



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 July 21, 2021.

A. CALL TO ORDER:

Mr. Cagnetta called the meeting or order at 7:00 pm

B. CHAIRMAN INTRODUCTIONS AND INSTRUCTIONS:

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

Member(s) Absent: all members were present

Staff Present: Amy Goins, Special Legal Counsel; Building Official and Zoning Clerk, Jamie Gorman; Administrative Associate, Jessica Spence

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

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

Ms. Goins discussed that the Governor's Executive Order allowing for Zoom meetings will expire on July 23, 2021 and that all meetings after that date will resume in-person meetings.

C. AGENDA ITEMS:

Continuation of the 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).

The petition of Garrett Homes, LLC will be heard starting at 9:00 pm.

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- I. **Petition of Caf Bar, LLC, 396 Main Street, Wakefield, RI 02879 for a Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking a special use permit to allow for alcohol service within the existing establishment (Caf Bar). Lot size is .16 acre. **A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table) and Section 907 (Standards of Relief).** Owner of the property is 396 Main Street LLC, for premises located at 396 Main Street, South Kingstown, Assessor's Map 56-3, Lot 43 and is zoned CD. The Use Code is 56.1-Restaurant, with Alcohol.

Attorney James Callaghan was present for the applicant.

Mr. Callaghan stated that the applicants run a coffee shop on Main Street and that they are seeking a Special Use Permit for a beer and wine license to increase their offerings. If they are successful tonight they will then go before the Town Council for approval.

Alexandra Boutros was present and sworn in and testified that she owns Caf Bar with her husband. The business recently relocated from another smaller location on Main Street to a larger space at 396 Main Street which allowed for more space to meet the social distancing requirements during the COVID pandemic. As part of the move they have done interior updates and also updated the fire suppression system. They are a community coffee and food shop and wanted to be a local gathering place for everyone. They provide food and coffee offerings and are open 7 days a week and open daily till 3pm. They currently have 6 employees. During the pandemic they adapted their business model to a scaled down plan, and they are now back to their original capacity. They are looking to add beer and wine to expand their offerings. Additionally, they learned through the pandemic and seeing how other businesses survived that adding a liquor service will help create stability to their business. They would not expect their hours to expand any later than 10:00 pm. They expect that adding beer and wine service will increase their business roughly by 15%. There are other businesses on Main Street that offer liquor service, their goal is not to be a full scale restaurant, but rather a gathering space for the community. The current location has previously received a variance for parking. Many customer currently walk to their location and there is municipal parking across the street. There have been no known parking issues with neighboring businesses. They would like to serve several local breweries and wines. Expected deliveries should not have any effect of the neighborhood. They have designated trash pickup.

Mr. Daniels asked if the application is deficient due to lack of site plan in the application.

Ms. Goins asked Mr. Callaghan to confirm that the site plan for this business is the same as the site plan that was previously submitted and on file from the granting of a dimensional variance, at which point Mr. Callaghan confirmed that there has been no change. Ms. Goins then explained that the parking deficiency was permitted by variance from the previous tenant. In this case the Board can either choose to forego the requirement of a site plan or make it a condition of approval that a site plan be submitted of any building permit application going forward. Ms. Goins complimented Mr. Callaghan on his argument brought forward in granting of the Special Use Permit with an existing Variance on record and she stated that this application is properly before the Board.

Mr. Jurczak asked questions in regards to the liquor service area and night time operations in relation to residential neighbors.

Ms. Boutros indicated that they will not be serving liquor outside, only within the confines of the building.

Ms. Goins advised that this application does not fall under the Covid liquor service expansion temporary permits because there was not an existing license in use, rather they are applying for the establishment of a new liquor license which is not eligible under Covid relief restrictions. Ms. Goins advised that the Board can consider the physical boundaries of the use and accept testimony stating where the alcohol will be served knowing that the applicant will still have to go before the Town Council for approval.

Ms. Boutros explained what business and residential properties about their location.

Mr. Rosen asked for clarification of the business hours, parking, and submitted floor plan.

