

STATE OF RHODE ISLAND

MINUTES
THE ZONING BOARD OF REVIEW
OF BRISTOL, RHODE ISLAND

06 NOVEMBER 2023
7:07 PM
BRISTOL TOWN HALL
BRISTOL, RHODE ISLAND

BEFORE THE TOWN OF BRISTOL ZONING BOARD OF REVIEW:

MR. JOSEPH ASCIOLA, Chairman
MR. CHARLES BURKE, Vice Chairman
MR. DAVID SIMOES
MR. DONALD S. KERN
MS. ALAYNE WHITE, Alternate

ALSO PRESENT:

ATTORNEY PETER SKWIRZ, Town Solicitor's Office
MR. EDWARD TANNER, Zoning Enforcement Officer

Susan E. Andrade
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The meeting of the Town of Bristol Zoning Board of Review was held and called to order at 7:05 p.m. by Chairman Joseph Asciola at Bristol Town Hall, 10 Court St., Bristol, RI

1. APPROVAL OF MINUTES:

18 SEPTEMBER 2023
02 OCTOBER 2023

Chairman Asciola called for approval of the September 18, 2023, and October 2, 2023 meetings. Chairman Asciola noted that those minutes were not yet available.

Mr. Simoes noted that at the October 2nd meeting he is shown as being present, and he was not in attendance at the October meeting.

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MR. SIMOES: With that correction, I' move to accept the September and October meetings.

MR. BURKE: I'll second with the correction.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

X X X X X X

(THE MOTION WAS UNANIMOUSLY APPROVED)

(Approval of minutes Continued)

CONTINUED PETITIONS

2. 2023-27

ROBERT M. KREFT

**22 Wall Street: R-6
Pl. 33 Lot 17**

Dimensional Variances to construct a 40' x 42' accessory garage structure at a size and height greater than permitted for accessory structures, and with greater than permitted lot coverage by structures in the R-6 zoning district.

Mr. Kreft noted that as requested at the prior month's meeting, he has submitted what he believes to be proper plans to scale. He explained that he is looking for a height variance and lot coverage variance. He confirmed that the garage will be used for storage of his equipment that he uses to maintain the many properties that he owns, which includes a tractor, snow removal equipment and an RTV. He again explained when questioned where the equipment is being stored now, that he does not keep his equipment out in the open at this location because it has been damaged and he moved it for safety reasons. He explained in detail the equipment he would be storing at this location and explained that the height of the door is in order to get the backhoe in and out of the garage, which is 16 feet high.

The Board reviewed the plans in detail and did acknowledge that the recently submitted plans were to scale.

Mr. Kreft stated that the other issue the Board previously had was if this was a buildable lot when he purchased it.

Mr. Tanner explained that Mr. Kreft did e-mail and sent a revised plan. He also stated he provided the Board with a memo dated October 25th with some lot history, including an old Zoning Certificate. The lot in question was identified as Lot 21 on the Tax Assessor's map, Plat 33. Yes, it was indeed a buildable lot, 7,380 square feet, 60 feet of frontage and he prepared

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a Zoning Certificate back in 2018 saying it was a buildable lot. Mr. Kreft purchased the lot in 2018 and in 2020 Mr. Kreft filed a real estate lot merger declaration with the Town, that was recorded in land records December 16, 2020. So, that document effectively merged Lot 17 and Lot 21 into one lot; Lot 21 no longer exists, it was incorporated into Lot 17. Yes, it was a buildable lot, but it no longer exists. If one looks at today's Plat map, Lot 17 encompasses the area of both lots.

Mr. Kreft stated that he merged the lots in order to build the accessory structure.

Mr. Burke stated that the amount of equipment Mr. Kreft wants to store in this structure seems to him to be a little excessive to service that piece of property that is associated with it. Mr. Kreft stated that he doesn't believe so. Mr. Burke stated that is his opinion, but to him it seems inconsistent with the amount of snow that might have to be removed from that one lane driveway to that particular parking lot. Mr. Kreft again explained that it's around the entire building and that he has other properties that he uses the equipment for. Mr. Burke stated that he would then be storing equipment there for other properties. Mr. Kreft stated it would be mainly for this one, as it is the biggest, but yes, he would be using the equipment that he owns on his other properties for maintenance.

Mr. Simoes questioned the location of the garage in relation to the house next to it. Mr. Kreft explained that the house is pushed back a bit and it would not block their view at all.

