



# Town of South Kingstown, Rhode Island

## BUILDING AND ZONING DEPARTMENT

180 High Street  
Wakefield, RI 02879  
Tel (401) 789-9331 x1224  
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A meeting of the Zoning Board of Review of the Town of South Kingstown, County of Washington, in the State of Rhode Island was held virtually VIA Zoom at 7:00 pm on Wednesday June 16, 2021.

### A. CALL TO ORDER:

Mr. Cagnetta called the meeting or order at 7:01 pm

### B. CHAIRMAN INTRODUCTIONS AND INSTRUCTIONS:

**Members Present:** Chairman, Robert Cagnetta; Vice-Chair, Thomas Daniels; Member, William Rosen; Member, Casey Charkowick; and Alternate #1 Susan Walsh

**Member(s) Absent:** Member, Richard Jurczak

**Staff Present:** Gina DiCenso, Special Legal Counsel; Building Official and Zoning Clerk, Jamie Gorman; Administrative Associate, Jessica Spence

*Members voting tonight will be Mr. Cagnetta, Mr. Daniels, Mr. Rosen, Mr. Charkowick and Ms. Walsh*

The standards of relief were explained as well as some technological aspects of Zoom.

### C. AGENDA ITEMS:

I. **Petition of Green Hill BTS, LLC c/o Heidi Kenny, 966 Lakeview Trail, McQueeney, TX 78123** for a **Special Use Permit Extension** under the Zoning Ordinance as follows: Request for an additional one-year extension of expiration date for the **Special Use Permit** granted on January 21, 2015 for property owned by **Conrad Heffernan and John Drew**, 130 Rosebriar Avenue, Wakefield, RI for a Special Use Permit to construct an onsite wastewater treatment system closer to a wetland than permitted (150' required – 75.4' requested). Premises located at Green Hill Beach Road, South Kingstown, RI, Assessor's Map 90-4, Lot 174, Section 504 and 907. **Request made pursuant to Sec. 908(B) of the Zoning Ordinance. Applicant requests an extension of the expiration date from July 1, 2021 to July 1, 2022.**

II. **Petition of Green Hill BTS, LLC c/o Heidi Kenny, 966 Lakeview Trail, McQueeney, TX 78123** for a **Dimensional Variance Extension** under the Zoning Ordinance as follows: Request for an additional one-year extension of expiration date for the **Dimensional Variance** granted on March 16, 2016 for property owned by **Conrad Heffernan and John Drew**, 130 Rosebriar Avenue, Wakefield, RI for a Dimensional Variance to construct a 24' x 24' dwelling closer to a front line than permitted in an R-80 zone. (40' required-35.7' requested). Premises located at Green Hill Beach Road, South Kingstown, RI, Assessor's Map 90-4, Lot 174, Section 207 and 907. **Request made pursuant to Sec. 908(B) of the Zoning Ordinance. Applicant requests an extension of the expiration date from July 1, 2021 to July 1, 2022.**

Mr. Cagnetta read into record the submitted application documents.

Heidi Kenny was present and sworn in.

Ms. Kenny testified that she purchased this lot on August 15, 2020. She was informed that the previous owners were elderly and it was her understanding from the realtor that this lot had all the necessary applications and permits in place to build upon. She was provided an assent letter from CRMC which detailed all of the restrictions on developing the lot, this letter had no expiration date on it. It was discovered after closing and well into the design process that the CRMC assent had expired in October 2019 prior to her purchase of the property. At that point she requested an extension from CRMC through her engineer. Due to the fact that the CRMC assent had expired she had to apply for a new permit which she did on December 22, 2020. In March 2021 a draft of the new CRMC assent document was sent to CRMC's outside attorney where it still sits. Until CRMC's attorney signs off on it, CRMC's biologist cannot begin reviewing the project. She was informed by Jeff Willis from CRMC that the attorney was working on other major coastal projects which is why her application has not moved. She has been in continuance contact with CRMC to get the assent

moved forward. Her original intent upon purchase of this land was to be moving into this property this month, but instead because of the expired CRMC assent she has spent thousands of dollars between legal fees, environmental engineering, coastal fees and taxes. Without this extension being granted, her lot becomes unbuildable. The current Special Use Permit and Dimensional Variance are still current and do not expire until July 1, 2021.

Ms. DiCenso explained that there is no limit to the number of extensions that an applicant can ask for, especially due to the fact that the current Special Use Permit and Dimensional Variance are still in effect.

Mr. Rosen asked about the approved OWTS.

Ms. Kenny stated that the OWTS that was approved is a superior system than what was originally before the Board.

There was no one present in the audience who wished to speak.