Ms. Boutros stated that their goal would be to remain open till 9:00 pm or 10:00 pm.

The Board had no further questions.

Mr. Callaghan asked Ms. Boutros clarify that there have been no complaints from any neighbors.

Mr. Callaghan had no further questions.

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

More discussion ensued in regards to the possibility of liquor service in the outside seating area and how to prohibit liquor from being consumed outside. This is in relation to possible disturbance to any residential neighbors.

Ms. Boutros clarified that they are not requesting liquor service in the outside area.

Board discussion ensued about the possibility of continuing the petition until some further evidence can be presented in regards to liquor service area.

The motion is as follows:

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

Motion passed 4-1 in favor

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

At a meeting held on July 21, 2021 regarding the Petition of Caf Bar, LLC, 396 Main Street, Wakefield, RI 02879 for a Special Use Permit under the Zoning Ordinance as follows: The applicant is seeking a special use permit to allow for alcohol service within the existing establishment (Caf Bar). Lot size is .16 acre. A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table) and Section 907 (Standards of Relief). Owner of the property is 396 Main Street LLC, for premises located at 396 Main Street, South Kingstown, Assessor's Map 56-3, Lot 43 and is zoned CD. The Use Code is 56.1-Restaurant, with Alcohol.

The following individuals spoke as representatives of the applicant:

- Attorney James Callaghan
- Alexandra Boutros

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

The following materials were entered into the record:

- Application signed and dated May 18th & May 20th 2021; Owner Authorization signed and notarized April 26, 2021; Correspondence from Attorney James Callaghan (3 pages) dated May 18, 2021; Rhode Island Supreme Court Decision Lloyd v. Zoning Bd. Of Review for Newport No. 2009-303-M.P. (11 pages) dated March 29, 2013; South Kingstown Zoning Board Notice of Decision (1 page) granted May 16, 2012 and recorded June 20, 2012 Land Evidence Book L1475 & Pg. 267; Floor Plan (1 page)
- 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 301 (Schedule of Use Regulations Table) 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 has proven that they meet all the criteria of the Ordinance for Use Code 56.1 to be granted a Special Use Permit allowing a restaurant with alcohol.
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 applicant explained in detail the traffic particular to this property and ingress and egress will not be obstructed.
 - (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 off-street parking available.
 - (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; there is on-site trash and storage and all utilities are present.
 - (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; there will be no additional signs or lighting.
 - (vi) Required yards and other open space; not applicable
 - (vii) General compatibility with lots in the same or abutting zoning districts, because this is a commercial district that has other restaurants that have liquor service in the immediate vicinity.

Approval is subject to the following conditions:

- Granting of the liquor license will require Town Council Approval
- Liquor service and consumption will be strictly limited to the interior space, no exterior liquor service

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- II. Petition of Raymond and Linda Dionne, 74 Thomas Leighton Blvd., Cumberland, RI 02864 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to replace the existing front deck with a new covered deck with stairs to grade. The new deck stairs will be located 22'4" from the front property line. The required front yard setback is 25'. Relief of 3' is requested. Lot size is 6,488 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 Raymond Dionne for premises located at 33 Washington Street, South Kingstown, Assessor's Map 86-3, Lot 115 and is zoned R20

Raymond Dionne was sworn in and testified that they were previously before the Zoning Board last year and were granted a Dimensional Variance. However, during the construction process it was determined that they would like to create a new front entrance to the home. The intention is for this to be their full time home and they have determined that they need an updated front entrance for ease of entrance as they get older. The existing deck is already encroaching on the setbacks and the proposed deck will be even less than what is there now.

Board question ensued.

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: Vote 5-0

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

At a meeting held on July 21, 2021 regarding the Petition of Raymond and Linda Dionne, 74 Thomas Leighton Blvd., Cumberland, RI 02864 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to replace the existing front deck with a new covered deck with stairs to grade. The new deck stairs will be located 22'4" from the front property line. The required front yard setback is 25'. Relief of 3' is requested. Lot size is 6,488 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 Raymond Dionne for premises located at 33 Washington Street, South Kingstown, Assessor's Map 86-3, Lot 115 and is zoned R20.

