



Town of South Kingstown, Rhode Island

BUILDING AND ZONING DEPARTMENT

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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 February 17, 2021.

Members Present:

- Robert Cagnetta, Chair
- Thomas Daniels, Vice-Chair
- William Mark, Member
- William Rosen, Alt. #1
- Casey Charkowick, Alt. #2

Also present were, Amy Goins, Special Legal Counsel, Jamie Gorman, Building Official and Clerk, and Jessica Spence, Administrative Support Associate.

Mr. Cagnetta opened the meeting at 7:00 pm

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

Members voting tonight will be Mr. Cagnetta, Mr. Daniels, Mr. Mark, Mr. Rosen and Mr. Charkowick

Mr. Cagnetta read the first petition.

- **Petition of Timothy O'Neill**, 235 Middlebridge Road, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to construct a 12' x 16' detached shed on the property and also construct a new front exterior stair attached to the dwelling. The shed will be located 29' from the front property line. The required front yard setback is 35'. Relief of 6' is requested. The dwelling front stairs will be located 17.5' from the front property line. Relief of 17.5' is requested. Lot size is 35,719 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief)**. Owner of the property is Timothy O'Neill for premises located at 235 Middlebridge Road, Assessor's Map 43-4, Lot 15 and zoned R 20.

The Board was asked to continue the petition until March 17, 2021 due to an error in the original legal notice.

The motion is as follows:

The motion was made to continue the petition until March 17, 2021

Motion made by Mr. Mark and duly seconded by Mr. Rosen

Motion passed unanimously: Vote 5-0

(Rosen-Aye, Mark-Aye, Charkowick-Aye, Daniels -Aye, Cagnetta-Aye)

Mr. Cagnetta read the second petition.

- **Petition of Simon Wildman**, 191 Holly Ridge Road, West Kingstown, RI 02892 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to construct a new 24' x 30' detached garage. The building height of the garage will be 25'. The maximum height allowed for accessory structures is 20'. Relief of 5' is requested. Lot size is 14.45 Acres. **A Dimensional Variance is required per Zoning Ordinance Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief)**. Owner of the property is Simon and Robin Wildman for premises located at 191 Holly Ridge Road, Assessor's Map 21, Lot 39 and zoned R 80.

An email correspondence from Simon Wildman, dated February 10, 2021 was read into record requesting a continuance until the March 17, 2021 meeting.

The motion is as follows:

The motion was made to continue the petition until March 17, 2021

Motion made by Mr. Rosen and duly seconded by Mr. Mark

Motion passed unanimously: Vote 5-0

(Rosen-Aye, Mark-Aye, Charkowick-Aye, Daniels -Aye, Cagnetta-Aye)

Mr. Cagnetta read the third petition.

- **Petition of Christopher G. Kehoe Revocable Trust**, 71 Main Street, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to convert the existing mixed-use structure into a single family dwelling. Currently, the first story is business use and the second story is a single dwelling unit. Relief is required for locating dwelling units on the first floor in a CD zoning district. There are no exterior changes proposed to the structure. The Lot size is 11,325 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 402 (Notes to Schedule of Dimensional Regulations) and Section 907 (Standards of Relief)**. Owner of the property is Christopher G. and Tracey L. Kehoe Trustees for premises located at 71 Main Street, South Kingstown, RI, Assessor's Map 57-1, Lot 102 and is zoned CD (Commercial Downtown).

Christopher Kehoe, applicant was present and sworn in.