In response to questioning on whether this would be a buildable lot on its own again, Mr. Tanner stated that no, Lot 17 is one parcel now, approximately 22,140 square feet. If they were asking if a house could be built there, the answer would be not without going back to the Planning Board and re-subdividing the lot and getting whatever variances, because Lot 17 as

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it stands is already non-conforming with 12 units on it. Mr. Kreft needs as much square footage as he can get and by taking that extra land away, it would be making the land more non-conforming. So, he could go to the Planning Board and try and would probably need to come back before the Zoning Board in order to do that. It would be a minor subdivision with variances.

Mr. Burke noted that at the previous meeting the applicant did say that if this wasn't approved, he would convert it back to a single-family lot and build on it; he offered that. Mr. Tanner stated he would have to go back to the Planning Board, it's not a guarantee; or after January it might be a unified development and might all be just the Planning Board. He also mentioned that State Law changes would be in effect starting in January.

No one spoke in favor or against the Petition.

Mr. Burke stated that this application is similar to the one they reviewed two years ago and there wasn't enough difference for him to change his position; he thinks its too much and the amount of equipment is not dedicated to what's already a grossly non-conforming piece of property. He was unwilling to approve an additional variance of this magnitude.

A detailed discussion was held on the fact that the laws are going to be changing in January of 2024; however, at this time the existing Standards must be applied at this time. After January 1st the Standards will be different; where the Board will not have to find that the amount of relief granted is the least relief necessary and also they won't have to find that the hardship is not the result of the applicant seeking financial gain. As of this meeting all the Standards are still in place.

Attorney Skwirz stated that if the Board is thinking of denying based on the least relief necessary, which will go away after January, just hypothetically, if the Board were to deny

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on that and it was appealed, the Court would have to review it and the Court would be reviewing with the laws in effect after January. So, even though what the Board did was right, it would almost be an automatic reversal, because the Standard wouldn't be there anymore.

During discussions between Board members, Mr. Kreft explained he would be using the equipment stored there for his seven properties in Bristol and not for his other outside of Town Bristol. In response to whether there would be a lot of traffic, he stated that he would only be using one piece of equipment at a time, driving in and out and it's just himself, he has no employees that would be using the equipment.

Attorney Skwirz explained that if the Board were to deny, they would not have to go through all the Standards, they would just pick out the Standard that it doesn't meet and say why.

Mr. Kreft stated that he would be willing to acquiesce until January if it would make it easier for everybody.

Attorney Skwirz stated the law has already been passed, the effective date will be January 1st.

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MR. BURKE: Mr. Chairman, I'll make a motion to continue to the January 2024 meeting, file number 2023-27, Robert M. Kreft at 22 Wall Street.

MR. KERN: I'll second that.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

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MR. KERN: Aye.

MR. ASCIOLA: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition Continued)

3. 2023-34

MICHELLE R. & JEFFREY COTE

**192 Poppasquash Rd.: R-40
Pl. 176, Lot 98**

Dimensional Variances to construct a 36' x 42' two-story accessory barn/garage structure at a size and height greater than permitted for accessory structures in the R-40 zoning district.

Ms. Michelle Cote stated that her address is 192 Poppasquash Road, but they really live on Clam Shell Road, which is the dirt road; about 1 mile down the road. They would like to build a pre-engineered timber barn on their property for the storage of a small car collection and a workshop for her husband in retirement. They have a 3.9-acre lot and they designed a barn that they think really compliments the property, compliments the lot. She was before the Board in September and explained that they are looking for a 36' x 42', which exceeds what is allowed and 25-feet high, which is five feet higher than what is allowed. But given their space and given their property, they felt like it was the only way to make it look nice and fit in with the property. At the last meeting there were some neighbors from Reliance Drive, which is a road that abuts her property down near the guard house. There was a site visit on the property with the neighbors and looked at the property and the proposed location of the barn. Her observations from that meeting were that the neighbors thought she owned the property that is further towards the neighbor's house. She showed them the lot line; her lot is a long skinny lot, and she thinks they were happy to find that it is further away than they thought. The neighbors also thought that it was going to open up towards their property, which is not the case, its going to open up towards the existing driveway. They asked if she had considered other locations, and they had. They have owned the property for a little over five years and have wanted to put it in a barn since the day they moved in. They are limited because of the width of the lot. On the left

