



**Stratham Zoning Board of Adjustment  
Meeting Minutes  
December 22, 2020  
Municipal Center/Virtual Meeting/ Conference Call  
Time: 7:00 PM**

**Members Present:** Garrett Dolan, Chairman  
Drew Pierce, Full Time Member  
Phil Caparso, Full Time Member  
Richard Goulet, Alternate

**Members Absent:** Bruno Federico, Full Time Member  
Amber Dagata, Full Time Member

**Staff Present:** Shanti Wolph, Code Enforcement Officer/Building Inspector

**1. Call to Order/Roll Call**

Chairman Dolan called meeting to order at 7:05 PM and took roll call. Mr. Dolan asked Mr. Goulet to be a voting member for this hearing. Mr. Goulet accepted. Mr. Dolan stated the applicant has the option of opting out of the meeting tonight to have their presentation heard by a full board consisting of five (5) members. Attorney Justin Pasay stated the applicant will accept proceeding with the quorum in place.

**2. Approval of Minutes**

**a. November 10, 2020**

Mr. Caparso made a motion to accept the November 10, 2020 meeting minutes as submitted. Mr. Goulet seconded the motion. Motion passed unanimously.

**3. Public Hearing(s)**

Mr. Caparso made a motion to limit the meeting time of tonight's hearing to 10:00 pm and to continue the hearing to the next available date. Mr. Goulet seconded the motion. Motion carried unanimously.

- a. Case #656A, Robert & Stephanie Cleary, 7 Boat Club Drive, Map 08, Lot 39, Residential Agricultural Zoning District, represented by Justin Pasay, Donahue, Tucker & Ciandella, 111 Maplewood Avenue, Portsmouth, NH.

The applicant requests a Special Exception from Section V, Article 5.1.3 of the Stratham Zoning Ordinance to expand a non-conforming structure, i.e. construct a 30'x49' residential addition.

Justin Pasay, Donahue, Tucker & Ciandella, representing the applicants Robert and Stephanie Cleary of 7 Boat Club Drive, Map 8 Lot 39, introduced Mr. Cleary and Sergio Bonilla of Mission Wetland and Ecological Services LLC, wetland scientist, assisting the applicant on the NH DES Shoreland application both are present.

Attorney Pasay stated the applications are straight forward and the entirety of the house is located within the town's shoreland protection overlay district which is a line that is drawn 150' from the shoreline of the Squamscott River. The existing house was built before the zoning ordinance provision regarding the overlay district and is therefore a non-conforming use, a use that was formerly permitted but is no longer permitted based on the zoning ordinance changes. The special exception relates to the expansion of the non-conforming use, and the variance relates to the shoreland protection district which states a structure cannot be erected within the shoreland protection district. The net result of the proposal is going to be a decrease of the impervious surface area within the Shoreland Protection Overlay District by 17 percent. With the addition being added, a lot of impervious surface, the current driveway, is being removed and will be replaced with crushed stone or pervious pavers that will infiltrate water. The net result will be a property that is in more compliance with the overlay district ordinance than it currently exists today.

Attorney Pasay referred the board to Exhibit 1 to explain the overall layout of the property. The property is bound to the left by the Squamscott River, to the east by Boat Club Drive, and is situated with a long driveway which leads to the existing house. Attorney Pasay explained the location of the town's overlay shoreland protection district cuts into the existing structure. Attorney Pasay explained the location of the proposed addition and the location of the proposed "shop" which is a barn that is part of the Cleary's overall master plan for the property. Attorney Pasay stated the "shop"/barn is not part of this application before the board. Attorney Pasay noted the NH State 250' shoreland line, to the right of the proposed "shop"/barn. Attorney Pasay stated the addition and a portion of the driveway are within 150' town shoreland protection district. The "shop"/barn is within the NH State 250' shoreland line. Attorney Pasay stated the applicant is before the board this evening just for the addition, which consists of 2 bedrooms, an office, a family room, and an extension of the existing master bedroom. Attorney Pasay explained the applicants have pursued a state shoreland permit for the entire property, which the state has approved. Mr. Dolan asked for confirmation that this property has been subdivided. Attorney Pasay stated yes. Mr. Dolan questioned why the subdivision line does not appear on the plan before the board. Attorney Pasay explained the plan before the board was completed prior to the approval of the subdivision plan, which was under appeal and recently was settled but not yet recorded. Mr. Wolph explained to the board that there currently there is only one lot until the subdivision appeals are resolved. Attorney Pasay explained the benefits of removing impervious surface within the shoreland district. Attorney Pasay reiterated there will be a net reduction in the impervious surfaces that is within the 150' line from the Squamscott River. This will allow the property to be in greater conformance with the town zoning ordinance than the property exists today. There is currently 8,293 square feet of impervious surface inside the 150 ft. line which includes a portion of the driveway and the entirety of the house. The addition is proposing to add 1,315 new square feet of impervious surface within the district. The total increase is 16 percent which will total 9,608 square feet within the town's overlay district. The Cleary's are proposing and requesting a condition on the special exception and variance approval that they remove the entirety of the impervious driveway area within the town's 150 foot line which is a sum of 2,761 square feet and to replace it with pervious pavers or crushed stone or materials that will infiltrate water. The reduction will total over 1,400 square feet of