The following individuals spoke as representatives of the applicant:

- Raymond Dionne, applicant

The following materials were entered into the record:

- Application signed and dated May 22, 2021; Owner Authorization signed and notarized May 22, 2021; Unofficial Site Plan (1 page) Map 86-3 Lot 121; East and North Elevations (1 page) and Basement and First Floor, Floor plans (sheet 2 pf 4) prepared by Norman P. Bellemont AIA and dated May 20, 2021; Washington Street Site Plan (1 page)
- 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 applicant is simply looking to make an existing dimensionally non-conforming front deck into a reasonable front entrance.
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 this will be the applicant's year round retirement home and they need to create an entry way that will allow ease of access.
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 applicant has designed a house that fits in nicely with the surrounding neighborhood.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicant is requesting minimal relief and simply looking to correct an existing dimensionally non-conforming deck while creating a front entrance that can be fully utilized.
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 the applicant wishes to extend and cover the deck to protect the entry way from any inclement weather and this would not be possible without the granting of the requested dimensional relief.

Approval is subject to the following conditions:

- There are no conditions upon this decision.

III. Petition of Richard Schappach, 74 North Mountain Road, Brookfield, CT 06804 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to demolish the existing dwelling and construct a new dwelling with second story deck. The proposed dwelling will be located 39.4' from the front property line. The required front yard setback is 40'. Relief of .6' is requested. The dwelling will be located 30' from the rear property line. The required rear yard setback is 40'. Relief of 10' is requested. The dwelling will also be located 4.3' from the left side property line and 7.1' from the right side property line. The required side yard setback is 10'. Relief of 5.7' and 2.9' is requested. Lot size is 6,200 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 D & R Schappach LLC for premises located at 311 Twin Peninsula Avenue, South Kingstown, Assessor's Map 89-3, Lot 5 and is zoned R80.

Attorney John Kenyon was present for the applicant. Mr. Kenyon reviewed the existing property conditions and zoning. There is an existing 624 sf single family residence on the property. The lot is constrained by proximity to Green Hill Pond and setback requirements due to the unique shape and size of the lot. The applicant is looking to demolish the existing house and build a new house in approximately the same area as the current house. The applicant is limited to moving the house location on the lot due to its proximity to Green Hill Pond. The applicant will be replacing the OWTS system with an Advantex Bottomless Sand Filter OWTS. The proposed house will meet all FEMA requirements. The applicant's intention is to keep the proposed house as close to the existing conditions as possible.

Richard Schappach was sworn in and testified that he is the owner of the property and as a profession he is a custom high end contractor in New York. He will be doing the construction on this house and is very familiar with the surrounding properties. He then explained that the existing structure is a small one story structure with below average conditions. He then explained the lot conditions. The existing house does not meet the FEMA requirements. He is proposing to replace the OWTS with a new OWTS system which will be located as far away from the pond as possible. During the design process they developed a plan that would be aesthetically pleasing and fit in well within the neighborhood. They have worked with CRMC and have attempted to move the house as far away from the pond and the setbacks as possible but this has proven difficult due to the lot configuration. The house has been reduced in width from the current house. They have designed the house with bump out in order to break up the massing of the house and be more aesthetically pleasing. The house needs to be elevated to meet FEMA requirements and they have designed camouflaging techniques to break up the height of the house. All of the mechanicals will also be elevated above the flood plain which further limits living space. The house will meet the Zoning Ordinance height requirements.

Mr. Kenyon had no further questions.

Board questions ensued in regards to construction equipment and how the applicant plans to ensure that the road remains passable during construction.

Mr. Schappach stated that demolition is easy to manage because the house will go down and be taken away in one day. In regards to the construction vehicles they will be directed and guided into the site and directed to where they can turn around. Not all of the houses are occupied year round and they are hoping to start the process in the fall so the heavy construction can be done during the winter when there is less traffic. There are currently other houses on the road undergoing construction and construction vehicles currently utilize the road with minimal impact on traffic.