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it's very narrow from the driveway to the lot line on the left. They're also limited because they have a big septic system in their front yard; so, they can't put it closer to the street. They talked about putting it in the backyard, but that is not at all what they want to do and makes no sense for them even to have cars in it. One of the concerns was lighting. They do have some up lighting in the house, they have some landscaped lighting on the house and is pretty lit up at night; and it is always shut off at 8:30. They were thinking that they would put some lights in this barn, but they agreed with the neighbors that it made no sense to put any lights in the back of the barn, no windows in the back of the barn and no light in the cupula; basically there will be no light from this barn shining on to Reliance Drive. They were also concerned about noise, specifically if there was going to be an alarm system. They have an alarm system in their home. The neighbors were concerned because they're not there full time and the neighbors were concerned that an alarm would go off for hours and hours. But that has never really happened in their house and to be honest she really doesn't want public records to show what they are going to do with the alarm system. She received letters from some of her neighbors on Clam Shell, because she went to their house and showed them what the plans were, and they all thought it would compliment the property. She thinks that all her neighbors know that she is allowed to build a two-stall garage at 26' x 28' in the R-zone; so, she could build two or three of them, but that would not complement the property and is not what she would like to see on the property.

Mr. Burke noted that she mentioned the backyard and it wouldn't be appropriate and asked if it was the westerly side towards the water. Ms. Cote explained yes, it is and that side of the yard slopes down pretty far, its pretty wet down there and they would have to put a driveway going into the back yard. Mr. Burke asked why they need the 25-foot height. Ms. Cote explained that if you look at the house, the designer who drew up the plans to complement

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the house and property. The house has a really high steep roofline, and it complements the house. The upstairs will just be used for storage. Mr. Burke stated that he agreed that architecturally the 20-foot-high requirement doesn't really work architecturally.

Mr. Burke stated he saw some on-line photographs and saw another structure on the property. Ms. Cote stated that they have a guest house on the property and confirmed that it was built with the house. She has no intention of using the second floor of the barn for living; there will be no plumbing, heat or air conditioning, there will be electricity.

Mr. Tanner stated that they have received multiple correspondence on this application, and everything received was forwarded to the Board, along with some put in front of them at this meeting. Mr. Tanner reviewed the correspondence with the Board in detail; all of which is in the formal record before the Board.

In response to Mr. Burke request to summarize the use, Ms. Cote stated that her husband has three Ford Mustangs that they now store in Rehoboth and would be stored on the property. Her husband and her are accountants, they work on cars, it's not the intention, her husband just likes to look at them.

Mr. James Saletnick, 21 Reliance Drive, abutting property owner, stated that he wanted to confirm that the neighbors did have a meeting regarding the plan. She discussed in great detail, with her husband, what they are planning to do at the site. He raised several questions and several concerns, which the Cotes were able to address, with the exception of one. At the time, because they live right to the south of where the barn would be, they are concerned about lighting. At the time the Cotes told them that they did intend to have a cupula, which would be lit on top of the barn, which would affect his back yard, depending on the time they lit the cupula. There was no discussion as to the intensity of the light or the frequency of the light.

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He was very candid with the applicant that they would attend this meeting with their concerns about the lighting and the applicant said they would think about it. He thought he heard that she was not going to light the cupola, which would eliminate his concern regarding the light pollution in his back yard. He may be overly concerned, but the Bristol Yacht Club just installed a whole series of new lights around their facility and if you drive past, it at night, it's almost blinding how bright those lights are. Light technology and intensity have changed dramatically over the past ten, fifteen years. He was referring to a letter that was written by the former house owner that he presently owns 18 years ago. The experience is much different, the people before them who sold the house to him added an additional floor and its now a three-story house and in his opinion the lighting of a cupola on a regular basis would impact both his back yards with light pollution, as well as two bedrooms that are located on that end of the house, which would be his north end and the Cotes south end where the barn would be located. So, he just wanted to confirm that what he thought he heard was that they decided not to light the cupola. If that's the case that would make his testimony mute, because they have essentially addressed all the issues that were raised at the neighborhood meeting on the 29th. There are still some concerns that are not as grave as the lighting concerns.