**The motion for a Special Use Permit is as follows:**

**The following motion, made by Mr. Daniels and duly seconded by Mr. Rosen**

**Motion passed unanimously 5-0**

**(T. Daniels-Aye, W. Rosen-Aye, C. Charkowick-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

- At a meeting held on June 16, 2021 regarding the Petition of Green Hill BTS, LLC c/o Heidi Kenny, 966 Lakeview Trail, McQueeney, TX 78123 for a Special Use Permit Extension under the Zoning Ordinance as follows: Request for an additional one-year extension of expiration date for the Special Use Permit granted on January 21, 2015 for property owned by *Conrad Heffernan and John Drew*, 130 Rosebriar Avenue, Wakefield, RI for a Special Use Permit to construct an onsite wastewater treatment system closer to a wetland than permitted (150' required – 75.4' requested). Premises located at Green Hill Beach Road, South Kingstown, RI, Assessor's Map 90-4, Lot 174, Section 504 and 907. Request made pursuant to Sec. 908(B) of the Zoning Ordinance. Applicant requests an extension of the expiration date from July 1, 2021 to July 1, 2022.

**The following individuals spoke as representatives of the applicant:**

- Heidi Kenny, Applicant

**There was no one present who spoke either in support of or opposition to the petition.**

**The following materials were entered into the record:**

- Letter from Green Hill BTS, LLC dated May 5, 2021 (2 pages); Transfer of Interest Letter dated March 2, 2021
- RI DEM OWTS construction permit dated September 28, 2020
- Correspondence:
  - James and Terry Bedard, 939 Green Hill Beach Road, dated June 10, 2021
  - Email between Jeff Willis, CRMC to Heidi Kenny, dated June 14, 2021
- Previously recorded Zoning Board decisions
  - Granted June 17, 2020 and recorded June 30, 2020; Book 1747 & Page 537
  - Granted May 15, 2019 and recorded May 23, 2019; Book 1705 & Page 634
  - Granted January 21, 2015 and recorded February 4, 2015; Book 1567 & Page 598, 599
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings and Notarized Affidavit of Mailing

**Findings of Fact:**

The Board finds that the request for an extension of time on the previously granted Special Use Permit meets all of the criteria set forth in in Section 908 (B) of the Zoning Ordinance because the applicant has shown good cause and proceeded with due diligence in the attempt to obtain all necessary permitting and that the delay has not been caused by the actions of the applicant.

**Approval is subject to the following conditions:**

- There are no conditions upon this decision.

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**The motion for a Dimensional Variance is as follows:**

**The following motion, made by Mr. Daniels and duly seconded by Mr. Rosen**

**Motion passed unanimously 5-0**

**(T. Daniels-Aye, W. Rosen-Aye, C. Charkowick-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

At a meeting held on June 16, 2021 regarding the Petition of Green Hill BTS, LLC c/o Heidi Kenny, 966 Lakeview Trail, McQueeney, TX 78123 for a Dimensional Variance Extension under the Zoning Ordinance as follows: Request for an additional one-year extension of expiration date for the Dimensional Variance granted on March 16, 2016 for property owned by *Conrad Heffernan and John Drew*, 130 Rosebriar Avenue, Wakefield, RI for a Dimensional Variance to construct a 24' x 24' dwelling closer to a front line than permitted in an R-80 zone. (40' required-35.7' requested). Premises located at Green Hill Beach Road, South Kingstown, RI, Assessor's Map 90-4, Lot 174, Section 207 and 907. Request made pursuant to Sec. 908(B) of the Zoning Ordinance. Applicant requests an extension of the expiration date from July 1, 2021 to July 1, 2022.

**The following individuals spoke as representatives of the applicant:**

- Heidi Kenny, applicant

**There was no one who spoke either in support of or opposition to the petition.**

**The following materials were entered into the record:**

- Letter from Green Hill BTS, LLC dated May 5, 2021 (2 pages); Transfer of Interest Letter dated March 2, 2021
- RI DEM OWTS construction permit dated September 28, 2020
- Correspondence:
  - James and Terry Bedard, 939 Green Hill Beach Road, dated June 10, 2021
  - Email between Jeff Willis, CRMC to Heidi Kenny, dated June 14, 2021
- Previously recorded decisions
  - Granted June 17, 2020 and recorded June 30, 2020; Book 1747 & Page 538
  - Granted May 15, 2019 and recorded May 23, 2019; Book 1705 & Page 602
  - Granted July 18, 2018 and recorded July 23, 2018; Book 1680 & Page 619
  - Granted March 16, 2016 and recorded March 23, 2016; Book 1603 & Page 114
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings and Notarized Affidavit of Mailing

**Findings of Fact:**

The Board finds that the request for an extension of time on the previously granted Dimensional Variance meets all of the criteria set forth in in Section 908 (B) of the Zoning Ordinance because the applicant has shown good cause and proceeded with due diligence in the attempt to obtain all necessary permitting and that the delay has not been caused by the actions of the applicant.

**Approval is subject to the following conditions:**

- There are no conditions upon this decision.