Questions about lot coverage ensued.

Mr. Schappach stated the proposed lot coverage of the whole house is 1610 sf. which is below the maximum gross allowed of 1860 sf.

Mr. Gorman explained that the lot coverage is 20% maximum but because they are in a special flood hazard area there are requirements for a maximum gross living floor area which are the calculations that Mr. Schappach referred to and are well under the amount.

Mr. Cagnetta read into record the correspondence received from Mary-Gail Smith received on July 20, 2021.

Mary-Gail Smith was present and enquired about the distance of the proposed structure to Green Hill Pond as well as her points brought up in her letter.

Mr. Kenyon stated the house is located 30' from the rear yard line, the applicant is actually moving the proposed house 1.5' further away from the pond than the existing house. In regards to the OWTS the house that is being proposed is slightly different than shown on the plan to address some concerns neighbors had. CRMC, not DEM, is actually the next step that the applicant will need to go through once zoning has been granted. In regards to the parking there is plenty of space on the property to allow for adequate parking. Finally any structural concerns are under the purview of the Building Department and will be reviewed prior to issuance of any permit for compliance. Due to the FEMA requirements it is almost virtually impossible to renovate the existing house and meet the FEMA requirements.

Mr. Schappach further explained the OWTS system. It is considered a renovation because there was an existing OWTS on the parcel and was not an undeveloped piece of property.

Jeffrey Cahn was present and sworn in. Mr. Cahn stated that his family has owned a home on the road for 40 years and that the Schappach's are great neighbors. Mr. Cahn stated that they use their house seasonally. The variance will bring the distance down to about 4' between the properties, his only concern is does the granting of this variance hinder any future variance his family may wish to request. He also asked about the placing of the OWTS.

Mr. Cagnetta stated that the granting of this variance will not hinder the granting of any future variances on neighboring properties providing any application that is submitted meets the Ordinance requirements.

Mr. Schappach explained that the OWTS is a self-contained system and will not impact surrounding properties.

There was no one else who wished to speak.

Board discussion ensued.

The motion is as follows:

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

Motion passed unanimously: Vote 5-0

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

At a meeting held on July 21, 2021 regarding the Petition of Richard Schappach, 74 North Mountain Road, Brookfield, CT 06804 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to demolish the existing dwelling and construct a new dwelling with second story deck. The proposed dwelling will be located 39.4' from the front property line. The required front yard setback is 40'. Relief of .6' is requested. The dwelling will be located 30' from the rear property line. The required rear yard setback is 40'. Relief of 10' is requested. The dwelling will also be located 4.3' from the left side property line and 7.1' from the right side property line. The required side yard setback is 10'. Relief of 5.7' and 2.9' is requested. Lot size is 6,200 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 D & R Schappach LLC for premises located at 311 Twin Peninsula Avenue, South Kingstown, Assessor's Map 89-3, Lot 5 and is zoned R80.

The following individuals spoke as representatives of the applicant:

- Attorney John Kenyon
- Richard Schappach

The following materials were entered into the record:

- Application with cover letter and narrative (Exhibit A) signed and dated June 4, 2021, Owner Authorization Form signed and notarized May 17, 2021; Vision Appraisal Field Cards (3 pages)
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings and Notarized Affidavit of Mailing
- Correspondence
 - Mary-Gail Smith, 17 Periwinkle Drive West, received July 20, 2021
- Exhibits 1-3
 - Cover Letter received July 9, 2021
 - Exhibit 1, Plot Plan prepared and stamped by Richard L. Couchon, PLS, Dowdell Engineering Inc., April 26, 2021 (A-00)
 - OWTS Plan prepared and stamped by William D. Dowdell, PE, Dowdell Engineering Inc., and Approved by RI DEM on May 14, 2020 Plan #0232-2062 (1 page)
 - Architectural Plans (A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-0)

The following spoke in regards to the petition:

- Mary-Gail Smith, 17 Periwinkle Drive
- Jeffrey Cahn, 313 Twin Peninsula Avenue

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 very unique in that it is a pie shaped lot and is restricted by its dimensions, as well as its close proximity to Green Hill Pond.
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 wishes to build a new structure that will comply with current flood zone requirements.
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 applicant has shown great care in the design of the house and the proposed design will certainly add to the character of this location. Additionally the proposed plan will not impair the intent of the Zoning Ordinance or the Comprehensive Plan because the proposed structure and its use is allowed within this zoning district.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicant has taken all possible steps to move the proposed structure as far away from the waterfront as possible while also trying to fit the structure within the very narrow lot confines and is requesting the least amount of relief as possible.
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 there is simply no other alternative for this applicant to comply with the flood plain requirements and be able to enjoy the use of his property to its fullest.

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.

Mr. Cagnetta made the motion to have the following petitions continued until August 18, 2021 due to time constraints and was duly seconded by Mr. Charkowick.

Motion passed unanimously: Vote 5-0

(R. Cagnetta-aye, C. Charkowick-aye, R. Jurczak-aye, T. Daniels-aye, W. Rosen-aye)

- IV. **Petition of Jason and Joan Grear**, 487 Pond Street, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to construct an 18' x 24' detached garage located 34' from the front property line. The required front yard setback is 50'. Relief of 16' is requested. Lot size is 10.21 acres. **A Dimensional Variance is required per Zoning Ordinance Section 401 (Schedule of Dimensional Regulations), Section 503.1 (Accessory Structures) and Section 907 (Standards of Relief)**. Owner of the property is Jason & Joan Grear for premises located at 487 Pond Street, South Kingstown, Assessor's Map 63-3, Lot 1 and is zoned R80.
- V. **Petition of Mahar Boys Properties, Inc**, 26 Pearl Street, Cortland, NY 13045 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to replace the existing seasonal trailer of 256 square feet with a new trailer of 300 square feet. The trailer will not be located any closer to neighboring units. Lot size is 7.67 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 trailer 689A Succotash Road is Mahar Boys Properties Inc, on property owned by Village at Potters Pond LLC, located at South Kingstown, Assessor's Map 87-3, Lot 5-56 and is zoned CW.
- VI. **Petition of Nicole Vanderslice**, 4615 Firtree Lane, Sparks, NV 89436 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to replace the existing seasonal cottage of 576 square feet with a new cottage of 720 square feet and attached deck of 200 square feet. The dimension between adjacent cottages will be a minimum of 20'. 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 18E3 is Nicole Louise Vanderslice on

property owned by Matunuck Beach Properties Inc, located at 240 Cards Pond Road, South Kingstown, Assessor's Map 92-1, Lot 9-205 and is zoned R200.

Election of Officers:

Mr. Jurczak nominated Mr. Cagnetta for Chairman and Mr. Daniels for Vice-Chair

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

Motion passed unanimously: Vote 5-0

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

At this point Mr. Jurczak left the meeting, he will not be voting on the Kingston Road application as he was not present for all testimony.

A break was taken from 9:25 – 9:32

- VII. Continuation of the 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).**

Attorney Joe Shekarchi was present for the applicant. He stated that all of last month's testimony is still on record and that tonight there will be some additional expert testimony to address the concerns brought up at last month's meeting.

Michael Dion, PE was present and sworn in. Mr. Dion stated that he will be screen sharing his presentation. Mr. Dion testified that the traffic study was done in May 2019 pre-Covid and that he has added supplemental traffic counts from November 2019 to address the concerns brought up regarding traffic while URI is in session. He then reviewed the Traffic Operation Analysis which has been projected out till horizon year 2026. Mr. Dion reviewed the Roadway Adequacy which assigns a letter grade for the roads level of service. He reviewed the peak PM and Saturday Midday conditions that the proposed location received. In conclusion, he stated any degradation in capacity between scenarios is negligible.

Mr. Daniels asked what is defined as peak hours, and how empirical data was calculated versus real time traffic counts.