Mr. Ken Bouchard, 25 Reliance Drive stated that first of all he would like to thank the Board for tabling the last meeting, as he and others had not received notice, which gave him time to do more research on the proposed location. He would like to address the lighting; the location of the proposed structure for the cars is that when they go to approach that garage those lights, when they come around the corner in their driveway are going to be shining right in his windows. Because the area between that property and his property is sparsely wooded. If one looked at the letter from Mr. Dennis McCoom, it states in it that the majority of the view is

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the Bay, it is, but is also the buffer between his property because of the trees is also a nice view for him. What he is more concerned about after he did a little research is that this is a storage facility for a collection of cars, the number doesn't matter. When you store cars close to another's property line, you run the risk of fire. The Cotes have their primary residence, but looking at the notes from the last hearing, they're not there full-time; they have two other homes. Getting back to the issue of fire. Usually, the first line of defense is that the homeowner is the person who helps put out the fire or limits the spread of the fire. So, that's a major concern. He did speak with the Fire Chief in Bristol and discussed it with him, who admits that in the past there have been issues with fire trucks in that area; there is limited water supply and naturally one would think you could pump water out of the Bay; his understanding is that when they can't pump out of one of the two or three retention pumps, they had to pump from the Bay; and the fire department didn't have enough hoses to get where they needed to get. In addition to that, the property at 194 is on the market; this is a 94-year-old man who will be leaving the home. Now, when he spoke with the fire chief, he said there's a possibility that whoever owns 194 will have to widen the road. He hasn't measured it but would guess it's between 12 and 16 feet wide, but certainly would be substandard in today's requirements. He can't imagine that someone would buy that property and not knock the existing structure down and the buyer would run into all new issues; new septic, the road, taking the building down. If that property is sold and you have to widen the road, how would that be done if a variance is granted for the barn to be built closer to the road.

Mr. Kern stated there is no variance on the lot line, just size, no variance on the setbacks of the lot.

Mr. Asciola stated that any accessory structure can be six feet off anybody's property in any location in the Town of Bristol.

Mr. Tanner stated the applicants did submit a site plan that is in the file, and it says 238 feet from the Clam Shell Road, and six feet off the side lot line.

Mr. Bouchard stated that this is a residential property and there are five garages on that property right now. Mr. Asciola stated that she could put even more because she has the land that would allow it.

The Board invited Mr. Bouchard up to the bench in order for him to show them where his property is located on the map before them. After careful review of the location and explanation to Mr. Bouchard that the existing driveway will be utilized to access the proposed barn and could not possibly shine into his windows, Mr. Bouchard thanked them for clarifying the application.

Ms. Cote explained again that she did not wish to publicly talk about any security system they are planning to install and that they are not planning on a fire suppression system; and it's not required, as it is an accessory structure.

During discussion Mr. Burke stated that when somebody has 4 acres and they request a large garage, if they meet the Standards the Board has allowed it, recently on property right next to the yacht club, as an example. And they also allowed one off of Mt. Hope Avenue which for a car collection. So, he doesn't see that it would be the first time they allowed relief, particularly in the Poppasquash area where someone has multiple acres for storing things like cars or whatever else they needed and thinks it's a reasonable request.

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MR. BURKE: Mr. Chairman, I'll make a motion to approve File number 2023-34, applicant Michelle R. and Jeffrey J. Cote, 192 Poppasquash Road, to construct 36' x 42' two-story accessory structure, at a size greater than allowed by the Zoning Ordinance and at a height of 25 feet, which exceeds the 20-foot accessory structure limitation in our Zoning Ordinance. 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 character of the surrounding area, or to an economic disability of the applicant. This property is almost a 4-acre parcel, and the applicant could erect multiple conforming accessory structures. And has petitioned the Board to allow them to put a new single structure of 36' x 42'. The hardship is not the result of prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. We heard testimony, and we see in the application, that it is for the storage of some antique automobiles and a workspace on the second level. The granting of the requested dimensional variance will not alter the general characteristics of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan of the Town of Bristol. Accessory structures are allowed in this residential area and it is very typical for these large parcels in the Poppasquash area to have larger accessory structures than the Ordinance allows. That the relief requested to be granted is the least relief necessary. We heard testimony that there are three vehicles that require storage, and the garage is sized for

those three vehicles. That the hardship that would be suffered by the owner of the subject property if the Dimensional Variance is not granted would amount to more than a mere inconvenience. In order to store the vehicles on this subject property they would have to construct more than one accessory structure. I so move. I'm sorry, I wanted to add the conditions. There are special conditions that go with this motion, and they are that there will be no lighting in the proposed cupola on the top of the accessory structure. And there will be no lighting or windows on the back of the proposed structure, which is the southerly side of the property. I so move.

MR. SIMOES: I'll second that motion.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

X X X X X X

(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition Granted)

NEW PETITIONS

**4. 2023-38
MARY T. CARROLL**

**61 Constitution St.: R-6
Pl. 14 Lot 96**

Dimensional Variances to remove an existing 8' x 8' mudroom and construct an 11.5' x 20.5' single-story mudroom/three season room addition to the rear of the existing dwelling with less than the required right-side yard.