**III. Petition of Henry and Constance DiMarco, 679 Jerry Brown Farm Road, South Kingstown, RI 02879 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to construct a 23' x 23' single-story detached garage. This property is located within the Jerry Brown Farm Association property. The parcel of land that this property is located on is non-conforming due to the number of residential structures on the same parcel. A Special Use Permit is required for any addition, enlargement, expansion or intensification of non-conforming use. Lot size is 70 Acres. Although there are no property lines between dwellings, the distance from the proposed garage to the closest adjacent dwelling is 68'. **A Special use permit is required per Zoning Ordinance Section 203 (Special Use Permit for addition, enlargement, expansion or intensification) and 907 (Standards of Relief).** Owner of land is Jerry Brown Farm Association, Inc., and the owner of the dwelling is Henry A. and Constance L. Dimarco for premises located at 679 Jerry Brown Farm Road, South Kingstown, Assessor's Map 82-1, Lot 1-22 and is zoned R-80.**

Mr. Cagnetta read into record all of the submitted application documents.

Henry DiMarco was present and sworn in.

Mr. DiMarco testified that they would like to erect a 23x23 single story garage. They have already been granted approval from the Board at Jerry Brown Farm to construct this garage. They are located at the end of Jerry Brown Farm and the proposed location will not affect any neighbor's views.

Board questions ensued.

Mr. DiMarco explained that there is currently a driveway on the property where he parks his cars and that the proposed garage will be located on the existing driveway in the same parking location. Mr. DiMarco then explained how he determined the distance from his closest neighbors.

There were no further Board questions.

There was no one in the audience who wished to speak.

**The motion is as follows:**

**The following motion, made by Mr. Rosen and duly seconded by Mr. Daniels**

**Motion passed unanimously 5-0**

**(W. Rosen-Aye, T. Daniels-Aye, C. Charkowick-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

- At a meeting held on June 16, 2021 regarding the Petition of Henry and Constance DiMarco, 679 Jerry Brown Farm Road, South Kingstown, RI 02879 for a Special Use Permit under the Zoning Ordinance as follows: The applicant is seeking to construct a 23' x 23' single-story detached garage. This property is located within the Jerry Brown Farm Association property. The parcel of land that this property is located on is non-conforming due to the number of residential structures on the same parcel. A Special Use Permit is required for any addition, enlargement, expansion or intensification of non-conforming use. Lot size is 70 Acres. Although there are no property lines between dwellings, the distance from the proposed garage to the closest adjacent dwelling is 68'. A Special use permit is required per Zoning Ordinance Section 203 (Special Use Permit for addition, enlargement, expansion or intensification) and 907 (Standards of Relief). Owner of land is Jerry Brown Farm Association, Inc., and the owner of the dwelling is Henry A. and Constance L. Dimarco for premises located at 679 Jerry Brown Farm Road, South Kingstown, Assessor's Map 82-1, Lot 1-22 and is zoned R-80.

**The following individuals spoke as representatives of the applicant:**

- Henry DiMarco, Applicant

**There was no one present who spoke either in support of or opposition to the petition.**

**The following materials were entered into the record:**

- Application signed and dated May 6, 2021; Owner Authorization's signed and notarized May 5, 2021; Site Plan (1 page); Plan Elevations and Sections (A1) prepared by Laura Krekorian AIA and dated May 8, 2021; Google Earth screen shots (2 pages); Proposed ISDS Plan (1 page) prepared by Carrigan Engineering, Inc. and dated August 5, 2003 with Revision on May 5, 2021
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings and Notarized Affidavit of Mailing

**Findings of Fact:**

1. The Board finds that the special use is specifically authorized by this Ordinance, because a Special use permit is required per Zoning Ordinance Section 203 (Special Use Permit for addition, enlargement, expansion or intensification) and 907 (Standards of Relief).
2. The Board finds that the special use meets all of the criteria set forth in the subsection of this Ordinance authorizing such special use, because the proposed garage will be located where there is already existing parking and due to this, there will be no additional disturbance to the surrounding area. Additionally, the proposed garage will fit in well with the surrounding properties.
3. The Board finds that granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan of the Town. In so doing, the Board has considered whether or not satisfactory provisions and arrangements have been or will be made concerning, but not limited to the following matters, where applicable:

- (i) Ingress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency or catastrophe; not applicable.
- (ii) Off-street parking and loading areas where required, with particular attention to the items in subsection A.1., above, and the noise, glare or odor effects of the special use permit on adjoining lots; not applicable.
- (iii) Trash, storage and delivery areas with a particular reference to the items in (i) and (ii) above; Utilities, with reference to locations, availability and compatibility; not applicable
- (iv) Screening and buffering with reference to type, dimensions and character; not applicable
- (v) Signs, if any, and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with lots in the zoning district; not applicable
- (vi) Required yards and other open space; not applicable
- (vii) General compatibility with lots in the same or abutting zoning districts, because the addition of the garage will have a minimal impact on the surrounding area.

