



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 January 27, 2021.

Members Present:

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

Also present were, Mike Ursillo, Town Solicitor; Jamie Gorman, Building Official and Clerk; and Jessica Spence, Administrative Support Associate.

Mr. Cagnetta opened the meeting at 7:01 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

Attorney Ursillo left the meeting at this point and Attorney Amy Goins joined the meeting as the Town's Special Legal Counsel.

Mr. Cagnetta read the first petition.

Petition of Robert and Constance Booth c/o RCM Builders, 4 Ann Street, #2, Westerly, RI 02897 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is proposing to demolish the existing garage and construct a 30' x 25' detached garage with storage room above. The garage will be located 16' from the front property line. The required front yard setback is 25'. Relief of 9' is requested. The proposed lot coverage will be 21%. The maximum lot coverage allowed is 20%. Relief of 1% is requested. The structure will meet the height requirement of 20'. Lot size is 12,365 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 208 (Nonconforming lots of record-Accessory building setback requirements), Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief).** Owner of the property is Robert W. and Constance M. Booth for premises located at 133 Browning Street, Assessor's Map 96-2, Lot 32 and zoned R 30.

Mark Viens was sworn in.

Mr. Viens testified that the existing garage is not big enough to park two cars and allow for any storage. The proposed garage will be basically the same footprint, and will only be expanding by 5' in the back and 6' to west, requiring 1% lot coverage variance. The applicant has a growing family and need the space above the garage for storage.

Board questions ensued in regards to use of 2nd story and septic location.

Mr. Viens indicated that the 2nd floor will be for storage only and the septic is located to the left of the front lawn, in addition the proposed garage will be coming no closer to Browning Street.

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

There was no Board discussion.

The Motion is as follows:

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

Motion passed unanimously: Vote 5-0

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

At a meeting held on January 27, 2021 regarding the Petition of Robert and Constance Booth c/o RCM Builders, 4 Ann Street, #2, Westerly, RI 02897 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is proposing to demolish the existing garage and construct a 30' x 25' detached garage with storage room above. The garage will be located 16' from the front property line. The required front yard setback is 25'. Relief of 9' is requested. The proposed lot coverage will be 21%. The maximum lot coverage allowed is 20%. Relief of 1% is requested. The structure will meet the height requirement of 20'. Lot size is 12,365 square feet. A Dimensional Variance is required per Zoning Ordinance Section 208 (Nonconforming lots of record-Accessory building setback requirements), Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief). Owner of the property is Robert W. and Constance M. Booth for premises located at 133 Browning Street, Assessor's Map 96-2, Lot 32 and zoned R 30.

The following individuals spoke as representatives of the applicant:

- Mark Viens, representing RCM Builders

The following materials were entered into the record:

- Application with Exhibit A Narrative, signed and dated December 20, 2020; Owner Authorization Form signed and notarized; 200' Radius Map and Abutter's List; 1 page of Elevation drawings; Site Plan prepared by Pinch Land Surveying, Steven M. Pinch, PLS dated December 21, 2020; Photograph of existing garage
- Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing

There was no one present who spoke in favor 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 has no other viable options to locate the garage on the property. In addition, the applicant is replacing a substandard garage within basically the same footprint as the existing garage and is only requesting a slight 1% change in lot coverage and overall footprint.

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 property is used as summer residence and it was indicated that the owner of the property has no intention to sell the property for any financial gain. The proposed garage will only add to the character of the property in that, it will be an improvement over the existing garage which is a knockdown and does not allow for adequate parking and storage.

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 once again there is an existing substandard garage on the property and the proposed garage will be a substantial upgrade and be similar to other garages in the neighborhood.

4. The Board finds that the relief to be granted is the least relief necessary, because there is no other location on the property to place a new garage. As well as, the proposed location is consistent with an existing driveway for easy vehicle access.

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 current garage is substandard and does not allow for adequate storage and parking of vehicles and therefore limits the owner's beneficial use of the property.

Approval is subject to the following conditions:

- There are no conditions upon this decision.