Mr. Jacob Apple and Ms. Mary Carroll presented the Petition to the Board. Mr. Apple explained they were asking for a 4'6 on the right side. The required setback is 10 feet. The existing mud room is quite small; there is a staircase that goes up into the kitchen and a staircase that goes down into the basement; so, she has a very small space existing that can be used as a mud room; there's no storage there and they would like to extend the mud room into the back yard. In doing so, they will keep the structure away from the edge of the existing house and try to stay as far away as they can. They wanted to make it even, but knowing that ten feet is required, they are trying to ask for as little relief as possible. So, the structure will sit 5' 6" from the property line of 65 Constitution; there is a fence that runs all the way along that side. And there is a very large asphalt driveway that was installed in the past. The structure will conform with all historic requirements; they have already sat down with HDC and have been approved.

In response to questioning by Mr. Asciola, Mr. Apple confirmed that the existing structure sits 4 feet off the property line, so they aren't making it any worse, the addition is going to be better than the existing structure.

The Board reviewed the Petition in detail. Ms. Carroll explained that the property is listed as a two-family, but inside it's one family; meaning there is no entrance for a tenant.

And confirmed what her contractor explained that the existing entrance is rotted, needs replacing, and they would have to remove it and put a slab down to rebuild anything that needs to be constructed.

Mr. Tanner confirmed that he applicant did go before the HDC and received approval.

No one spoke in favor or against the Petition.

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MR. SIMOES: Mr. Chairman, I'll make a motion that we grant File number 2023-38, 61 Constitution Street in Bristol. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and also the structure. It will be a variance of 4' 6". It's usually required by the Zoning Ordinance at 10 feet. But the area between the house will be further right to the foundation of the house, so there will be more room in the back in the new structure than they have on the existing house, with is only 4 feet, and this will give them 5' 6". The hardship is not the result of any prior action of the applicant, nor does it result in any primary desire for the applicant to realize greater financial gain. By granting this requested Dimensional Variance, it will not alter the general characteristics of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan of the Town of Bristol. This is the least relief necessary and for that reason I move that the variance be granted.

MS. WHITE: I'll second.

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MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

X X X X X X

(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition Granted)

**5. 2023-39
GABRIEL PTASIENSKI & SARA ORDING**

**1270 Hope St.: R-10
Pl. 100, Lot 15**

Dimensional Variance to install a six-foot-high solid vinyl privacy fence, portions of which would be located within the front yard on a corner lot.

Mr. Ptasienski presented the Petition to the Board. He explained that they would like to surround a six-foot privacy fence to surround three sides of the yard. The variance requested is to install the 6-foot on the north side bordering Brook farm Drive. That's the side yard, if you will, but because it's on a corner they need to request the additional 2 feet for both privacy and security. Across that street is a gas station and a smoke shop and there's typically some decent foot traffic; so, they are asking for the additional 2 feet to fully enclose the yard for the family and to keep the dog from jumping over the fence. They have spoken to their neighbor on the east side that they share the fence with, and she is all for it. She wanted to split the cost, but he is going to expend the cost of the installation.

The Board reviewed the Petition in detail. The applicant confirmed that there will be no site interference with the location of the fence, as there would be about 70 feet from the fence to the site line of traffic.

Mr. Tanner stated that the 8-foot dimension from Brook Farm Drive to the fence; that's 8 feet back from the pavement. The applicant stated that the plan showing the 8 feet is an estimate from the contractor and if the variance is approved, they plan to get an actual survey, as they do plan on putting the fence on the property line. And he is well aware of the right-of-way to Brook Farm Drive and the survey will ensure they do not impede on the Town's right-of-way.

Mr. Burke asked if the applicant would consider enclosing less of the yard. The applicant explained that if the Board votes for the variance, it will be the property line plus a

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couple of feet to give a buffer space as he would hate to have to tear it down if the road is widened. Mr. Burke stated he would be more comfortable if the applicant committed to having it two feet off the property line, to him that would be the least relief. Mr. Asciola stated that he is allowed to put it on the property line. Mr. Burke stated that they are, but not at six feet, and was only suggesting. The applicant stated he was willing to go to the two feet.

No one spoke in favor or against the Petition.

Mr. Tanner stated that there was one letter in the packet concerning site clearance.