**Approval is subject to the following conditions:**

- There are no conditions upon this decision.

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**IV. Petition Rob and Samantha Schadtler, 433 Martin Road, Hebron Ct 06248 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to replace the existing seasonal cottage and deck. The cottage will be increased in size by 150 square feet, the maximum allowed. The new cottage is proposed to be 534 square feet and the deck will be 200 square feet. The required separation between adjacent cottages will be in compliance with the zoning standards. Lot size is 50.2 Acres. **A Special Use Permit is required per Zoning Ordinance Section 203 (Special Use Permit for Addition, Enlargement, Expansion or Intensification), Section 608 (Coastal Community Overlay District) and Section 907 (Standards of Relief).** Owner of cottage 6W2 is Robert and Samantha Schadtler on property owned by Matunuck Beach Properties Inc., located at 240 Cards Pond Road, South Kingstown, Assessor's Map 92-1, Lot 9-290 and is zoned R200**

Mr. Cagnetta read into record the submitted application documents.

Robert Schadtler was present and sworn in.

Samantha Schadtler was present and sworn in.

Ms. Schadtler testified that they are looking to remove an existing structure built in 1940 that they purchased last winter. The existing structure is in need of drastic repairs. They are looking to demolish the existing structure and build a new structure in its place. The Zoning Ordinance Section 608.4 allows up to a 50% increase or 150 square feet, they are proposing to build a new structure in its place and add an additional 150 square feet to the new structure, which is the lesser amount. The new GLFA will be 530 sf and the existing structure is 384 sf. The proposed structure will maintain the distance between the neighbors on the east and west sides. There is a road on the north and south side, and distance will be maintained. There is a deck on the back of the existing structure which will now become living space within the new structure and the grassy area will remain. The parking area will be increased due to the proposed changes. The proposed structure will meet all building codes and FEMA regulations, the height will be no greater than 17' measured from the free board elevation which meets the Zoning Ordinance regulations. Stair location has yet to be determined but will be on the side of the cottage that offers the least encroachment on neighboring cottages. Utilities have been accounted for. At this point they just have preliminary plans designed and upon approval, if granted, any recommendations will be accounted for in the final plan set.

Mr. Gorman explained that stairs are exempt in Section 608 and are not counted in floor area for increase in size.

Board questions ensued.

Ms. Schadtler clarified the dimensions showing the distances from the neighboring properties.

Mr. Gorman explained that a replacement dwelling need to either maintain the same or increase the fire separation between cottage walls and in the past decks have not been typically included in this measurement.

Ms. Schadtler clarified that there is currently deck on the north side of the structure, but the field card is showing the deck on the south side. Where the deck is currently located will now be turned into cottage area. The distance on the south side is increasing and the distance on the north side is remaining the same from the roads.

There was no one in the audience who wished to speak.

Board discussion ensued.

**The motion is as follows:**

**The following motion, made by Mr. Daniels and duly seconded by Mr. Charkowick**

**Motion passed unanimously 5-0**

**(T. Daniels-Aye, C. Charkowick-Aye, W. Rosen-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

- At a meeting held on June 16, 2021 regarding the Petition Rob and Samantha Schadtle, 433 Martin Road, Hebron Ct 06248 for a Special Use Permit under the Zoning Ordinance as follows: The applicant is seeking to replace the existing seasonal cottage and deck. The cottage will be increased in size by 150 square feet, the maximum allowed. The new cottage is proposed to be 534 square feet and the deck will be 200 square feet. The required separation between adjacent cottages will be in compliance with the zoning standards. Lot size is 50.2 Acres. A Special Use Permit is required per Zoning Ordinance Section 203 (Special Use Permit for Addition, Enlargement, Expansion or Intensification), Section 608 (Coastal Community Overlay District) and Section 907 (Standards of Relief). Owner of cottage 6W2 is Robert and Samantha Schadtle on property owned by Matunuck Beach Properties Inc, located at 240 Cards Pond Road, South Kingstown, Assessor's Map 92-1, Lot 9-290 and is zoned R200

**The following individuals spoke as representatives of the applicant:**

- Rob Schadtle, Applicant
- Samantha Schadtle, Applicant

**There was no one present who spoke either in support of or opposition to the petition.**

**The following materials were entered into the record:**

- Application signed and dated May 5, 2021; Owner Authorization's signed and notarized May 2, 2021; Existing Plot Plan; Proposed Plot Plan; Elevations and Floor Plan (4 pages)
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings and Notarized Affidavit of Mailing