Mr. Cagnetta read the second petition

Petition of Sean Dougherty, 60 Broad Rock Road, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to elevate the existing dwelling in same location to comply with the floodplain elevation requirements. The proposed exterior stairs and entry deck will be located 7.4' from the side property line. The required side yard setback is 11'. Relief of 3.6' is requested. The first floor entry door will have a roof overhang located 32.7' from the front property line. The required front yard setback is 35'. Relief of 2.3' is requested. Lot size is 7,961 s.f. **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 Sean Daugherty for premises located at 705 Middlebridge Road, South Kingstown, RI, 02879, Assessor's Map 35-4, Lot 97 and is zoned R 20.

Sean Daugherty was sworn in and testified that they are going to be moving into this property full time once the renovation is complete. As part of this renovation they will be making the home FEMA compliant and the stairway and entry deck requires a variance. They will be staying within the existing footprint due to CRMC requirements.

Board questions ensued.

Christopher Palmer, PLS, was sworn in and testified that he was contacted to do a boundary and topography survey for the land. The current house has an elevation well below current FEMA standards. Due to FEMA and insurance requirements the applicant decided that it would be beneficial to get this property as high out of the floodplain as possible. The applicant is proposing to use the existing foundation. The first floor will be at 17' with parking underneath the building with break-away walls. The side yard is the best option to locate the proposed stairway being it is farthest away from the flood features. They are requesting a lot coverage variance to accommodate the stairwell. The 35' height is from the garage floor level, not from the base flood elevation, this was designed this way to stay consistent with other homes in the neighborhood.

Board questions ensued.

Mr. Daugherty stated that this will be his dream home and they spend about half the time here in RI and spend the remaining time in Florida and visiting grandchildren in Colorado.

Mr. Palmer stated that they would be looking for CRMC approval once the Zoning approval has been granted.

Ms. Goins advised that this will be a two-year expiration based on Section 908 of the Zoning Ordinance.

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

There was no Board discussion.

The Motion is as follows:

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

Motion passed unanimously: Vote 5-0

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

At a meeting held on January 27, 2021 regarding the Petition of Sean Daugherty, 60 Broad Rock Road, Wakefield, RI 02879 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to elevate the existing dwelling in same location to comply with the floodplain elevation requirements. The proposed exterior stairs and entry deck will be located 7.4' from the side property line. The required side yard setback is 11'. Relief of 3.6' is requested. The first floor entry door will have a roof overhang located 32.7' from the front property line. The required front yard setback is 35'. Relief of 2.3' is requested. Lot size is 7,961 s.f. 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 Sean Daugherty for premises located at 705 Middlebridge Road, South Kingstown, RI, 02879, Assessor's Map 35-4, Lot 97 and is zoned R 20.

The following individuals spoke as representatives of the applicant:

- Sean Daugherty, applicant
- Christopher Palmer, PLS

The following materials were entered into the record:

- Application with Exhibit A Narrative, signed and dated December 15, 2020; Owner Authorization Form signed and notarized December 22, 2020; ; 200' Radius Map and Abutter's List; Construction Drawings (11 pages); Comprehensive Boundary Survey (Sheet 1) prepared by Christopher G. Palmer, PLS dated December 15, 2020; CRMC Submission Proposed Site Plan Comprehensive Boundary Survey (Sheet 2) prepared by Christopher G. Palmer, PLS dated December 15, 2020; Proposed Site Plan Comprehensive Boundary Survey prepared by Christopher G. Palmer, PLS dated December 15, 2020
- Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing

There was no one present who spoke in favor 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 structure which the applicant is proposing to elevate will utilize the existing foundation which is already legally non-conforming due to the unique lot constraints that are consistent throughout this area.
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 as the applicant indicated the proposed structure will become their permanent year round dream home and needs to be elevated to meet all FEMA standards for the flood plain.
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 use of the structure will remain the same as a single family dwelling. The proposed structure will be brought up to all Code Standards and be FEMA compliant. Also of note, there are many similarly designed structures in the immediate neighborhood.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicant is proposing to use the existing structure's foundation and elevate the proposed structure out of the floodplain. The only relief requested is for the outside stairway and landing; the stairway and landing location was chosen because that side of the lot is the furthest point from the flood features of the lot.
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 given the current climate considerations and the house being located in a designated FEMA flood zone, to not elevate the house would prove unwise and the exterior stairs are a necessary part of the proposed elevated structure.