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MR, BURKE: Mr. Chairman, I'll make a motion to approve File 2023-39, Gabriel Ptasienski and Sara Ording, 1270 Hope Street, to erect a fence in what is technically a front yard on a corner lot, at a height of six feet, where the Ordinance allows only a 4-foot height in a front yard. And per agreement with the applicant, the fence will be located southerly two feet from the existing property line on Brook Farm Road. 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, or to an economic disability of the applicant. Because it is a corner lot and in many cases that is a liability for the property owner, as far using a limited amount of open space on the property. The hardship is not the result of prior action of the applicant and does not result primarily from a desire of the applicant to realize greater financial gain. The applicant has provided written and oral testimony about the need to enclose the property because of pets and a buffer to the traffic on Hope Street and Brook Farm

Drive. The granting of the requested Dimensional Variance will not alter the general characteristics of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan of the Town of Bristol. Fences are allowed in a residential area and the actual length of this fence will not impact any of the surrounding properties. That the relief requested to be granted is the least relief necessary. The applicant has already agreed to move the fence in more from the proposed location. That the hardship that will be suffered by the owner of the subject property if the Dimensional Variance is not granted would amount to more than mere inconvenience. A 30-foot requirement in order to put a six-foot privacy fence and safety fence would not allow for an adequate amount of open space on the property. I so move.

MR. SIMOES: I'll second that motion.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

X X X X X X

(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition Granted)

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6. **2023-40**
ANGELA HALIBURDA

15 Adelaide Ave: R-10
Pl. 84, Lot 8

Dimensional Variance to construct an approximate 7'7" x 14' exterior deck addition with less than the required side yard.

Ms. Angela Haliburda and Mr. John Hanley presented the Petition to the Board. Mr Hanely stated the applicant would like to put a 7' x 7' addition on to the rear portion of the deck, which would infringe on the encroachment by 7 feet, and he believes there would be 8 feet left. There already is an existing deck in the rear on that 8-foot setback line. And there's going to be a pergola up above it. Now, the weird positioning of it is basically because of the angle of the sun. As the sun comes down, if she put it where the existing deck is, when the sun comes down further to the right, looking out her back deck, which would be further to the north. With where the proposed pergola, that would be the perfect angle to block the sun. There will be retractable screens that will go up and down. The overall height is about 8 feet from the existing deck up; and is just looking to match the existing deck line further down the property.

A detailed discussion was held on how the applicant cannot enjoy the existing deck when the sun moves further down, and this would allow her to enjoy the outdoor area. After confirming that the existing deck was already on site when the applicant purchased the property, Mr. Tanner stated that there are minimal records on when the deck was constructed back in the 90's. And at the time they considered Adelaide the front yard and the north side was the side yard. Mr. Tanner stated that it is in an R-10 zone so it only needs 15-foot side yard. The Board reviewed the photos and plans submitted in detail, as well as another detailed discussion of the sun angle during the afternoon, making it impossible for the applicant to enjoy the back deck in the afternoon sun.

After reviewing the Staff report with Mr. Tanner, it was determined that the deck and pergola would require the same variance as indicated in the Staff report, as well as a building permit.

Mr. Stephen Long Lowe, 16 Fort Hill Road spoke against the Petition. Mr. Lowe stated that he lives directly behind the applicant, and he has a panoramic view at the present time. He thinks that if this deck extends north towards his property and it will affect his view of the harbor and presented pictures of his property to the Board, which was reviewed with the Board at the bench. Mr. Lowe stated that all the decks on the West side have sun on them in the afternoon and confirmed that he does have an awning on his deck.

Mr. Peter Maloney, 22 Fort Hill Road spoke against the Petition, stating that he owns the abutting house to the north. First of all Ms. Haliburda's house is already in the dimensional red zone, so to speak. And certainly, shouldn't be allowed to expand. There are a number of factual issues that need to be corrected in the supporting documents submitted. She wrote that sometimes its too bright to even look out the window and he would note that even though the applicant alleges that sun blocking shades don't work, there are millions of them sold every year and can be purchased as what the industry terms 1% openness which blocks the view. 10% openness blocks 90% of the light, but still allows a view. So, she is asking this Board to rule in her favor by saying solar shades don't work. The second issue is that on her existing deck, her statement says there's not enough room to erect a pergola because of living room windows and doors that open to the deck and the upper overhang balcony. The deck runs for about 20 feet long but extends out from the house 14 feet. Assuming her doors are the standard 36", she could build a structure of 11 feet, leaving 3 feet for the doors to open. The second-floor balcony is about 12 feet above the deck level. And the proposed structure seems to be 8 feet and