**Findings of Fact:**

1. The Board finds that the special use is specifically authorized by this Ordinance, because a Special Use Permit is required per Zoning Ordinance Section 203 (Special Use Permit for Addition, Enlargement, Expansion or Intensification), Section 608 (Coastal Community Overlay District) and Section 907 (Standards of Relief).
2. The Board finds that the special use meets all of the criteria set forth in the subsection of this Ordinance authorizing such special use, because after some discussion regarding separation between structures it has been determined that there is adequate spacing between the structures; the distances have not been reduced to less than 15' between the structures. Additionally, there is a road way on both sides of this structure which will allow emergency vehicle access.
3. The Board finds that granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan of the Town. In so doing, the Board has considered whether or not satisfactory provisions and arrangements have been or will be made concerning, but not limited to the following matters, where applicable:
  - (i) Ingress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency or catastrophe; there is sufficient access for emergency services.
  - (ii) Off-street parking and loading areas where required, with particular attention to the items in subsection A.1., above, and the noise, glare or odor effects of the special use permit on adjoining lots; not applicable
  - (iii) Trash, storage and delivery areas with a particular reference to the items in (i) and (ii) above; Utilities, with reference to locations, availability and compatibility; Trash, storage and delivery area are not applicable. Utilities will be self-contained within the new structure.
  - (iv) Screening and buffering with reference to type, dimensions and character; not applicable
  - (v) Signs, if any, and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with lots in the zoning district; not applicable
  - (vi) Required yards and other open space; not applicable
  - (vii) General compatibility with lots in the same or abutting zoning districts, because the proposed structure fits well with the other structures located in Matunuck Beach Properties as well as the surrounding area.

**Approval is subject to the following conditions:**

- There are no conditions upon this decision.

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**V. Petition of Phillip Courten, 95 Billington Avenue, South Kingstown, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows:** The applicant is seeking to demolish the existing dwelling and storage shed and construct a new dwelling and detached garage. The dwelling will be located 8.4' from the front property line and the detached garage will be located 18.2' from the front property line. The required front yard setback is 25'. Relief of 16.6' for the dwelling and 6.8' for the garage is requested. The detached garage will also be located 3' from the left side property line. The required side yard setback is 10'. Relief of 7' is requested. Lot size is 25,200 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming Lots of Record-Building Setback Requirements), Section 208 (Nonconforming Lots of Record – Accessory Building Setback Requirements), Section 503.1 (Accessory Structures) and Section 907 (Standards of Relief).** Owner of the property is Phillip B Courten for premises located at 95 Billington Avenue, South Kingstown, 02879, Assessor's Map 69-2, Lot 28 and is zoned R 40.

Mr. Cagnetta read into record the submitted application documents.

Attorney John Kenyon was present for the applicant.

Mr. Kenyon reviewed the lot and zoning size. There is an existing 3 bedroom house and shed on the property. The applicant is looking to demolish the existing house and shed and rebuild a new 3 bedroom house and garage on the property. He then explained an administrative subdivision was done in 2012 to merge the lots to create one larger lot which was completed in 2014. This administrative subdivision required a Special Use Permit from this Board. After the lot merge the applicant was before the Board for dimensional relief. After receiving the previous zoning relief the applicant then went to CRMC for assent approval. CRMC required some changes and the applicant is now back before the Board for dimensional relief which will meet the CRMC requirements. The proposed house has been reduced in size and moved forward on the lot from what was originally approved. The applicant is also proposing to build a garage where the previous shed was located. The property is located on a peninsula at the end of the road and the house and garage have been sited to allow for as much of a buffer as possible from the wetlands.

Jeffrey Balch, PLS was present and sworn in. Mr. Balch testified that he is familiar with the property and the surrounding properties. He then described the existing and proposed conditions of the lot. Mr. Balch then explained the administrative subdivision that was previously granted which increased the size of his property, as well as the locations of the existing house and wetlands on the property. The existing house does not currently meet flood zone requirements. The proposed location of the house will maximize the distances from the coastal features, and due to these features and the existing OWTS they have a limited building envelope. The proposed house will meet all FEMA requirements and in doing so all mechanics will be raised above the flood elevation. In regards to the proposed garage it is being located where there is an existing driveway and stone walls which will limit the amount of disturbance. He then reviewed the size of the proposed 18x20 garage and its functionality. Mr. Balch then explained that many of the residential lots on Billington Avenue are split by the road and have the house on the west side and the garage lots on the east side. The proposed garage location is compatible with the neighborhood. The proposed drainage was prepared by CJ Doyle, PE.

Board questions ensued in regards to construction vehicle management and emergency vehicle access during the construction process.

Mr. Balch explained that there is some road distance between the nearest neighbor and the applicant's lot so no driveways should be blocked, as well as existing parking within the lot.

Phillip Courten was present and sworn in.