what currently exists. The new total of impervious surface will be 6,847 square feet which is a 17 percent of what is currently on the property. Attorney Pasay stated allowing the property to remain in the current state is a worse condition, and contrary to the current zoning ordinance, than what the applicants are proposing.

Sergio Bonilla, Mission Wetlands, reiterated he completed a thorough assessment of the wetlands in July 2019. Mr. Bonilla discussed the delineation of wetlands shown on the plans before the board. Mr. Bonilla pointed out the communities of vegetation associated with the wetlands. Mr. Bonilla stated the objectives to protect the environment and to maintain water quality there is a 17 percent decrease in impervious surface area and there is no impact to any aquatic habitat. The terrestrial habitat associated with the proposal is previously disturbed maintained landscaped lawn area, none of the natural vegetation will be impacted. The properties along the Squamscott are unique settings and the Cleary's are proposing to improve on the area. Mr. Bonilla stated there is no direct impact to the wetlands associated with the Shoreland Protection Overlay District and the only impact is to the buffer zone of that tidal wetland. Mr. Bonilla stated the impacts have been minimized and only in previously disturbed areas and away from the resource and the applicant is proposing to reduce the pervious surface area. The mitigations are in the form of decrease the impervious and silt control will be in place during construction.

Mr. Wolph asked Mr. Bonilla to confirm the 150 ft. Shoreland Protection District line of delineation would not include or encompass the proposed addition. Mr. Bonilla stated if this was a bank delineation of the Squamscott River this would not be an issue, it is the fact that the ordinance defines it and encapsulates the title. Mr. Wolph stated the board needs to be aware that the addition will fully within the Shoreland Protection District and will be required to have a special exception or variance. Mr. Pasay explained the town's 150 ft line on the plan on Exhibit 1.

Mr. Dolan stated the special exception should be delineated first based on the criteria and then proceed to the variance, if required.

Attorney Pasay explained there are two areas of the zoning ordinance which articulate criteria for special exception. Article 5.1.3 specifically addresses the expansion of non-conforming use. The proposed addition is within the 150 ft. Shoreland Protection District and the house is a non-conforming use formally permitted. The zoning ordinance states a special exception can be applied for to expand the non-conforming use under Article 5.1.3 if the criteria is met.

The first criteria is that the proposed expansion cannot intrude any further into any setback area than does the existing structure. Attorney Pasay stated this requirement is satisfied as the applicant is not intruding into any setback area of front, rear, or side setback and there are no setback violations. Attorney Pasay explained that to the extent the applicant is intruding into the Overlay District and away from the Squamscott River.

The second criteria is that the expansion must have no further adverse impact on the view, light, and air of any abutter and this is satisfied because the applicant is insulated from any abutters.

The third criteria that the expansion must not cause property values to deteriorate. Jameson Dustin, Bean Group real estate agent, provided an analysis in enclosure 8 and explains this will not have a detrimental effect to surrounding property areas.

The fourth criteria to not impede existing rights of access or egress is satisfied as there are no impacts to access or egress rights on this property.