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maybe a foot at the beam; so, there is plenty of room on the existing deck to build a structure. Also, in terms of the sun, the windows don't start right at the edge of the house, the windows are in like 3 feet from the edge of the house. So, you can start building on the existing structure, which would block a lot of the sun. The other issue he would note on the diagram submitted has a cute graphic of the sun in the northwest corner. And he noted that is not the permanent position of the sun. Mr. Maloney then gave a detailed description of how the sun rises and sets at different times and angles; and he would have this proposed additional structure that will be casting shade onto his property all day long, or most of the day, due to the size and location of the proposed structure.

Mr. Hanley stated that he doesn't agree with Mr. Maloney on his statement that the structure would be casting shade on his property to any other extent than perhaps a little bit of his grass. He also explained that Mr. Maloney told the applicant that he plans on making an adverse possession claim against her and that should be taken into account by the Zoning Board for one of his reasons for objecting so vehemently.

Mr. Burke asked for elaboration on the interior shades and how they would not be sufficient. Mr. Hanley stated that the applicant explained to him that the interior shades, depending on where the sun comes down, when it is at its worst, is in the mid to late summer, the most time she would like to spend in her living room or on her deck. The interior shades make it too dark in the house. To make it livable the shade would have to be more solid. If the shade is further away it's more diffused by the time it gets to the windows and doesn't make the room as dark as if the shade was right along the window.

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In response to a question by Mr. Kern, Attorney Skwirz confirmed that the Board cannot consider view even if a variance is required. They can consider the general character, but if someone says they can't see the water where they could before, that can't be considered.

Discussion was held between Board members who considered that the structures are already too close to the property line and now they want to encroach further, even though the encroachment was present when the applicant purchased the property. The Board reviewed the plans for construction and the issue of sun angles in detail. Ms. Haliburda also explained that she has tried other ways, such as putting up a canvas awning, which is why she knows this more permanent solution would help tremendously. She also explained that the problems involved with having just the sun sail which makes half of the deck unusable. Different solutions were presented to the applicant also, such as an awning, which Mr. Hanley explained reasons why it would not work, because of the balcony over the deck.

After reaching the consensus of the Board that other remedies should be considered, combined with the fact that the existing structure already encroaches into the side yard, the applicant requested that the application be withdrawn at this time. Mr. Tanner explained that if the application is withdrawn the file is closed and if they wish to come back, they have to start from the beginning.

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MR. BURKE: Mr. Chairman, I'll make a motion to accept the withdrawal of File 2023-40 without prejudice.

MR. KERN: I'll second that.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

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MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

X X X X X X

(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition withdrawn without prejudice)

7. **2023-41**
KENNETH M. & LEE D. MILLER

50 Everett St.: -10
Pl. 123, Lot 2

Dimensional Variances to demolish an existing single-family dwelling and construct a new single-family dwelling with less than the required front yard on a corner lot; and Special Use Permit to construct a single-family dwelling at a height of over 25 feet above grade in the flood zone.

Attorney Bruce Cox presented the Petition to the Board. He explained that the existing house fronts on San Miguel, where the driveway is. They are relocating the driveway over the Everett; so they are eliminating traffic going on to San Miguel, which really becomes basically a foot path very shortly after this house. They are also keeping this house down below what would be the legal maximum height. The legal maximum height of this house could be 45 feet. The Board received the updated chart; the first one had feet and inches and millimeters, and this is far simpler in showing that basically when you're in the flood zone you have a free board, you are allowed to be five feet up; so that's what they have done to make the lower part of the structure functional as a garage and storage area. He has also kept the ceiling levels down very nicely within the house. Basically, the house is going to require less relief than currently exists on San Miguel and requires just a little bit on the southwest corner of the house as it fronts on Everett. It's an unusual lot, slightly undersized and it tapers towards the west, wider at the waterfront than it is on Everett.

Mr. Cracker, Architect explained the height of the new building is off grade it's at 37.9; the existing is 28; and of that they have to be, required by FEMA, a minimum of 6 feet. They have made an attempt to encroach as little as they possibly could. In fact, they encroached less than the existing house does, and they've attempted, through design, to keep the aesthetics

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such that they brought the roof line down, the eaves down and put a Nantucket dormer on. They are trying to make that house look as short as possible. CRMC will only allow 50% more structure or lot coverage. This structure will be in the A-zone. Landscaping will be added, and rain retention gardens will be added.