Mr. Courten stated that he has owned the property for 20 years. The existing structure was built in 1944 and way outside of anything that would meet today's building code or flood regulations. It was determined that due to the flaws in the existing structure demolishing and rebuilding a new structure is the more practical solution, additionally they could not find any builders who would have been willing to add on and raise the existing structure. In the design they have attempted to keep the house as close as possible to the existing footprint. In 2014 they were granted a dimensional variance for a similar plan, but due to CRMC requirements they have needed to redesign and relocate the proposed structure to comply with CRMC requirements to be as far away from the wetlands as possible. He explained that there have been several houses that have had extensive renovations on Billington Avenue and construction vehicles had not presented any problem, additionally he is the last house on the road so construction vehicles should not blocking any neighbor's properties or be a problem for traffic.

Board questions ensued in regards to parking for construction vehicles, the lot merger, location of wetlands and type of foundation.

Mr. Kenyon advised that the two lots that were merged now constitute one 25,200 sf lot.

Mr. Balch stated the wetlands take up approximately ¼ of the lot.

Ms. DiCenso advised that any restrictions the Board may want to impose need to relate directly to the petition. Additionally anything that would only occur during the construction phase would be outside the scope of what the Board should be considering as part of their decision.

Mr. Kenyon advised that if needed they would be amenable to a condition that would pertain to parking of vehicles during construction.

There was no one present who wished to speak.

Mr. Kenyon summarized the standards for granting of a dimensional variance.

Board discussion ensued.

Laura Krekorian, AIA was present and sworn in.

Ms. Krekorian explained that the proposed house will have a poured foundation which is allowed in the A flood zone where the house is located. The framing plans are not completely finished at this time because they are still working through some permitting steps. She does not see that cement trucks and steel beam trucks would show up on site at the same time. Additionally she feels that there is room on this lot for trucks to turn around and get back out. The design is similar to what was previously approved only a bit smaller, they are cognizant in the design of the house and keeping the house within the character of the neighborhood. There were no further questions.

There was no one in the audience who wished to speak.

**The motion is as follows:**

**The following motion, made by Mr. Rosen and duly seconded by Mr. Charkowick**

**Motion passed unanimously: Vote 5-0**

**(W. Rosen-Aye, C. Charkowick-Aye, T. Daniels-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

At a meeting held on June 16, 2021 regarding the Petition of Phillip Courten, 95 Billington Avenue, South Kingstown, RI 02879 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to demolish the existing dwelling and storage shed and construct a new dwelling and detached garage. The dwelling will be located 8.4' from the front property line and the detached garage will be located 18.2' from the front property line. The required front yard setback is 25'. Relief of 16.6' for the dwelling and 6.8' for the garage is requested. The detached garage will also be located 3' from the left side property line. The required side yard setback is 10'. Relief of 7' is requested. Lot size is 25,200 square feet. A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming Lots of Record-Building Setback Requirements), Section 208 (Nonconforming Lots of Record – Accessory Building Setback Requirements), Section 503.1 (Accessory Structures) and Section 907 (Standards of Relief). Owner of the property is Phillip B Courten for premises located at 95 Billington Avenue, South Kingstown, 02879, Assessor's Map 69-2, Lot 28 and is zoned R 40.

**The following individuals spoke as representatives of the applicant:**

- Attorney John Kenyon
- Phillip Courten, applicant
- Jeffrey Balch, PLS
- Laura Krekorian, AIA

**The following materials were entered into the record:**

- Application with cover letter and narrative signed and dated May 7, 2021; Owner Authorization's signed and notarized May 6, 2021; Vision Appraisal Field Card Map 69-2 Lot 28 (3 pages);
- Correspondence:
  - Attorney John Kenyon dated June 1, 2021
- Exhibits



- Applicant's Exhibit 1 – Soil Erosion, Runoff & Sediment Plan (2 pages) prepared and stamped Jeffrey K Balch PLS of Frisella Balch & Associates & Carolyn J Doyle PE dated March 24, 2021
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings and Notarized Affidavit of Mailing

**There was no one who spoke either in support of or opposition to the petition.**

**Findings of Fact:**

1. The Board finds that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(16), because the lot is located in a flood zone and the building area is further limited due to the proximity of wetlands on the property, the location of an existing OWTS system on the property and restrictions imposed by CRMC to maintain a required coastal buffer setback.
2. The Board finds that that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain, because the original property was built in 1944 and would not meet today's current Building Code and FEMA standards. The applicant is simply looking to build a new structure, similar in size and scope to the existing structure, which will be now be Building Code and FEMA compliant.
3. The Board finds that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based, because the area itself is beautiful in nature and the applicant has worked closely with CRMC in maintaining the environmental wetlands and coastal features.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicant has worked diligently with the design of the new structure to keep it within the confines of the lot while still meeting the CRMC setback requirements.
5. The Board finds that that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, because if not granted the applicant would need to go back before CRMC to try and obtain further relief. Additionally if the relief were not granted the applicant may not be able to construct a new structure and would not have the benefit of a FEMA compliant home.

**Approval is subject to the following conditions:**

- The decision is a Conditional Zoning Approval and is conditioned upon any, if necessary, further CRMC approvals and will have a two-year expiration from the recorded date per Section 908 of the Zoning Ordinance with the right to extend if necessary.