Mr. Kehoe stated that he wanted to clarify the description set forth in the agenda. There are not currently two separate uses. They are requesting a dimensional variance to allow residential use on the first and second floor. Mr. Kehoe then entered into evidence Exhibits 1-6

Mr. Kehoe addressed the standards to grant relief. The building was originally constructed in 1930 as a single family residence and is still configured as a single family residence. The only change was the kitchen was removed to utilize the space as office space. The building has not been modified since 1979 because it was grandfathered and did not need to meet current building codes. The fire system was updated. To bring the building to current fire and building requirements would be very costly. There is currently only one entrance to the building and there is no other viable way to enter and exit the building except the one entrance. The building would need to be fire rated for appropriate fire code separation as well as common interior walls which would need to be fire coated. This is not economically feasible to accommodate the two different mixed uses in the building. There is a walk out basement in the back of the building as well as a deck on the back which would be used as emergency use only and are not viable commercial use entrances.

Discussion ensued in regards to how the building is currently utilized and its legal occupancy of record.

Mr. Gorman explained that to convert the business on the first floor to a single family home would require dimensional variance.

Mr. Gorman indicted that we have no records that show the location of the kitchen but the building is listed as a business and residential use.

Mr. Cagnetta asked that if the building was changed to a single family dwelling would the applicant then have to meet the current building and fire codes.

Mr. Kehoe, said he believes that they are getting off track. They have a building that was constructed and used for 90 years as a residence and then was converted to an office space, the only structural modifications were the removable of a kitchen. The use was converted to an office space in 1979 and was grandfathered under most of the building code requirements with the exception of some fire code requirements.

Mr. Cagnetta asked for clarification about the particular zone requirements in regards to living space on the first floor.

Ms. Goins clarified that this is a dimensional variance because the applicant is seeking to alternate a dimensional provision and therefore that is how the application was advertised. Dimensional because the ordinance specifies that the residential use is not allowed on the first floor and the applicant is seeking to alter that dimensional requirement. Mr. Kehoe does not have to show lack of all beneficial use but rather has to show that he is looking for the least relief necessary and if not granted that it would be more than a mere inconvenience in regard to the residential use on the first floor.

Mr. Kehoe then referenced another property that he believes was granted dimensional variance to allow living on the first floor. It is a dimensional variance before the Board tonight that has a very low burden to meet, not the more restrictive and difficult Use Variance.

Mr. Kehoe stated that they are looking for the right to enjoy a permitted use on the second floor as a residential use which cannot be fully utilized without allowing the requested residential use on the first floor, which is the hardship.

Mr. Daniels asked if granting this dimensional variance would create a non-conformity in the CD Zone.

Ms. Goins explained that this does not create a non-conformity but creates a condition that is created specifically by the granting of a dimensional variance. It is the Boards job to decide if the application meets the standards set forth.

Mr. Rosen asked about the past uses of the building, specifically if when it was used as an office on the first floor was the second floor ever used as a residential structure.

Mr. Kehoe reviewed the history of the building. When the building was used as office space there was never any residential use upstairs. Due to Covid, his former tenant with whom he shared the office space ended her lease and despite advertising for a year, he was never able to rent out the space.

Mr. Cagnetta asked about the grandfathering of the building and fire code and what would trigger mandatory updated code compliance.

Mr. Gorman explained what would need to be done to meet building and fire code compliance under different occupancy scenarios.

Mr. Kehoe then spoke about the reasonable use of property. He does not want to sell the building and cannot use it as it currently exists. In the future he is hoping to convert it back to an office for his son to use as his law office at which time he will update to meet all of the necessary building and fire code compliance.

Mr. Kehoe then spoke about the hardship not being the result of any prior action of the applicant or the applicant's desire to create any greater financial gain. At this time during the Covid Pandemic no one is looking for 2500 square feet of office space, they have spent 12 months trying to find a tenant. The proposed dimensional variance will not alter the general character of the neighborhood and will meet the general intent of the Comprehensive Plan as there are many other single family residences all along Main Street, and there will be no exterior changes to the building. In regards to the least relief necessary, there is only one level of relief that can be granted, therefore the least relief. They only want to enjoy a permitted use and if the dimensional variance was not granted this would prohibit the benefit of the permitted residential use.

Mr. Kehoe asked that the exhibits be brought up for display.