The Board reviewed the plans in detail. Mr. Tanner confirmed that there is a right-of way on San Miguel Drive to the water. The Board also reviewed the landscaping plans in detail. Mr. Burke noted that the application showed two front yards and a left side lot line, each requiring relief. Mr. Tanner stated that they show 13.3 to a shower enclosure which is not counted. If you look at the northwest corner of the house itself, it's 16.7; so, he doesn't believe there is a side yard variance, only the front yard relief of 15.7 feet and confirmed that the other two should be disregarded.

Ms. Christine Joclyn, 45 Everett Ave., spoke in favor of the Petition. She stated that the applicants had worked so hard; she was concerned about height and that has been answered. They worked so hard to make it fit and be good neighbors and it's going to be nice to have them full time. It looks very pretty.

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MR. BURKE: Mr. Chairman, I'm going to make two motions, one for the Dimensional Variance and one for the Special Use Permit. I'd like to make a motion to accept and approve application 2023-41, Kenneth M. and Lee D. Miller at 50 Everett Street to demolish an existing single-family structure and construct a new CRMC conforming structure in its place. This new structure will be less non-conforming than the existing structure, but it does require relief on the San Miguel property side of 13.7 feet; a front

yard typically requiring 30 feet. And the same 30 feet would also apply to Everett; and I'm going to make a motion that we grant a 1.6-foot front yard variance on the Everett Street side, to be finalized and confirmed by the owner's representative with appropriate Town Officials. 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 or to an economic disability of the applicant. The need to demolish and rebuild is driven by the CRMC waterside requirements. The hardship is not the result of prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain. We heard testimony that initially this was going to be an addition to the existing building and was not cost feasible to do that and they end of with a non-complying to the CRMC regulations after making a significant financial investment. The granting of the requested Dimensional Variance will not alter the general characteristics of the surrounding area or impair the intent or purpose of the Zoning Ordinance or the Comprehensive Plan of the Town of Bristol. It's a residential area, a residential lot and what is being constructed is a single-family residence that's allowed in this area. That the relief requested is the least relief necessary. As it was pointed out in the application and in the testimony, the new structure will be much less non-conforming than the existing structure. That the hardship that will be suffered by the owner of the subject property if the Dimensional Variance is not granted will amount to more than a mere inconvenience, because

they will not be able to construct a conforming structure in this waterfront area. I so move.

MR. SIMOES: I'll second.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

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MR. BURKE: Mr. Chairman, I'm going to make a motion to grant a Special Use Permit specifically for a height of building in the flood zone that exceeds 25 feet, per our requirements of our Ordinance. This is file number 2023-41, Kenneth M. and Lee D. Miller, 50 Everett Street, who require a Special Permit because the proposed structure will have a height of 38 feet, that exceeds the 25-foot trigger level requiring a Special Use Permit. This requirement is cited in Section 28-409 c-2. And the requirements are that it does not alter the surrounding character of the neighborhood. And I believe the testimony and the inquiry, and the written information confirm that it does not. I so move.

MR. SIMOES: I second that motion.

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MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MS. WHITE: Aye.

MR. KERN: Aye.

MR. ASCIOLA: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

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8. REVIEW of Zoning Board Application Instructions and Rules of Procedure.

Mr. Burke stated that he had asked that this matter be advertised and added to this meeting, but he was willing to table it next month, because it's late. Mr. Tanner and his team in enough time. The only thing on his list that he thinks is critical is he needs the reports 10 calendar days before the meeting to be fair to the Town and fair to the applicants.

9. ADJOURNMENT:

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MR. ASCIOLA: Motion to adjourn?

MR. KERN: So moved.

MR. SIMOES: Second

MR. ASCIOLA: All in favor?

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KERN: Aye.

MR. TIPTON: Aye.

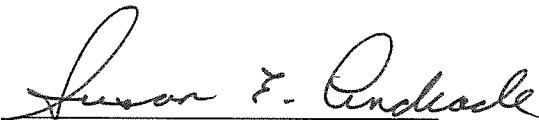
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(THE MOTION WAS UNANIMOUSLY APPROVED)

(MEETING ADJOURNED AT 10:10 P.M.)

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RESPECTFULLY SUBMITTED,


Susan E. Andrade

TOWN OF BRISTOL ZONING BOARD
MEETING HELD ON: 06 NOVEMBER 2023

Date Accepted: 1-2-24

Chairman: 