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**VI. Petition of Garrett Homes, LLC, 59 Field Street, Torrington CT 06790 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to construct a 7,545 square foot retail trade structure. The applicant was previously denied a special use permit from the Zoning Board of Review, but has since revised the plan to include two adjacent lots. The Planning Board advisory Development Plan Review was granted April 27, 2021. Lot size is 94,902 square feet. **A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table, Use Code 55) and Section 911 (Repetitive Petitions).** Owner of the property is South Shore Mental Health Center Inc. for premises located at South Kingstown, Assessor's Map 40-1, Lot 125 and Alternative Living Concepts c/o Gateway Health Care for premises located at South Kingstown, Assessor's Map 40-1, Lot 126. Both lots are zoned MU (Mixed Use).**

Mr. Cagnetta read into record all of the submitted application documents.

Mr. Daniels asked for a clarification in how the Board should proceed in regards to determining if a significant change had occurred since the previous denial.

Ms. DiCenso explained that the Board can hear one presentation and then decide if there was a significant change. The applicant can present their testimony and then the Board can rule on the significant change, as long as it is its own separate motion.

Attorney Joseph Brennan was present for the applicant.

Mr. Brennan explained that the Board denied a previous application in 2019 and that the appeal is still pending. They are before the Board tonight because they believe they have met the criteria for a substantial change to the application and they have submitted a memorandum detailing the changes made. They have addressed the previous concerns and reasons for denial. They have gone before the Planning Board DPR Advisory to Zoning and received a positive advisory. He then explained that they believe they have met all of the standards of the Ordinance for granting a Special Use Permit.

Matthew Bruton, PE was present and sworn in.

Mr. Bruton screen shared and reviewed the subject property and the original denial from 2019. The original application was just one parcel. The developer is now in purchase and sales agreement with the adjacent lot which now makes the proposed lot approximately 2 acres and with the purchase of the additional property they have been able to address some of the concerns in the previous denial. Mr. Bruton then reviewed the two parcels general characteristics. They are proposing a 7500 square foot single story retail building with a single access drive to Kingstown Road. They have received approval from RI DOT for PAP. Mr. Bruton reviewed the updated site plan and went over parking, turn around area, loading and unloading of vehicles and pedestrian safety. The parking spaces are now 9' wide by 18' long which is an increase from the previous proposal. There is still a proposed side walk extension along Kingstown Road as well as a connection from the sidewalk to the building. The Stormwater management system complies with all State regulations and they have received approval from RI DEM in regards to the proposed system. There is no direct impact to surrounding wetlands. All utilities have been accounted for. All necessary soil erosion measures will be in place during construction. The landscaping was designed to meet the Planning Board recommendations. All lighting will be LED and dark sky compliant. Mr. Bruton then reviewed the significant changes from the first application. They have incorporated the Planning Boards recommendations into the current application.

There were no questions at this time.

Douglas Grunert, AIA was present and sworn in.

Mr. Grunert screen shared and reviewed the updated redesign and elevations of the building. The applicants took into account the direction of the Planning Board in the redesign. The proposed redesign is more in harmony with the surrounding area than the previous proposal. Additionally the roof will drain into the proposed stormwater management system.

Board questions ensued.

Mr. Bruton explained the designed storm water management system complies with State regulations and that there is a detention base which is adjacent to the wetland area.

Mr. Grunert explained that there will be no loading dock on site, the loading and unloading area is at a flat grade.

Mr. Bruton addressed concerns in regards to lighting and signage. There is a photometric plan that was part of the DPR approval process. There should be no excessive glare and any proposed fixtures can be retrofitted after the fact if glare becomes an issue. The only signage will be on the building as shown on the elevations. All customer parking will be in the front of the building and there should be no conflict between customers and the truck loading zones. The average delivery is typically one 18-wheel truck and two box trucks per week. The proposed turn around area is sized to accommodate an 18-wheel truck.

Edward Pimentel, AICP was sworn in.

Mr. Pimentel explained that this was a collaborative effort to meet the concerns addressed by the Planning and Zoning Boards as well as meet the standards set forth in the current Comprehensive Plan and the upcoming proposed Comprehensive Plan which has some very specific guide lines. Mr. Pimentel then reviewed the current uses in the area and stated that the applicant's intent was to really blend in with the area and keep that "village" design concept reflected in the Comprehensive Plan. Mr. Pimentel reviewed the standards that must be met in the granting of the Special Use Permit. Substantial modifications have been made since the previous application's denial and he believes they now meet the guidelines set forth under the Comprehensive Plan.

The Board had no questions at this point.

Mr. Cagnetta read into record the correspondence from John Dowling.

Monica Hanson was present. She stated that she echoed many of Mr. Dowling's concerns addressed in his letter in regards to traffic in the area.