The fifth criteria that the portion of the proposed expansion which will intrude into the setback must, in no event, exceed the footprint square footage of that portion of the structure which presently intrudes into the setback regardless of the number of applications made over time and under this subsection. Attorney Pasay stated that, generally, cases before the board that a reviewing this criteria are literally encroachments into the setback and a structure that is already non-conforming to a front, rear, or side setback and this is not the situation before the board. The existing footprint of the building is 5,400 SF and the proposed addition is adding 1,315 SF which is less than a quarter in size of the existing building and the proposed addition meets this criteria.

The sixth criteria that, in the event the non-conforming structure contains a commercial use, there must be no adverse impact on access, traffic, parking, lighting, or other safety or visibility features of the existing structure. This criteria is satisfied and the property is strictly a single family, residential use and will continue as such.

The seventh criteria that a special exception, under this subsection, may be granted only as to expansions into the side, front, and rear setbacks and is not available for expansions which violate height restrictions of this ordinance. Attorney Pasay states this provision usually pertains to a non-conforming structure which violates the setback and the applicant is not in a setback and this criteria is satisfied. The addition will be to the front of the existing structure and within the setbacks and no proposed violation to the town's height requirements under the zoning ordinance.

Attorney Pasay stated the first criteria under 17.8.2.c that the proposed use meets the standard provided by the board and the particular use permitted by special exception. Expansion of non-conforming structures are permitted by Section 5.1.3 if the criteria is met.

The second criteria states no hazard to the public or adjacent property on account of any potential fire, explosion, or release of toxic materials will occur as a result of the approval of the special exception which is also satisfied with the straightforward 1,300 SF addition onto an existing single family use and no incidents of these items.

The third criteria that no detriment to the property values in the vicinity or change in the essential character of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor, smoke, gas, dust, or other pollutants, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or other materials will occur. This criteria is met by a real estate brokers opinion of value and the structure is insulated by hundreds of feet in either direction to any abutters and the proposed addition is conservative and will add 1,300 SF of footprint to the structure itself with no evidence before the board that would substantiate a finding of detriment to property values and the use will be single family residential as it currently exists.

The fourth criteria states there will be no creation of a traffic safety hazard or a substantial increase in the level of any traffic congestion in the city as a result of the proposal being proposed. This criteria has been satisfied as the traffic will remain as is currently on the property and no increase.

The fifth criteria that the use will not result in excessive demand on municipal service, including water, sewer, waste disposal, police, fire protection and schools. The use remains

the same as the property currently enjoys and is serviced by private septic and well water and no increase demand on municipal services caused by this project.

The sixth criteria that no significant increase of storm water runoff onto adjacent property or streets as a result of the proposed use. Attorney Pasay explained the building on the property is insulated by hundreds of feet and currently not contributing storm water to the property the result of the project will be a reduction of impervious surface in the shoreland protection district by 17 percent. Significantly more water will be infiltrating into the ground by virtue of this project than what currently exists.

Mr. Caparso asked for confirmation that the reduction in impervious driveway surface area is to just to the 150 ft. line shown on the plan. Attorney Pasay explained that Exhibit 4 shows the driveway and impervious surface that is being discussed. The existing total amount of driveway located within the 150 ft. is 2,809 SF and 2,761 SF will be removed and no longer be impervious and will be pervious to infiltrate ground water. Attorney Pasay explained the issue with ground water and wetlands in general is storm water runoff and impervious surface cannot go into the ground and pushes it elsewhere. Storm water management protocols and best management practices handles where water goes after it hits an impervious surface. A pervious surface, where water can go into the ground, alleviates that issue because it goes directly into the ground and is the biggest consideration there is for the protection of the wildlife and the aquatic resources in that zone and more water will go into the ground because of what is being proposed and what currently exists. Mr. Bonilla explained the wetlands and slopes on the plan. Mr. Wolph stated a project of this size is marginal compared to a commercial building of significant size to mitigate and allow for the displacement of the wetlands elsewhere.

Mr. Dolan asked for any public comment in opposition to the application.

David Kisver, 9 Boat Club Drive, his belief is that expansion can occur in the waterline shoreline zone but you cannot go out in the shoreline zone and stay within the confines of the property. Mr. Kisver asked what the project is giving back beside the 17 percent of impervious surface and there is no hardship being created in not allowing it. Mr. Wolph and Mr. Dolan explained the board is currently hearing the special exception, not the variance. Mr. Kisver does not agree that this proposed addition fits with the setback variance criteria.