Mr. Dion clarified that the peak hour is one-hour between 4pm -6pm and 11am-1pm on Saturday. The Institution of Traffic Engineers (ITE) Trip generation manual was used to calculate empirical traffic studies which is the industry standard. Additionally, there have been onsite manual traffic counts to field verify the information present.

Mr. Daniels stated that he has site visited two (2) separate Dollar Generals and conducted one-hour traffic counts. Both locations when extrapolated out would create higher traffic volume than the proposed Kingstown Road location which is a much busier roadway. He stated he cannot realistically expect the counts presented based on his peak hour trips and peak hour exits and entrances that he physically counted at the less busy locations.

Ms. Goins asked if Mr. Dion could comment on industry standards in regards to expected counts in the ITE in regards to the expected uses and asked to clarify if these counts represent averages over seasons and time frames.

Mr. Dion explained the ITE has been collecting data for over 45 years and the numbers are averaged and will show fluctuations. There is also a COVID factor which should be factored in for daytime traffic.

Mr. Cagnetta stated that in listening to the Planning Board and their considerable talk on traffic study that the Ordinance allows for this use in this zone and this allowance assumes there is going to be a certain amount of traffic flow in the area and that the proposal before the Board is a permitted use and is therefore in sync with the Comprehensive Plan.

Ms. Goins advised that the Planning Board granted an Advisory Development Plan Review and had no major issues with the traffic study and its conclusions. The application is here on a special use permit and the proposed use is conditionally permitted provided

that the proposed use meets all of the conditions set forth in the Ordinances. In theory it can be assumed that the Council felt that a commercial business of this type would be allowed in this district provided all other requirements are met. The applicant has produced a traffic study and given expert testimony to back up the conclusion that the proposal will have no adverse impact on traffic conditions in the area. Courts have said that traffic is a subject on which you do need expert evidence. Courts have reversed Zoning Board decisions where the Board gave greater weight to non-expert testimony due to the science of traffic studies. In general when you have expert evidence that is not contradicted by another expert, it can be considered reversible error for a Board to reject it. There may be times, however, that a Board can reject evidence given. If the evidence is controverted and the objector's had another expert with contradicting testimony or if there was independent reason to doubt the credibility or the weight of the traffic study that is another potential reason to discount any conclusions. Finally when Board members give less weight to expert testimony based on their own personal observations it may be that this will be upheld in court provided that the Board members put their reasons on the record. The question for the Board to consider is not 'is there too much traffic already?' it is 'would the addition of this use create adverse conditions on traffic and can those conditions be mitigated in any way?' This is the reason the traffic expert is here to address the before the Board.

Mr. Shekarchi stated that he feels the burden has been met and that the Board's previous concerns have been addressed.

Matthew Bruton wanted to clarify that they did supply a traffic turning radius that shows that an 18-wheeler can enter and exit from the site without crossing over the center line of the road.

Mr. Charkowick asked for clarification on the ITE 10th addition which was published in 2017 and the overall traffic volume numbers projections and what is the starting point for projection.

Mr. Dion stated that the 10th addition is the latest addition and that ITE is continually updating their data. Mr. Dion stated that in 2019 they actually did a physical traffic count and they have now been projected out at .5% a year through 2026. They consulted with another engineering firm that did a study in November 2019 when school was in session to give the Board an accurate representation of numbers when

Ms. Spence read into record the correspondence from Attorney Frank Lombardi representing Southwinds Condominium Association.

Mr. Shekarchi stated that he attempted to reach out to Attorney Lombardi. He also stated that the Condominium Association has also had ample opportunity to higher their own expert witnesses. Ultimately they are not experts and if they truly felt strongly on this they should be present and have brought in their own witnesses and the Board should take the letter for what it is worth. Additionally, he indicated that he spoke with the developer and as a goodwill gesture the developer would be willing to install a crosswalk.

Mr. Dion stated that the letter misrepresented the 30% of traffic going into the business is not accurate. He also stated that he would be hesitant in making the condition of a crosswalk part of any decisions as RI DOT would need to be heavily involved.

