petrick responded that as far as the pole was concerned, the compliance area requirement is 50 feet to maintain light and said the light was facing towards the ATM. Mr. Siano asked what the foot candle measurement was on Ms. Fox's property to which Mr. Petrick responded 0.1. Mr. Petrick stated that shrinking the height of the pole would reduce the size of the area of the light and said that generally when a pole is shortened, it creates other pockets of darkness which he said is what they were trying to avoid. There were not any other comments from the public.

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

Mayor Nicol commented that he wanted the neighbors to be satisfied with the lighting.

Councilman Garruzzo agreed with Mayor Nicol but said that it did not appear that the lighting would be anymore detrimental than what was currently there and said he was inclined to move forward with the application.

Mr. Stenson asked what the candle foot measurement was where all of the neighbors were. Mr. Petrick answered that the highest measurement would be .2 to which Mr. Stenson said that he was satisfied with that.

Mr. Jones said he agreed with Mr. Stenson.

Ms. Brisben asked Mr. Hilla if the applicant would have to submit revised plans for the dumpster placement to which he replied that they did have to do that. She said she would need 4 sets of the plans to show where the dumpster would be.

Ms. Trainor said she heard the comments about the lights but thought that it would need to be balanced against the safety purposes of the statutory scheme that governs the lighting that is necessary for an ATM, said that the trees are in the neighbor's control and said she thought the application made good sense. She also said she would want the pot hole to be addressed.

Mr. Clark then reviewed 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. James Stenson made a motion, seconded by Chris Siano, 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, Charlie Tice

Noes: None

OLD BUSINESS: Continuation of hearing for Minor Subdivision for Block 81.01, Lot 1, 409 Union Lane, owned by Daniel & Todd Burke, co-Executors, to allow a two lot subdivision.

Councilman Garruzzo announced it was necessary to recuse himself from this application. Mr. Clark stated that in the last meeting, Mr. Middleton was in the midst of his direct examination of Mr. DiFolco. Mr. Middleton then began to question Mr. DiFolco. He asked Mr. DiFolco if it were true that at the last meeting he had testified that the Lot had 40 feet of frontage where 75 feet was required and if his testimony was based upon an Ordinance. Mr. DiFolco answered that it was correct, based upon the Ordinance and the application. Mr. Middleton referenced section 20-3 of that Ordinance and asked Mr. DiFolco to read it to the Board. Mr. Middleton asked Mr. DiFolco if this lot was a corner lot. Mr. DiFolco answered that it was not. Mr. Middleton asked if because this was not a corner lot, the requirement would be that the frontage would equal the width. Mr. DiFolco replied that was correct, 75 feet. Mr. Middleton handed Mr. DiFolco the

schedule of area requirements and asked him to read the R-3 Zone requirements. Mr. DiFolco read 75 feet for width. Mr. Middleton asked Mr. DiFolco if it was his opinion that the lot frontage of 40 feet out of character with the other lots in the neighborhood. Mr. DiFolco responded that it was his opinion that it was grossly out of character and said it was undersized for the neighborhood and the Zone.

Mr. Middleton displayed a document which was marked as Exhibit O-10 by Mr. Clark. Mr. Middleton stated that the Exhibit identified the lots on the street on the left and identifies the frontages on the right, the subdivided lots that had been previously discussed and the proposed lot. Mr. DiFolco said that when looking at the Exhibit, one could see that the lots have frontages of higher than 40 feet and said that in terms of character, from a planning perspective, this was out of character with the neighborhood.

Mr. DiFolco stated that the driveway would be 90 degrees to the other driveways on the street which would create a conflict, said backing out of the driveway would require a U-turn, a K-turn or two K-turns to get around and said there is no place to do a turnaround movement at the end of a dead end driveway. He said that 20 feet of the 26 foot at the end of the street would have to be part of the driveway and parking on either side of the street would obstruct the 20 foot driveway. Mr. DiFolco said he had referenced Ordinance 21-31.10 for the width of the driveway.

Mr. Middleton asked Mr. DiFolco if he had a chance to review the merger of Lots 8 and 9. He answered that he had, said the Borough has a standard, 21-56.2, called "Substandard Sized Lot", and then read it aloud to the Board. He said both of the lots were substandard so both of the lots would have merged under the Merger Doctrine and the Borough's Ordinance. Mr. Middleton said that Lot 9 was 7500 feet and Lot 8 was about 6500 feet, where the minimum area 11, 250 square feet was required. Mr. DiFolco said that this was important because it introduced another driveway into the end of the road with additional vehicles moving in and out.