Approval is subject to the following conditions:

- The decision is a Conditional Zoning Approval and is conditioned upon any necessary 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 read the third petition.

Petition of Matthew and Jeanmarie Leonard, 68 Potter Road, Wakefield, RI 02879 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to construct a 21' x 24' detached garage, with studio above, and 10' x 10' storage area to the rear. The garage will be located 6' from the front property line. The required front setback is 25'. Relief of 19' is requested. The garage will also be located 6' from the side property line. The required side yard setback is 20'. Relief of 14' is requested. Lot size is 27,320 s.f. **A Dimensional Variance is required per Zoning Ordinance Section 208 (Nonconforming Lots of Record-Accessory Building Setback Requirements), Section 401 (Schedule of Dimensional**

Regulations) and Section 907 (Standards of Relief). Owner of the property is Matthew J. and Jean Marie Leonard for premises located at 68 Potter Road, South Kingstown, RI, Assessor's Map 87-2, Lot 124 and zoned R-80.

Attorney Margaret Hogan was present for the applicant. Ms. Hogan indicated that despite efforts they have not been able to reach arrangements with the objector's Charles and Becky Donnell.

Matthew Leonard, applicant, was present and sworn in. He testified that he and his wife own the property and reside their full time with their oldest son. This property was purchased in 2004 and was chosen because the location was a beautiful spot at the end of a gravel road and they fell in love with the property. After the purchase, the property was utilized by family as mostly a summer dwelling and occasionally a few winter rentals. Many CRMC permits were pulled for the previous home. Including all of the necessary OWTS approvals which were granted in 2016. They eventually determined that the previous home needed to be torn down due to its poor state and at that point determined that they would build a new home on the property and hired the appropriate experts. The current house was able to be designed without the need for any zoning relief. During this process they were able to obtain a LOMA, moving their property out of the flood zone.

The proposed project is for a garage with a room above containing a lavette, as well as an attached shed for lawn equipment. The new septic system is currently where you drive in and can be driven over, thus utilizing space above and below ground.

Ms. Hogan referenced the objector's correspondence about multiple CRMC applications.

Mr. Leonard stated that they have gone before CRMC whenever necessary for compliance.

Ms. Hogan then had Mr. Leonard discuss the objector's allegation regarding the over building of the lot.

Mr. Leonard reviewed the property features and size of structures currently on the lot.

Ms. Hogan asked if the applicant has applied for an increase in the OWTS from three to four bedrooms.

Mr. Leonard indicated that he had not.

Ms. Hogan then asked questions about the neighborhood and the road.

Mr. Leonard explained that this is a private road, owned individually, but that they have a legal right of way for access. Additionally, the owners of the road have submitted a letter of support for the proposed application.

Ms. Hogan then enquired about the proximity of the objector's property to the applicants.

Mr. Leonard indicated that the three abutting owners who would be most affected have all submitted letters of support.

Ms. Hogan than asked Mr. Leonard about the proposed garage.

Mr. Leonard explained that the garage will have storage for recreational equipment and that the upstairs room will be used as an art studio for his wife. They have no intention of creating a rental unit above the garage.

Ms. Hogan had no further questions of Mr. Leonard and called her next witness.

Amy Sonder, PLS, was sworn in and recognized as an expert witness in land surveying and site design.

Ms. Hogan reviewed Ms. Sonder's curriculum vitae.

Ms. Sonder than testified that she began working with the Leonards in 2007 for the proposed pre-treatment septic system alteration for a four-bedroom design. There was a four year delay from the initial design, which maintained its status through the State's tolling regulations at the time. Ms. Sonder then explained the septic system design, including the shallow galley system that allows the septic system to be placed under a driveway and allows it to be driven over, utilizing both above and below ground. This system is the best option for land use.

Ms. Hogan than asked Ms. Sonders to review all the permitting constraints on this property.

Ms. Sonders indicated that the site has a CRMC set back of 75' from any coastal features, the property has three different flood zones on it, there was a 150' setback requirement from the leach fields, and the design also was not to increase by more than 50% to meet CRMC requirements and obtain a favorable recommendation. Ms. Sonders then indicated that she worked closely with CRMC in the preliminary stages to work within the CRMC guidelines so no substantial variances would need to go before CRMC's Council, which is an extensive process.