Mr. Shekarchi clarified that they would be willing to cover the cost of striping the sidewalk providing that all necessary State and Town permissions are granted.

Ms. Spence read into record the letter from Bonnie Baranowski, Ph.D.

Bonnie Baranowski, Ph.D. was present and testified that she has lived at Southwinds Condominiums for the past 3 years and has witnessed the heavy traffic volume on Kingstown Road and the overall effect needs to be considered. Furthermore, she has serious doubts in regards to the validity of this traffic study.

Mr. Cagnetta explained that the cumulative effect of any proposed project is considered by the Planning Board.

Mr. Shekarchi wanted to clarify that Dr. Baranowski has never professionally testified as a traffic experts, which she stated she has not.

There was no one else present who wished to speak.

Mr. Shekarchi had no further testimony.

The Board had no more questions.

Ms. Goins advised that any decision that the Board makes tonight to direct legal counsel to prepare the decision.

Board discussion ensued.

Mr. Dion reviewed his Curriculum Vitae.

Board discussion resumed.

The motion is as follows:

Ms. Walsh made the motion to direct legal counsel to draft the decision to approve the petition of Garrett Homes, LLC under the Zoning Ordinance and was duly seconded by Mr. Rosen.

Whereas a vote was taken: (S. Walsh-aye, W. Rosen-aye, T. Daniels-nay, C. Charkowick-nay, and R. Cagnetta-aye)

Motion does not pass, Denial 3-aye to 2-nay

Ms. Goins asked that Mr. Daniels and Mr. Charkowick give detailed reasons for their objections.

Mr. Daniels found that the special use does not meet all of the criteria set forth in the ordinance, specifically it does not meet the ingress and egress of the lot and to existing and proposed structures there on with particular reference to automotive and pedestrian safety. He finds that safety is compromised and that traffic flow in particular with entrance and exits, making left turns compromises the heavy traffic flow on Kingstown Road. This is not unlike the previous decision that is currently under appeal. I find no additional evidence that has been presented in two (2) hearings other than changes to internal lot structure that has effected or impacted with regard to ingress, egress and traffic flow. The same study that is on consideration here is basically the same study that was under consideration before. I find that based on personal observations that some of the numbers in the experts report can be debated based on having visited similar locations and conducted traffic counts. I also find that it is not compatible with the comprehensive plan and it is not necessarily compatible with surrounding the area. This is a MU zone and not a commercial zone therefore they are not required to find that a commercial establishment necessarily needs to go there. It was designed MU for the purpose of not creating strip malls and adjacent retail business.

Mr. Charkowick stated that another factor to consider whether this application meets all of the requirements of the Ordinances, in addition to automotive and pedestrian safety, there is a 'mere convenience' factor. Traffic flow and control is explicitly outlined in the criteria that they are meant to consider. He also pointed out that the Kingstown Road management district has been identified in the Comprehensive Plan as a road that has the potential to develop into commercial strips which exasperate traffic problems and create visual clutter and he believes that the addition of this business would do exactly that.

This will be a Denial by virtue of 3-2 vote.

Mr. Shekarchi indicated that they would be appealing the decision. He believes some of the reasons of denial are not germane and not relevant and would fall under the purview of the Planning Board which has approved this application twice. He asked for a formal roll call vote be put on the record.

Whereas a vote was taken: (S. Walsh-aye, W. Rosen-aye, T. Daniels-nay, C. Charkowick-nay, and R. Cagnetta-aye)

D. OTHER BUSINESS:

I. Minutes: Motion made by Mr. Rosen to approve the minutes as written from the June 16, 2021 meeting. The motion carried by unanimous vote with no abstentions

II. Attendance: August 18, 2021 Meeting.

(T. Daniels-aye, W. Rosen-aye, S. Walsh-aye, R. Cagnetta-aye, C. Charkowick-unsure at this point)

E. ADJOURNMENT:

I. Mr. Rosen made the motion to adjourn the meeting at 11:05 p.m. The motion carried by unanimous vote with no abstentions.