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

Mr. Rosen enquired about the installation of a kitchen and what that would entail.

Mr. Kehoe stated that any necessary building permits would be pulled.

Discussion ensued in regards to fire code protections and if the dimensional variance were not granted could the upstairs be used as a residence.

Discussion ensued in regards to signage.

Mr. Kehoe stated that his intent right now is to the property as a single family residence.

There were no further questions and no further discussion.

The motion is as follows:

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

Motion passed unanimously: Vote 5-0

(W. Mark-Aye, C. Charkowick-Aye, T. Daniels-Aye, W. Rosen-Aye, R. Cagnetta-Aye)

At a meeting held on February 17, 2021 regarding the **Petition of Christopher G. Kehoe Revocable Trust**, 71 Main Street, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to convert the existing mixed-use structure into a single family dwelling. Currently, the

first story is business use and the second story is a single dwelling unit. Relief is required for locating dwelling units on the first floor in a CD zoning district. There are no exterior changes proposed to the structure. The Lot size is 11,325 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 402 (Notes to Schedule of Dimensional Regulations) and Section 907 (Standards of Relief).** Owner of the property is Christopher G. and Tracey L. Kehoe Trustees for premises located at 71 Main Street, South Kingstown, RI, Assessor's Map 57-1, Lot 102 and is zoned CD (Commercial Downtown).

The following individuals spoke as representatives of the applicant:

- Attorney Christopher Kehoe

The following materials were entered into the record:

- Application with Cover Letter & Narrative (exhibit 12), signed and dated December 11, 2020; Owner Authorization Form signed December 11, 2020; Vision Appraisal Field Card Map 57-1 Lot 102; 200' Radius Map and Abutter's List; WEB GIS Map 57-1 Lot 102
- Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing
- Amended Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing
- Correspondence
 - Christopher Kehoe dated January 1, 2021
 - Continuation Request from Christopher Kehoe dated January 6, 2021
- Applicant's Exhibits Photo Exhibits 1-6
 - Exhibit 1A, application
 - Exhibit 1B, correspondence to abutters dated January 1, 2021
 - Exhibit 1C, outline of testimony
 - Exhibit 2, photo exterior of building
 - Exhibit 3, photo only public entrance to building
 - Exhibit 4, panoramic of interior and foyer
 - Exhibit 5, video entering foyer through front door
 - Exhibit 6, video descending stairs from second to first floor foyer and exit

There was no one present 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 building was originally built as a single family residence and then was grandfathered in 1979 to allow the use as commercial space. The applicant is simply looking to revert the building back to its original use. The applicant understands that any change back to a commercial use would require further zoning approval and would need to meet all current building and fire code standards.
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 hardship was created prior to the applicant's purchase of the property. Due to the Covid Pandemic, the current use is no longer a viable option and the applicant is simply seeking to utilize the building to its best potential.
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 in granting this dimensional variance the applicant will not be changing any outside characteristics of the property which is surrounded by similar structures in both size and age.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicant is not seeking to undertake a large physical expansion of the property, but rather the applicant is seeking to change the use within the property's existing walls which requires the granting of this dimensional variance.
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 the dimensional variance is not granted the building will likely remain vacant due to the current economic situations as a result of the Covid Pandemic. The applicant expressed that he wants to maintain ownership of the building for

future generations use and the granting of this dimensional variance would allow him the best economic option to do so.

Approval is subject to the following conditions:

- There are no conditions of approval on this decision.
-

Mr. Cagnetta read the fourth petition.

- **Petition of Michael & Donna Monteforte c/o Walter J. Manning, III**, 50 Anchorage Road Narragansett, RI 02882 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking the approval of a Special Use Permit to locate an Onsite Wastewater Treatment System (OWTS) closer to a wetland than allowed. 150' is required, 95' is proposed. Relief of 55' is requested. The project previously received approval from the Conservation Commission on December 1, 2020. Lot size is 1.6 Acres. **A Special Use Permit is required per Zoning Ordinance Section 504.1 (Special Use Permits-Location of OWTS) and Section 907 (Standards of Relief)**. Property is owned by Michael Monteforte for premises located on Assessor's Map 79-3, Lot 15, and zoned R80.