Ms. Hogan then asked that the site plan be shown.

Ms. Sonders then explained the site plan and the lot restrictions that they faced in the design. She referenced on the site plan the CRMC 75' set back requirement from the coastal feature and the velocity line relative to the FEMA flood zone. She indicated that you would want to build landward of this velocity line if at all possible and that the existing house was designed and built landward of this velocity line. There is also the coastal feature 200' setback that runs just seaward of the proposed garage.

Ms. Sonders then explained the LOMA process that the applicant went through to raise the structure out of the flood zone hazard area. Flood insurance is no longer required for the owner and the Town does not need to mitigate for these properties in their flood plan rating.

Ms. Sonders then explained where the septic system was located on the property and the required septic system setbacks and leach field requirements.

Ms. Sonders explained when asked if a garage could be put underneath the existing structure. She explained that if the site was excavated to put a garage below the existing home it would defeat all of the work that was done to obtain the LOMA and put the house back in the flood zone.

According to Ms. Sonders, they worked tirelessly to make this site fit all of the required components on site and have exhausted all other viable options to place the proposed garage. She also explained that in the CRMC review there is no impact to the site if the structure is less than 200 square feet, accounting for the bathhouse and cabana.

Nancy Leslie, AIA was sworn in and recognized as an expert in architecture.

Ms. Leslie indicated that she has been involved with this project since approximately 2016. The lot itself is non-conforming pie shaped lot which put constraints upon the design. The design itself is very modest and utilized all 3-stories, the overall lot coverage is around 10% in a zone that allows 20% permitted use. An integral garage under was initially proposed but not possible because of the LOMA and it seemed more prudent to get the house off the flood plain than to design for a garage under the house. In addition the garage would have triggered the buffer zone with CRMC. Also if the garage had been located under the house, the house itself would have lost 600 sf of living space in a home that already has smallish, squeezed in rooms.

Ms. Leslie then testified about the proposed one-car garage with ground level storage and an art studio on the second floor. The art studio is 12' x 16' with two dormers and falls within in the height requirement of the Zoning Ordinance.

Ms. Hogan referenced photo # 3, then #2 of her exhibits.

Ms. Leslie testified to the slope of the site shown in Exhibit #3. She then spoke about the proposed location of the garage on the site, and the existing tree line.

Testimony ensued in regards to the shrubbery located along the property line.

Ms. Leslie testified that the applicant has never indicated that the proposed garage be designed to accommodate living quarters.

Ms. Hogan concluded her direct line of questioning of her witnesses.

Board discussion ensued.

Mr. Mark asked about the site plan and how the percentage of lot coverage is determined.

Ms. Sonder explained that the site as existing is at 8.4% lot coverage and with the proposed garage it would be at 10.7% lot coverage and the South Kingstown Zoning Ordinance allows for 20% lot coverage. In regards to CRMC regulations and the 50% allowable expansion of the structural roofed area of a house, the roof area should not exceed 50% roof line expansion, which has been in effect since 1995 and is cumulative. In general CRMC considers pools, patios, and decks basically as landscaping. CRMC is more concerned in regards to structural roofed area which is more regulated.

Mr. Rosen enquired about LOMAR and the X designation and the half bath.

Ms. Sonders explained what LOMAR/LOMAF represented and explained what the X indicated in flood plain mapping. She further explained the process of obtaining a Letter of Map Amendment through FEMA and what was done on this property in particular.

Mr. Leonard explained the half bath can be used for basic facilities and for maintenance of art supplies, etc.

Mr. Mark asked for further clarification if the LOMA designation covered this entire property or just the area that was brought up.

Ms. Sonders explained that with this particular site, it only took the portion of the land that was filled and in doing so this removed the structure from the flood zone, which is most relevant to the Town and its flood designation through FEMA.

Mr. Charkowick asked about other structures on the property and potential impact.

Ms. Sonders indicated that where the pool, terrace and cabana are would be southward of the LOMA line and within the CRMC setback so even if these structures were not there it would not be an ideal position for a garage, placing it within the flood zone.