Mr. DiFolco referenced Lot 8 and said that the proposed driveway is within 5 or 6 feet from the end of the pavement on Melrose Avenue which coincides with the driveway being about 5 feet from the property line. He said that if someone were backing out of Lot 8 and out of the proposed lot at the same time, they would be in conflict and added if there were a car parked on the street, it would be more difficult, if not impossible, to back out because there would not be enough room. Mr. DiFolco said he felt it would create a dangerous situation and a safety concern. He said another issue would be snow removal. When plowed, he said, the truck would plow the snow at the end of the road and this would block the driveway to the proposed lot and perhaps even Lot 8, unless the snow is pushed onto the property. He said this application creates a snow problem, a backup problem, a turnaround problem, and also the orientation of the house problem because everyone is parallel to the street and this house would be contrary to that standard neighborhood scheme. Mr. Middleton stated he did not have any other questions for Mr. DiFolco.

Mr. Burke stated that in Mr. DiFolco's testimony in the meeting he expressed concerns with the topographic map submitted with the application and asked if he had any facts that support that it did not meet the requirements of the Borough Code. Mr. DiFolco responded that he reviewed the plan and said the degree of accuracy of the map did not provide any suitable engineering basis

for a determination. Mr. Burke asked if the contour intervals on the map meet the code. Mr. DiFolco replied that he took issue with the content of the map and the information provided on the plot plan really did not explain anything. Mr. Burke then asked if the professionals that reviewed this had any problems with it and the answer was no. Then Mr. Burke and Mr. DiFolco went over the requirements for submission of a subdivision and survey. Mr. Burke had his next exhibit marked as Exhibit A-5, a survey of the property which show a license and seal of the surveyor and he asked Mr. DiFolco if this was proper and Mr. DiFolco noted the survey is from 1999. Mr. Burke asked if there have been any changes to this survey and Mr. Middleton objected to this, Mr. DiFolco is an Engineer, not a surveyor, and a survey for this plan should have been a more up to date. Ms. Trainor asked Mr. DiFolco if he could answer Mr. Burke's question and the answer was no. Mr. Burke then questioned who could prepare a subdivision map and noted it could be done by an Engineer, he then asked that his reference to this, which he read, be marked as Exhibit A-6, a quote from NJAC 30:40-7.4. Mr. DiFolco had questioned his ability to do this subdivision plan.

Mr. Burke referenced Exhibit A-2, the Minor Subdivision plan, and asked Mr. DiFolco if it referenced the survey that was included with the application and the answer was yes. Mr. Burke then asked about the metes & bounds description from May 2022 that were included with his first submission for this subdivision and Mr. DiFolco was not familiar with them so they were produced and marked as Exhibit A-7; Mr. Burke noted they were prepared by a licensed surveyor. He then started to go on but Mr. Middleton objected at this time that Mr. Burke had not asked a question but produced Exhibit A-7. Mr. Burke then asked Mr. DiFolco if he had listened to the tape of the July 2023 meeting and he had not.

Mr. Burke then asked Mr. DiFolco if the full lot for this application fronts on two streets, Union Lane and Melrose Avenue and Mr. DiFolco had a problem with Mr. Burke's definition of "frontage". There was a brief discussion on rights-of-way, linear path as well as streets and Mr. Burke asked Mr. DiFolco to produce references; Mr. DiFolco explained this does not have the frontage required and they discussed the travel way on Melrose Avenue. Mr. Burke asked if the end of Melrose Avenue is considered a right-of-way line and Mr. DiFolco said no, it is the dead end of Melrose Avenue. Mr. Burke then asked how was he able to come up with the numbers he has on his subdivision map and Mr. DiFolco said he did not agree with it; Mr. Burke said the Zoning Officer did agree with it when he originally went in with his plans. Mr. DiFolco again said this is a dead end without a cul-de-sac. Mr. Burke asked Mr. DiFolco how many dead ends are there in the Borough and Mr. DiFolco did not know, Mr. Burke said there are dozens. Mr. Burke then asked about cul-de-sacs and felt, based on what Mr. DiFolco said, they do not have proper frontage and asked Mr. DiFolco if he agreed with this and the answer was no, they have a radius on a curve, a pie shape and there is no cul-de-sac for this application; Mr. Burke did not agree with this and there was another brief discussion on the linear path definitions.