Attorney John Kenyon was present for the applicant. Mr. Kenyon explained the zoning district and lot specifications. The applicant is proposing to build a single family home which will meet all of the zoning requirements but will need OWTS relief. DEM has approved the proposed OWTS. The applicant has gone before the Conservation Commission and received a favorable recommendation with the condition that the driveway be made smaller.

Jason Clough was sworn in and recognized as an expert in civil engineering.

Mr. Clough testified that he prepared the site plan that was submitted with the application and was familiar with the existing uses around the property. He then explained the existing conditions of the property and the surrounding wetlands which have been flagged. Mr. Clough explained the type of wetland that is on the property. He stated that the applicant is looking to construct a 4-bedroom single family home which will meet all of the zoning ordinance setbacks and lot coverage requirements. The proposed driveway will provide adequate ingress and egress, not affect the traffic flow of the area and provide adequate parking as well as emergency vehicle access. The lot will be serviced by a private well located on the south side of the proposed home. The lot has an adequate area for trash storage, will not have any signage or non-residential lighting and there is no issue with providing electrical service to the lot. The applicant has receive approval from RI DEM for the proposed OWTS.

Mr. Clough then explained the proposed OWTS in detail. The proposed leach field will be located on the northwest corner of the proposed home. The proposed OWTS was positioned to maximize distance to the wetlands and is located within the area of approved soil testing by DEM. DEM approved this location for the OWTS. The proposed system will be located 102.3 feet at its closest point from the wetlands. This is as far from the wetlands as the system can be located and still meet DEM requirements. Mr. Clough then explained how the proposed system operates and that it will require a continuance and operation maintenance agreement with the owner to be recorded in South Kingstown Land Evidence.

Mr. Clough then explained the proposed storm water management design and that it diverts the water away from the OWTS, these calculations have been supplied to the Town and were designed to meet the 24 hour, 25 year storm models. There are control measures designed so there will be no net increase of storm water runoff between pre and post site development on adjacent properties to meet the 24 hour, 25 year storm model. The storm water design was designed to divert the runoff away from the OWTS system. The lot's buildable area is 27,987 square feet. The proposed impervious coverage is 14.8% of the buildable lot and in his professional opinion the OWTS has been located as far as possible from the wetland edge. It is also his opinion that the proposed house has been located as far as possible from the wetland edge will still meeting the Town's zoning setback requirements.

Mr. Clough stated that in his professional opinion the OWTS and the house are located as far away from the wetlands as possible. In addition he stated that the applicant received a positive Conservation Commission advisory and that the applicant met the condition that the driveway be made smaller. In Mr. Clough's opinion the proposed location of the OWTS will have no negative impact on the wetlands or the surrounding properties.

Mr. Daniels asked about the Conservation Commission advisory based on a site plan dated December 9, 2021 and stated the revised site plan was not in the package.

Mr. Clough shared his Zoom screen, showing Revised Site Plan dated December 9, 2021.

Ms. Goins advised that the applicant must provide a true and exact copy of the revised site plan to the office of the Zoning Board and that any decision must reference the revised site plan.

Mr. Clough referenced the revised site plan dated December 9, 2021 and showed the new driveway location.

Mr. Kenyon noted the submission of the revised site plan with a revision date of December 9, 2021.

Board questions ensued in regards to other features shown on the revised site plan.

There was no further testimony.

Mr. Cagnetta asked if anyone present wished to speak.