The Board had no further questions.

Ms. Hogan had no more questions of her witnesses and requested that she be allowed to make a closing statement.

Mr. Cagnetta read the following letters into record.

- o Christine and Michael Anderson, 141 Old Succotash Road received January 19, 2021
- o Tami and Frank Mazza, 55 Potter Road received January 20, 2021
- o John Hanson, 73 Potter Road received January 15, 2021

Mr. Cagnetta asked if anyone present wished to speak.

Attorney Stephen Surdut was present and referenced the letter that he submitted on behalf of his clients, the Donnells, of 46 Potter Road. He stated that he finds the need for additional space in a 4000 square foot house questionable. In addition, Mr. Surdut stated that the applicant made many choices in the design process, including the design and placement of the OWTS which speaks to the applicant's creation of a hardship. A main point being that when you have a 4000 square foot house for two people the need for more space does not fall under the necessary burden of hardship. In addition the applicant has used up all of the allowed space inside of the coastal feature which is why the applicant is here tonight making a request to be outside of the coastal feature and is unable to go any closer to the existing structure. The applicant also chose to apply for a LOMA and gain the benefits of the LOMA. It is his understanding that they could have placed the garage on the ground floor but that they didn't want to give up 600 sf of living space in their 4000 sf home.

Discussion ensued in regards to CRMC regulations and increase in roof area.

Ms. Goins stated that she is not an expert on the CRMC regulations.

Ms. Sonders stated that CRMC always encourages applicants to only increase the roof area by no more than 50%, in addition, CRMC always encourages the applicant to go before the town for any variance approval prior to going before CRMC for any type of variance request which CRMC may deny.

Mr. Surdut stated that the applicant has made decisions throughout the design process, they have in fact created this problem that requires a variance to be granted, the garage should have been factored in when the entire project was being designed. His clients, Mr. and Mrs. Donnell, are not against the garage only that the proposed garage is situated so close to the property lines inside the setbacks and the size garage requested seems large for a single car garage and suggests that the applicant does not seem to be asking for the least relief necessary. Mr. Surdut indicated that his clients were asking for the applicants to have the garage be located 10' back from the property line, as well as additional plantings to further buffer between their two properties.

Discussion ensued.

Mr. Gorman indicated that plantings could be considered as a condition of approval.

Ms. Goins stated that she believes screening maintenance would be a relatively simple condition to enforce.

Mr. Surdut also indicated that his client would prefer that the doorway not be located along the setback side and moved to the other side of the structure.

Discussion ensued.

Mr. Surdut stated that his argument is that the applicant created their own hardship by choosing to create a LOMA and in utilizing that LOMA, the benefit is that the applicant no longer has to pay flood insurance and because of the LOMA they have chosen to forego their previously designed garage so as not to lose living space. If they are looking for the least relief necessary to simply to park a car, why the need for a two-story structure. His clients request for a 10' setback and some screening is not an unreasonable request.

Ms. Hogan stated that by reducing the side to 10' it would reduce the depth by 4' creating some difficulties in using the garage to its best potential.

Ms. Sonders stated the entire structure could not be moved 10' to the west because that would put the garage into CRMC purview and would require full CRMC Council review. In addition the design was tweaked to best conform to the lot and leach field setbacks. Additionally the septic system that was installed is the best system for the area and what she would have encouraged anybody to install given the same circumstances. In regards to the LOMA and the filling of land, this is not something done to simply save on flood insurance, this is something that moves the structure out of the velocity flood zone and that she would advise anyone who has the means to do so, if at all possible.

Ms. Hogan asked Mr. Leonard about the present use of the home and future use of the home.

Mr. Leonard explained that he and his wife have four children, who will hopefully have families of their own one day and they would like them to be able to visit and spend time with them. In addition this will be their permanent retirement home. Additionally during the construction of the house, no variances were needed, the entire project up till now met all of the Zoning setbacks.

Board questions ensued.

Mr. Daniels asked Mr. Surdut about the existing arbor vides and about his clients proximity.