Mr. Burke noted in previous testimony it was stated that any home built on new lot 1.02 would be 10 feet from Mr. Donnelly's home and asked Mr. DiFolco about this, his answer was the building envelope was 60 feet long, it would be a long and narrow home and he asked Mr. Burke if he was asking if the layout was correct? Mr. Burke said he was asking him if a home can be built inside this building envelope that will not impact the Donnelly home and Mr. Middleton had an objection to this, this is conjecture of where the home will be built. Mr. DiFolco was

willing to answer and felt the home could or could not impact Mr. Donnelly's home, there is a 60 foot long envelope. Mr. Burke then produced Exhibit A-8, a conceptual sketch addressing the concerns of the location of the home and not have it looking at the Donnelly residence, he had two plans of where the home could be. He asked Mr. DiFolco if they looked conforming and Mr. DiFolco questioned the setback lines, he did not agree. Mr. Burke then asked if a hammerhead parking area could be put in so a car could turn around on the property to leave facing forward on Melrose Avenue and Mr. DiFolco agreed a hammerhead could be put in but there needs to be 20 feet to do this. At this time Mr. Middleton raised an objection as Mr. Burke's testimony was to subdivide the property and sell the lot as is for the new owner to build a home, Mr. Burke was not building a home here and now he is asking about hypothetical homes, none of this was on the original application. Ms. Trainor asked Mr. Burke when he submitted Exhibit A-8 to the Secretary and he said he did not, he brought it tonight in response to last month's testimony. As Mr. DiFolco said he felt he could answer questions on Exhibit A-8, Ms. Trainor overruled Mr. Middleton's objection and asked Mr. Burke to continue on with his questions.

Mr. Burke then referenced other subdivisions in the area and noted the building envelopes for them and felt they could fit in the proposed lot and asked Mr. DiFolco if that were correct and Mr. DiFolco made a comment on the light shield but his answer was inaudible on the recording. Mr. Burke then asked about the Objector's Exhibit 0-7 or 0-8 showing cars on either side of Melrose Avenue at the dead end and asked Mr. DiFolco if this is represented correctly and Mr. DiFolco said yes, this is to demonstrate the road width available. Mr. Burke said the home on lot 8 at the end of Melrose Avenue not fully built and the driveway would block part of this so a car could not park on that side of Melrose Avenue in that location and he felt the exhibit was not accurate.

Mr. Burke then spoke of snow plowing and said that there would be enough room on the right side of the dead end to allow snow to be piled up there, Mr. DiFolco agreed. Mr. Burke asked about testimony Mr. Donnelly had made but Mr. DiFolco could not answer and Ms. Trainor asked Mr. Burke to continue with another question. He asked if there are any other dead ends in town that have driveways and Mr. DiFolco said he saw several of them and they had ample room to turn around. Mr. Burke then asked about Mr. Donnelly's property and the proposed lot, do they have about the same square footage and Mr. DiFolco felt Mr. Donnelly's may be a little more; Mr. Burke noted they are both around 12,000+ square feet.

Mr. Burke commented that Mr. Donnelly had stated he would be subject to 5 years of construction and lots 8 and 9 were sold in 2001. Lot 9 has been occupied so is not in construction and he asked if that was correct and Mr. DiFolco agreed. Lot 8 had been sitting for some time but is now under construction and the building is framed, Mr. DiFolco agreed. Mr. Burke said a house on Lot 4 was taken down and reconstructed with a modular and is currently occupied. Mr. Burke asked Mr. DiFolco how long it takes to build a stick house and Ms. Trainor asked Mr. DiFolco if he was qualified to answer this and he was not so Mr. Burke was told to move on and finish his question as he was over time allotted. Mr. Burke said Mr. Donnelly's home is approximately 100 feet deep and asked Mr. DiFolco how this compares with proposed lot 1.02. Mr. DiFolco said the question made no sense to him. Mr. Burke referenced

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Objector's Exhibit 0-1 and asked the minimal distance from the right-of-way to the rear property line; Mr. DiFolco answered 98 feet and change.

Ms. Trainor told all that they were over time allowed for this evening and the hearing will have to be continued next month.

Mrs. Brisben spoke and said the December meeting has a full agenda, she was told this hearing would be concluded this evening and wondered if this can be carried to the January meeting but it was decided to carry this to the December 12th meeting. Ms. Trainor then asked for a motion to carry this tonight for another 15 minutes but no one made that motion and Mr. Clark felt that even if another 15 minutes were given there still has to be time for the public, etc. to speak so he agreed it should be carried to December. It was also noted that Mayor Nicol will not be on the Board in January so it would be prudent to hear this again next month and the hearing was concluded for the evening, to be continued on December 12th.

Ms. Training then asked if there were any other business to be brought before the Board. Hearing none, a motion to enter into Executive Session was made by Chris Siano, seconded by James Stenson at 8:15 pm. The reason the Board went into Executive Session was to discuss pending litigation and a potential resolution to Affordable Housing concerns.

Mr. Clark announced that the Board was out of closed session at 9:43 pm.

A motion to adjourn was made and seconded with unanimous vote, all aye. The meeting was adjourned at 9:44 p.m.

Denise Murphy, Recording Secretary

Approved: December 12th, 2023