William Prior, 10 Heather Hollow Drive, was present and sworn in. He stated that the surrounding area is very wet and that DiPrete Engineering determined the wetland setback requirements, his concern is that although some of the area may not be considered wetland, it is in fact a very wet area. He is also concerned about storm water runoff and asked if any of the Board have reviewed this property. His property was built in 2012 and is further down the road; he is concerned about any activity during construction or the storm water runoff design and how it could affect access to his property. The nature of this neighborhood is that the natural flow and drainage has been impacted over the years.

Mr. Clough explained that from 2012 the requirements are still the same. The current storm water regulations came out in 2010. What the applicant is proposing meets the States requirements and is going above and beyond the Towns requirements. He then further explained the proposed drywells and raingardens which were designed to withstand a 25 year storm event and mitigate it to levels that are consistent with existing conditions.

Mr. Prior expressed that his main concern is access and that he is currently denied full enjoyment of his yard due to existing wet conditions and that the proposed application will only further exasperate the situation.

Board questions ensued.

Jeremy Voelker, 2 Heather Hollow Drive, owner of adjacent lot to east of the property was sworn in and testified that he has a number concerns especially regarding water issues. He purchase his home in 2015. The wetlands in question is a significant area. He testified that he loses a large portion of his backyard to water throughout the year and the land itself is essentially swamp land. Due to the nature of how these lots were set up there is really nowhere for the water to go. His concern is any type of work on the applicant's property is going to displace water and the questions is where is this water going to go. He has reviewed the plans and expressed concerns that the major source of water on this property is a dug well and that this may directly impact the water supply to his home. His well is actually located on the other side of the property line and is identified on the plan as an existing well. The plan does not show any radius from that well to the proposed system. He expressed concerns in regards to the wetland delineation shown on the site plan. He has also spoken with a member of the Conservation Commission, as well as RI DEM in regards to the history of this property and their role in the review process.

Mr. Clough explained how wetland are delineated to determine wetland edges and the evaluation process. He then explained how the site will be graded to direct the water path to continue following its existing directions. The proposed storm water engineering is designed to mimic existing conditions and mitigate any potential increases in the runoff. In regards to the well in question, there is a 100' well radius which is just at the edge of the septic tank, the well radius to a septic tank is only required to be 75' feet. The leach field is even farther from the well, an additional 30' to 50' feet. The proposed OWTS, as designed, will not necessarily improve the water and runoff situation but it will not make the situation any worse than currently existing.

Mr. Mark asked Mr. Voelker about the surrounding lots and the applicant's lot in particular and how it's dissected by the wetlands.

Mr. Voelker stated that he wanted to make it clear that DiPrete Engineering is a paid consultant and not an independent contractor.

Mr. Cagnetta stated that they are licensed professionals, regardless of if they are paid experts, and that they cannot misrepresent the facts and that they are bound by the ethics of their professional licensure. Mr. Cagnetta advised that the only way to counter what the applicant's experts have stated is to bring in your own experts to counter any testimony given.

Maura Gazerro, 60 Heather Hollow Road, was sworn in and testified that she is not personally impacted by the water issue, however, based on her observation she has seen large amounts of water present on the applicant's, the Prior's and the Voelker's lots. She is asking that the Board give further consideration prior to granting any decision.

Mr. Cagnetta stated that the Board has to rely on the expert testimony put before them.

James Voelker, 55 Heather Hollow, was present and sworn in. He testified that he is not personally affected by the water and has lived on Heather Hollow since 1974 and his concern is about the evolution of the property as a whole and how the property has gone from having some wet conditions but now has water almost all the time. His concern is what the property will look like five years from now given the increase that he has seen since he first moved there in 1974 and how much higher the water table will continue to rise.

There was no one else present who wished to speak.