Mr. Surdut explained that his clients have put considerable expense into planting and maintaining the existing arbor vides which buffer the cement retaining walls. His clients would like the applicant to fortify the buffer by adding an additional row. Although his client's garage is closest to the proposed garage, his clients would have visual impact if the applicant's garage is placed where proposed.

Chuck Donnell, 46 Potter Road, was sworn in and testified that they purchased their property 13 years ago and stated they were drawn to the area due to spacious separation of houses and out buildings. As well as the fact that all of the lots were zoned R80 with a minimum side setback of 20'. They consider the setback request of 14' to be intrusive and excessive. They feel their privacy and enjoyment of the property will be affected by the granting of this variance. The most recent buffer of arbor vides was planted four years ago to buffer during the construction of the applicant's home. Mr. Donnell indicated that they use the area in question frequently to enjoy sunsets and gardening. The addition of this garage with studio will impact the quiet, tranquil use of their property. In closing, Mr. Donnell, asked the Board to perform a reasonableness review and request that the size of the structure be scaled down and located 10' from the property line.

The Board had no questions for Mr. Donnell

Ms. Hogan asked if Mr. Donnell could clarify that the arbor vides were in place prior to the retaining wall. In addition she asked that the Board review applicant's exhibits 12-15.

Discussion ensued.

Mr. Donnell stated that they planted the arbor vides prior to the Leonard's making this their residence a year ago to prevent their tenants from accessing their property.

Ms. Hogan requested a brief recess at 9:54

Mr. Cagnetta called for a recess until 9:59

Ms. Hogan asked Mr. Leonard to clarify about the arbor vides and the retaining wall.

Mr. Leonard testified that the arbor vides were planted many years ago and the retaining wall was put in 2 years ago. In regards to the driveway and garage location the abutter, Mr. Donnell, had stated that they could move the garage further away. Mr. Leonard's concern is that if the garage was moved it would severely limit access of emergency vehicles.

Frank Mazza, 55 Potter Road, was sworn in and stated that the arbor vides have been there for many years. In moving the structure 10' back and planting more arbor vides as the Donnell's requested this would directly affect his view. In regards to emergency services, Mr. Mazza indicated that he was previously a fire official and that if the applicants proposed garage was moved closer to the already narrow road it would be almost impossible for emergency vehicles to turn around. He stated that he is in favor of allowing the garage to be built in the proposed location.

Mr. Surdut stated that the applicant is also asking for a front line variance so the issue of accessibility also encroaches on the road. Mr. Surdut clarified that the applicant is asking for 14' of relief and his client is asking him to come in 4' additional feet therefore creating a 10' setback. Additionally, the applicant had plenty of opportunities to create a garage space or an artisanal space but made other design choices along the way, therefore creating their own hardship.

There were no further questions.

Ms. Hogan gave her closing statement and stated that she believes they have met the burden of proof for granting of a dimensional variance. Ms. Hogan then reviewed all of the restrictions that have dictated where all of the structures had to be placed on the lot. The Leonard's intent is for this to be their permanent year round home that can accommodate a future growing family. The applicant has followed and met all of the zoning setbacks for all previous construction and no relief has been asked for. Due to site constraints this is the only location the garage can be located on site.

There was no further testimony.

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, W. Mark-Aye, C. Charkowick-Aye, R. Cagnetta-Aye)

At a meeting held on January 27, 2021 regarding the Petition of Matthew and Jeanmarie Leonard, 68 Potter Road, Wakefield, RI 02879 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to construct a 21' x 24' detached garage, with studio above, and 10' x 10' storage area to the rear. The garage will be located 6' from the front property line. The required front setback is 25'. Relief of 19' is requested. The garage will also be located 6' from the side property line. The required side yard setback is 20'. Relief of 14' is requested. Lot size is 27,320 s.f. A Dimensional Variance is required per Zoning Ordinance Section 208 (Nonconforming Lots of Record-Accessory Building Setback Requirements), Section 401 (Schedule of Dimensional Regulations) and Section

907 (Standards of Relief). Owner of the property is Matthew J. and Jean Marie Leonard for premises located at 68 Potter Road, South Kingstown, RI, Assessor's Map 87-2, Lot 124 and zoned R-80.