Mr. Bruton recapped the traffic study that was submitted and reviewed peak demand and expected traffic flow. Additionally they have received approval from RI DOT.

Mr. Daniels said he would much prefer that the author of the traffic study be present to answer questions in regards to the traffic study. He also expressed concerns that the traffic study was prepared in May 2019 and questioned whether or not URI student traffic was taken into account. Additionally he questioned that the study only showed projected traffic through 2020, therefore questioning the accuracy of the traffic volume and the study's findings in 2021.

Mr. Bruton stated that he would be happy to have the traffic engineer come back at the next meeting to address the traffic concerns brought up.

Mr. Charkowick echoed Mr. Daniels feelings that he could not make a fully informed decision without first hearing from the traffic engineer.

Mr. Brennan stated that they are willing to continue to next month's meeting so the traffic engineer can be present to address the concerns raised tonight.

Ms. Hanson had no further comments.

John Dowling was present and testified that two months ago he was rear ended on Kingstown Road during heavy traffic and he is concerned about traffic leaving the complex and going onto the already busy Kingstown Road.

Richard Menard was present and stated that he is Board Member at Southwinds Condominiums and that he is speaking on the behalf of the Board. The Board is opposed to the proposed application and feels that this retail development does not fit within the general character of the neighborhood and would be a detrimental to the neighborhood and property values.

Mr. Cagnetta explained that this is a permitted use in this area.

There was no further testimony at this time.

Mr. Charkowick stated that a traffic study prepared in May could potentially have the lowest year round traffic volume depending on when in May the study was prepared and that he would like to see an updated study during a time of year when the traffic patterns are more indicative of year round volume.

Board discussion ensued.

Mr. Charkowick asked legal counsel can they bifurcate this matter and make a ruling on the doctrine of administrative finality and whether substantial change has been met, that way if they do continue the application they can focus on the traffic and other issues that remain.

Ms. DiCenso stated that if there is a consensus among the Board, that if enough testimony has been heard to determine that a substantial change has been met, the Board can make that motion and continue the application until another date on the substantive issues. It is going to have to be voted on separately.

Board discussion ensued.

Mr. Bruton stated that they are happy to update the traffic study and would like to be put on the July agenda.

Mr. Charkowick stated he would make a motion that the applicant has shown that substantial change has occurred.

**The following motion, made by Mr. Charkowick and duly seconded by Mr. Rosen**

**Motion passed unanimously 5-0**

**(C. Charkowick-Aye, W. Rosen-Aye, T. Daniels-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

**The motion is as follows:**

1. The Board finds that the special use is specifically authorized by this Ordinance, because a Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table, Use Code 55) and Section 911 (Repetitive Petitions).
2. The Board finds that the petitioner has satisfied the obligations according to the Administrative Finality Doctrine that a substantial change has taken place since the last petition was presented to the Board. This is based on the architectural

changes that have been submitted to the Board as well as the significant changes that have been made to the proposed parking lot and the addition of a designated truck turn around in the parking lot.

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Mr. Daniels stated he would make a motion to continue the petition upon conditions.

Mr. Bruton advised that typically traffic would be counted in person, but due to the pandemic traffic counts would be dramatically reduced and any numbers in 2021 would be an anomaly and not a true representation of traffic counts in this neighborhood. To give an accurate recommendation he would recommend going back to pre-pandemic numbers which is what DOT organizations nationwide have been advising; this would give a more accurate representation of numbers and volume. This information would be reviewed by RI DOT and traffic engineers.

Mr. Daniels expressed his concerns again about properly representing the amount of URI traffic on Kingstown Road.

Mr. Bruton advised that they can pull historical DOT data when URI is in peak session and use that as a basis of the traffic study.

Mr. Daniels made a motion to continue the petition until such time that the petitioner provides an updated and complete traffic study based on historical DOT traffic data supported by live testimony of the traffic engineer and/or someone with firsthand expert knowledge of the report.

**The motion is as follows:**

**The motion to continue was made by Mr. Daniels and duly seconded by Mr. Charkowick  
The motion carried by unanimous vote with no abstentions; petition continued until such time as an updated traffic study has been submitted and expert testimony can be heard regarding the traffic study.  
(T. Daniels-Aye, C. Charkowick-Aye, W. Rosen-Aye, S. Walsh-Aye, R. Cagnetta-Aye)**

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**D. OTHER BUSINESS:**

- I. Minutes:** Motion made by Mr. Rosen to approve the minutes as written from the May 19, 2021 meeting and was duly seconded by Mr. Charkowick. The motion carried by unanimous vote with no abstentions
- II. Attendance:** July 21, 2021 meeting all members present can attend
- III. Election of Officers:** continued until July 21, 2021

**E. ADJOURNMENT:**

- I.** Mr. Rosen made the motion to adjourn the meeting at 10:32 p.m. and was duly seconded by Ms. Walsh. The motion carried by unanimous vote with no abstentions.