Mr. Kenyon stated that they understands the neighbors' concerns, however, this property is zoned residential and the only use of this property is for a single family residence. The proposed house requires no dimensional relief under the Zoning Ordinance. The Town has enhanced OWTS requirements above and beyond the State which is why the applicant needs relief for the location of the OWTS itself. RI DEM has approved the OWTS as designed. Mr. Kenyon then explained that RI DEM has been on site and has also verified all of the flagged wetland. Additionally, the Town requires an advanced review under Section 504. The Town's Conservation Commission has thoroughly vetted this application prior to granting approval. The driveway and the storm water runoff design has been further enhanced from what is normally required, the applicant had to show zero net increase for volume or rate of storm water runoff during a 24 hour, 25 year storm model event. In closing he believes the applicant has met the development standards for the granting of a Special Use Permit under the Zoning Ordinance requirements.

There were no further questions of Mr. Kenyon.

There was no Board discussion.

The motion is as follows:

**The following motion, made by Mr. Rosen and duly seconded by Mr. Daniels
Passed unanimously (Vote 5-0)**

(W. Rosen-Aye, T. Daniels-Aye, W. Mark-Aye, C. Charkowick-Aye, R. Cagnetta-Aye)

At a meeting held on February 17, 2021 regarding the **Petition of Michael & Donna Monteforte c/o Walter J. Manning, III**, 50 Anchorage Road Narragansett, RI 02882 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking the approval of a Special Use Permit to locate an Onsite Wastewater Treatment System (OWTS) closer to a wetland than allowed. 150' is required, 95' is proposed. Relief of 55' is requested. The project previously received approval from the Conservation Commission on December 1, 2020. Lot size is 1.6 Acres. **A Special Use Permit is required per Zoning Ordinance Section 504.1 (Special Use Permits-Location of OWTS) and Section 907 (Standards of Relief).** Property is owned by Michael Monteforte for premises located on Assessor's Map 79-3, Lot 15, and zoned R80.

The following individuals spoke as representatives of the applicant:

- John Kenyon, Attorney for applicant
- Jason Clough, PE

The following spoke in opposition to the application.

- William Prior, 10 Heather Hollow Drive
- Jeremy Voelker, 2 Heather Hollow Drive
- Maura Gazerro, 60 Heather Hollow Drive
- James Voelker, 55 Heather Hollow Drive

The following materials were entered into the record:

- Application with Cover Letter and Narrative, signed and dated January 5; Owner Authorization Form signed and notarized January 6, 2021; Vision Appraisal Field Card Map 79-3 Lot 15; 200' Radius Map and Abutter's List; RI DEM OWTS Construction Permit dated June 15, 2020; Correspondence DiPrete Engineering from Jason P Clough, PE, dated November 9, 2020; Drainage Calculations prepared by Jason P Clough PE, dated November 5, 2020 (3 pages); OWTS Site Plan prepared by DiPrete Engineering, Jason P Clough, PE, dated March 5, 2020 with revisions on September 25, 2020 and November 5, 2020 (2 pages)

- Conservation Commission OWTS Advisory Opinion to Zoning Board dated December 2, 2020 (2 pages)
- Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing
- Revised OWTS Site Plan prepared by DiPrete Engineering, Jason P Clough, PE, dated March 5, 2020 with revisions on September 25, 2020, November 5, 2020 and December 9, 2020 (1 pages)

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 504.1 (Special Use Permits-Location of OWTS) 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 the applicant received a positive Conservation Commission Advisory and submitted a revised site plan to indicate the reduced driveway width as conditioned in the Conservation Commission's Advisory Opinion dated December 2, 2020.
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; the proposed driveway will provide adequate ingress and egress as well as allow for emergency vehicle access.
 - (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; there is ample parking.
 - (iii) Trash, storage and delivery areas with a particular reference to the items in (i) and(ii) above; the lot has adequate area for trash storage.
 - (iv) Utilities, with reference to locations, availability and compatibility; utilities will be provided and compatible with the neighborhood.
 - (v) Screening and buffering with reference to type, dimensions and character; the lot has existing buffering and screening that is consistent with neighboring properties.
 - (vi) Signs, if any, and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with lots in the zoning district; there will be no signage.
 - (vii) Required yards and other open space; not applicable.
 - (viii) General compatibility with lots in the same or abutting zoning districts, because the lot and the proposed single family structure is similar to neighboring lots and structures surrounding and within the wetland system; additionally the proposed OWTS has received approval from RI DEM and has been designed to have no negative impact on the wetlands or the surrounding properties.