The following individuals spoke as representatives of the applicant:

- Attorney Margaret Hogan
- Matthew Leonard, applicant
- Amy Sonder, PLS
- Nancy Leslie, AIA

The following materials were entered into the record:

- Application with Exhibit A Narrative, signed and dated December 20, 2020; Owner Authorization Form signed and notarized December 10, 2020; Site Plan prepared by Easterbrooks & Associates, LLC and stamped by Amy Sonder, PLS dated October 14, 2020; Construction Documents prepared by Leslie Architects dated October 8, 2020; 200' Radius Map and Abutter's List; Vision Appraisal Field Card Map 87-2 Lot 124
- Letter regarding Change of Attorney from John Kenyon dated January 11, 2021
- Legal Notice, Proof of Certified Mailings and Notarized Affidavit of Mailing
- Applicant's Exhibits 1-18
 - 1. Photo, Leonard- Proposed Garage Location
 - 2. Photo, Leonard Garage Location with Gray Truck
 - 3. Photo, Leonard Garage Location showing wide view
 - 4. Photo, Leonard House from Water
 - 5. Photo, Leonard Abutter Garage- Cerio, 95 Old Succotash Road
 - 6. Photo, Leonard Abutter Garage-Donnell, 46 Potter Road
 - 7. Photo, Leonard Abutter Garage-Anderson, 141 Old Succotash Road
 - 8. Photo, Leonard Abutter Garage-Fiasconaro, 33 Potter Road
 - 9. Photo, Leonard Abutter Garage- Mazza, 55 Potter Road
 - 10. Photo, Leonard Abutter Garage- Samponarao, 34 Potter Road
 - 11. Photo, Leonard- Letter of Support from Donnell to Hanson for project in the fall of 2020.
 - 12. 2006 Aerial Photo from SK GIS.
 - 13. 2011 Aerial Photo from SK GIS.
 - 14. 2018 Aerial Photo from SK GIS.
 - 15. 2020 Aerial Photo from SK GIS.
 - 16. FEMA's National Flood Insurance Program Community Rating System
 - 17. Photo
 - 18. Photo
- Correspondence in favor
 - John Hanson, 73 Potter Road received January 15, 2021
 - Christine and Michael Anderson, 141 Old Succotash Road received January 19, 2021
 - Tami and Frank Mazza, 55 Potter Road received January 20, 2021
- Correspondence opposed
 - Correspondence from Attorney Steven Surdut representing 46 Potter Road received January 20, 2021
 - Objector's Photo Exhibits 1-6

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

- Stephen Surdut, attorney for objector at 46 Potter Road
- Chuck Donnell, 46 Potter Road, in opposition
- Frank Mazza, 55 Potter 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 there is only one location on this property based on extensive testimony where the proposed garage can be located. To move the garage any closer to the road would represent a safety hazard for emergency vehicle access and to move

the proposed garage any closer to the west side of the lot would impede on the coastal features and fall within CRMC's regulatory full council review which would be extensive, costly and more than likely denied by CRMC.

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 intends to use the property as the family's permanent residence and simply wishes to construct a garage with an art studio above to accommodate the needs of his spouse.

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 proposed 2-car garage is in line with the general character of the area, in fact there are several homes along Potter Road that also have 2-car garages, both attached and detached, some with lofts above.

4. The Board finds that the relief to be granted is the least relief necessary, because to construct a garage any smaller would not be sufficient to allow for vehicle parking and additional storage, as well as accommodate a studio above. There has been extensive testimony in regards to the studio above. The studio will have a small lavette but will not have any living quarters and will not have any bedrooms. The studio will simply be an open area to be utilized as an art studio for the applicant's spouse and for additional storage space.

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 is entitled to have a garage on his property, and certainly in this climate it is not unusual to have a garage like many of his neighbors along Potter Road also have. It would amount to more than a mere inconvenience because there is simply no other location on this property where the proposed garage can be located that would make any reasonable sense.

Approval is subject to the following conditions:

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

Other Business:

- Attendance:
February 17, 2021 meeting, all members present can attend.
- Adjournment:
The motion was made to adjourn by Mr. Charkowick and duly seconded by Mr. Rosen, all members present were in favor. Meeting adjourned 10:40 p.m.