Hearing no objections, Mr. Dolan asked if the board had questions for the applicant regarding the special exception. No questions were brought forward. Mr. Dolan asked the board if the factors in Section 5.1.3 exist in order to grant the special exception. Mr. Caparso made a motion to close the open portion of the hearing. Mr. Pierce seconded the motion. Motion passed unanimously.

Mr. Dolan opened the hearing to board comments. Mr. Dolan explained the board 5.1.3 requirements need to be satisfied before the board can move on to the requirements of the special exception. Being no comments from the board, Mr. Caparso made a motion to close the discussion. Mr. Goulet seconded the motion. Motion carried unanimously. Mr. Dolan stated the board must find the following factors to exist before issuing such a special exception:

A. The proposed expansion must intrude no further into any setback area than does the existing structure; Mr. Caparso voted yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.

- 250 B. The expansion must have no further adverse impact on the view, light, and air of any  
251 abutter; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 253 C. The expansion must not cause property values to deteriorate; Mr. Caparso yes, Mr. Dolan  
254 yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 256 D. The expansion must not impede existing rights or access or egress; Mr. Caparso yes, Mr.  
257 Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 259 E. The portion of the proposed expansion which will intrude into the setback must, in no  
260 event, exceed the footprint square footage of that portion of the structure which presently  
261 intrudes into the setback, regardless of the number of applications made over time under  
262 this subsection; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 264 F. In the event the non-conforming structure contains a commercial use, there must be no  
265 adverse impact on access, traffic, parking, lighting, and other safety or visibility features  
266 of the existing structure; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 268 G. Special exception under this subsection may be granted only as to expansions into the  
269 side, front, and rear setbacks and is not available for expansions which violate height  
270 restrictions of this ordinance; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce  
271 yes.  
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273 Mr. Dolan stated the special exception criteria has been met for the expansion of a non-  
274 conforming structure and the board will move onto Section 17.8.3.c. The planning board  
275 criteria has already been met. Special exceptions shall meet the following standards;  
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- 277 1. Standards provided by this ordinance for the particular use permitted by special exception;  
278 Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 280 2. No hazard to the public or adjacent properties on account of potential fire, explosion, or  
281 release of toxic chemicals or materials; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes,  
282 Mr. Pierce yes.  
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- 284 3. No detriment to property values in the vicinity or change in the essential characteristics of  
285 a residential neighborhood on account of the location or scale of buildings and other  
286 structures, parking area, access ways, odors, smoke, gas, dust, or other pollutant, noise,  
287 glare, heat, vibration, or unsightly odor, outdoor storage of equipment, vehicles, or other  
288 materials; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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- 290 4. No creation of traffic, safety hazard, or a substantial increase in the level of traffic  
291 congestion in the vicinity; Mr. Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce  
292 yes.  
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- 294 5. No excessive demand on municipal services including, but not limited to, water, sewer,  
295 waste disposal, police and fire protection, and schools; Mr. Caparso yes, Mr. Dolan yes,  
296 Mr. Goulet yes, Mr. Pierce yes.  
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- 298 6. No significant increase of storm water runoff onto adjacent property or streets; Mr.  
299 Caparso yes, Mr. Dolan yes, Mr. Goulet yes, Mr. Pierce yes.  
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Mr. Dolan stated the requirements for granting a special exception has been met. The board has the option to institute appropriate conditions on granting a special exception and asked if the board members would like to set any special conditions for this approval. Mr. Wolph stated the board could make a condition for the applicant to complete the pervious surface area as stated in the application.

Mr. Caparso made a motion to grant the Special Exception with the following condition;

1. The applicant shall replace the impervious driveway surface within the Shoreland Protection Overlay District and replace with a pervious surface material and subsequently provide a certification of completion by a qualified individual.

Motion to approve the Special Exception with condition passed unanimously.

Mr. Dolan explained the applicant has 30 days to appeal the granting the special exception and moving forward prior to the 30 day timeline will be at the applicant's own risk.

Mr. Caparso made a motion to close case #656A. Mr. Goulet seconded the motion. Motion passed unanimously.

- b. Case #656B, Robert & Stephanie Cleary, 7 Boat Club Drive, Map 08, Lot 39, Residential Agricultural Zoning District, represented by Justin Pasay, Donahue, Tucker & Ciandella, 111 Maplewood Avenue, Portsmouth, NH.