Approval is subject to the following conditions:

- The decision is a Conditional Zoning Approval and is conditioned upon any, if necessary, further RI DEM 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.

The following petitions were continued till February 24, 2021, all members present tonight are available.

Motion made by Mr. Rosen and duly seconded by Mr. Charkowick

Motion passed unanimously (Vote 5-0)

(W. Rosen-Aye, C. Charkowick-Aye, -Aye, -Aye, R. Cagnetta-Aye)

- **Petition of Richard and Lucille Biele**, 141 Alder Road, South Kingstown, RI 02879 For a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to construct a 6' x 16' portico on the front of the dwelling. The portico will be located 10.4' from the right side property line. The required side yard setback is 15'. Relief of 4.6' is requested. The Lot size is 10,000 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming lots of record-Building setback requirements) and Section 907 (Standards of Relief).** Owner of the property is Richard and Lucille Biele for premises located at 141 Alder Road, South Kingstown, RI, Assessor's Map 83-2, Lot 259 and is zoned R 30.

- **Petition of Jerry C. Babcock**, PO Box 641, Charlestown, RI 02813 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to construct a detached one bedroom Accessory Apartment consisting of 750 square feet with additional second floor storage. A Special Use Permit is required for accessory apartments located in an R200 Zoning District not serviced by a public sewer system. The Lot size is 1.89 acres. **A Special Use Permit is required per Zoning Ordinance Section 503.2 C (Accessory Apartments) and Section 907 (Standards of Relief)**. Owner of the property is Jerry C Babcock for premises located at 1217 Matunuck School House Road, South Kingstown, RI, Assessor's Map 84-3, Lot 39 and is zoned R200.
- **Petition of the Contemporary Theater Company c/o Terrence G. Simpson**, 321 Main Street, Wakefield, RI 02879 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to amend the existing Special Use Permit. The request is to construct a two story addition with incorporated deck to the theater rehearsal studio. The applicant also requests the liquor service area to be expanded into the proposed addition. Previous Special Use Permits were granted on June 21, 2017 and February 21, 2012. Lot size is .37 Acres. **A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations) and Section 907 (Standards of Relief)**. Owner of the property is Contemporary Theater Company for premises located at 321 Main Street, South Kingstown, RI, Assessor's Map 57-4, Lot 211, and is zoned CD (Commercial Downtown).

The Board took recessed from 9:49pm to 9:56 pm

Mr. Cagnetta read the last petition.

- **Petition of Maria Earley, Executor of the Estate of Christopher Shafer c/o South County Survey Company, LLC, James T. Caldarone**, 382B Main Street, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to reduce the area of an existing lot (AP 46, Lot 4) in an R-80 zone. Both lots 3 and 4 are currently nonconforming by dimension. Lot 4 is presently 57,032 s.f. and is proposed to become 43,984 s.f. whereas Lot 3 is presently 18,688 s.f. and is proposed to become 31,737 s.f. **A Dimensional Variance is required per Zoning Ordinance Section 400D (Compliance with Regulations), Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief)**. Owner of the property is the Estate of Christopher Shafer c/o Maria Earley, Executor for premises located at 2040 Ministerial Road, Assessor's Map 46, Lot 4 and is zoned R80.

James Caldarone, PLS, was sworn in and testified that the applicant is proposing to do an administrative subdivision which can typically be done by the administrative officer in the Planning Department, however because both of the lots are non-conforming and undersized for an R-80 Zone, a dimensional variance is required. In the mid 1970's the lot lines were moved creating the current lots. The applicant is simply asking to move the property lines back to the original property lines from the 1920's which in effect will make both of the non-conforming lots more conforming and balanced in size.

Correspondence in favor were read into record from neighboring abutters.

- Anne B. Sheffield, 2070 Ministerial Road, and
- Karen DiMartino Mensel, 2030 Ministerial Road.

Mr. Cagnetta asked if anyone present wished to speak.

Joe Kosiarek, 2014 Ministerial Road, was present and sworn in and stated that they also have no objection to the variance and totally support the application.

No one else present wished to speak.

There was no further discussion.

The motion is as follows:

The following motion, made by Mr. Daniels and duly seconded by Mr. Charkowick
Motion passed unanimously: Vote 5-0
(T. Daniels-Aye, C. Charkowick -Aye, W. Rosen-Aye, W. Mark-Aye, R. Cagnetta-Aye)

At a meeting held on February 17, 2021 regarding the **Petition of Maria Earley, Executor of the Estate of Christopher Shafer c/o South County Survey Company, LLC, James T. Caldarone**, 382B Main Street, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing

to reduce the area of an existing lot (AP 46, Lot 4) in an R-80 zone. Both lots 3 and 4 are currently nonconforming by dimension. Lot 4 is presently 57,032 s.f. and is proposed to become 43,984 s.f. whereas Lot 3 is presently 18,688 s.f. and is proposed to become 31,737 s.f. **A Dimensional Variance is required per Zoning Ordinance Section 400D (Compliance with Regulations), Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief).** Owner of the property is the Estate of Christopher Shafer c/o Maria Earley, Executor for premises located at 2040 Ministerial Road, Assessor's Map 46, Lot 4 and is zoned R80.

The following individuals spoke as representatives of the applicant:

- James Caldarone, PLS

The following materials were entered into the record:

- Application, signed and dated January 8, 2021; Owner Authorization Form signed and notarized January 5, 2021; Certificate of Appointment dated August 24, 2020; 200' Radius Map and Abutter's List; Administrative Subdivision Plan prepared by South County Survey, LLC, James T Caldarone, PLS dated January 8, 2021; Administrative Subdivision Conditional Approval dated October 22, 2020; Correspondence from James T Caldarone to Planning Department dated January 5, 2021
- Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing
- Correspondence
 - Karen DiMartino Mensel, 2030 Ministerial Road, received February 8, 2021
 - Anne B. Sheffield, 2070 Ministerial Road, received February 16, 2021
 - Letter from Planning Director, James Rabbit dated January 19, 2021 granting extension of the Conditional Approval dated October 22, 2020

The following spoke either in support of or opposition to the petition.

- Joe Kosiarek, 2014 Ministerial Road, in support

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 administrative subdivision of Assessor's Map 46, Lots 3 & 4 was conditionally approved by the Administrative Officer on October 22, 2020. This is conditional upon zoning approval due to the fact that the two lots are located in an R-80 Zone and are existing legally non-conforming lots of record which makes zoning approval necessary for the granting of an Administrative Subdivision to occur.
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 applicant simply wants to revert the lot line between Assessor's Map 46, Lot 3 & 4 back to the original 1932 plat line.
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 this an R-80 Zone and the granting of this dimensional variance will increase the size of the corresponding lot, Map 46 Lot 3, making it more compliant with R-80 zoning requirements.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicant is simply requesting to move the lot lines back to their original 1932 demarcation.
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 the lots lines are not moved it will make the full utilization of either lot difficult in an R-80 zone.

Approval is subject to the following conditions:

- All conditions of the Planning Board Administrative Subdivision Conditional Approval dated October 22, 2020 shall be met

Other Business:

- Adjournment: The motion was made to adjourn by Mr. Mark and duly seconded by Mr. Daniels, all members present were in favor. Meeting adjourned 10:13p.m.