The applicant requests a Variance from Section XII: Shoreland Protection District: (overlay), Article 12.6.1(a), of the Stratham Zoning Ordinance in order to construct a 30'x49' residential addition.

Attorney Pasay stated the applicants are willing to dispense with the factual and context here if the board agrees for the purposes of remedy and efficiency that the presentation previously provided with the special exception is the same presentation that would be provided for the context of this variance. The variance application is very closely tied to the special exception application previously discussed and Attorney Pasay would like to explain the variance criteria and a detailed discuss of the property and proposal is not necessary. Mr. Dolan stated the board may want to hear the presentation regarding the setback of the structure, impact on shoreland protection district of the impervious area, etc. Mr. Caparso agreed.

Mr. Pasay asked the board to reference Exhibit 1 which is the plan that depicts everything that is being proposed. Mr. Pasay stated this parcel is currently 11.2 acres and once the subdivision is recorded it will be approximately 8 acres. The existing structure on the plan is well insulated by hundreds of feet from the boundaries of the specific property. The existing structure in its entirety is located within the town's shore land protection overlay district, which is a 150 ft line from the shoreline of the Squamscott River to the upland extent which proceeds on the plan from left to right. Mr. Pasay stated the actual 150 ft line is located to the left of the proposed "shop" on the plan and proceeds south, before eventually heading east in a manner that mirrors the other wetland line located on the plan, which is the 250 ft State of NH shoreland line and 250 ft from the shoreline of the Squamscott River. The proposed addition to the existing structure which is 30x49 ft will accommodate (shown on Exhibit 7) two additional bedrooms, an office, a family room, and extended master bedroom. The footprint is large and one story. The building is not well suited to expand up due to the cathedral ceilings in the center there would be two distinct second floor areas. The addition

will be, in its entirety, located within the town's shoreland protection overlay district. The square footage of the building footprint is 1,315 SF and the existing building square footage is 5,400+/- . The total square footage, including the existing impervious surface area of the driveway within the town's shoreland protection district it totals 8,293 SF. The addition will bring the total to 9,600 SF. The applicant is proposing to remove approximately 2,761 SF of impervious driveway surface area located within the town's shoreland protection district which will be a net reduction of 1,446 SF, 17 percent, of the impervious surface area within the shoreland protection district. Attorney Pasay stated the proposed structure is well insulated from the road and neighbors. Attorney Pasay explained the result of this proposal will be a property in greater conformity with the zoning ordinance and more compliant the Shoreland Protection Overlay District than currently exists.

Mr. Bonilla stated there will be no impact to the wildlife corridor or any previously undisturbed areas. The impacts of this proposal are limited to those areas that have been previously disturbed or that are maintained lawn area. No natural vegetation is required to be removed and avoidance, minimization, and mitigation is proposed in the form of the 17 percent reduction in the shoreland protection overlay district. Mr. Bonilla stated that best management practices will be exercised during construction.

Mr. Dolan asked if the board had any questions for the applicant. Mr. Dolan asked for confirmation that the applicant is requesting a variance from Section 12.6.1. Mr. Wolph stated yes.

Attorney Pasay stated a variance, by definition, is approval to do something that is not allowed by the letter of the law. Mr. Dolan stated the applicant is requesting to improve the condition of the soils and infiltration of water into the aquifer and protected zone. Attorney Pasay stated yes, and the variance, from a legal perspective, is a constitutional safety valve. A regulation on the books that is being applied in a manner to a property that is not advancing the purpose of the regulation then a variance should issue. A local regulation should not stand in the way of the reasonable exercise of ones own property rights. Attorney Pasay stated it is the board's determination whether it makes sense to apply regulation Section 12.6.1 to this property and the applicant does not believe it does. Attorney explained the legal question is whether or not the variance conflicts with the zoning ordinance in a marked degree. The mere conflict with the zoning ordinance is not sufficient to say no to the first two variance criteria. The variance will not alter the essential character of the neighborhood. The variance will not threaten the public health, safety, or welfare. If the answer to those questions is no, the Supreme Court states the first two criteria of the variance have been met. The Supreme Court has also stated that in making this determination the ZBA should consider the intent of the zoning ordinance. The general purpose provisions of the zoning ordinance is to protect public health. The general point of the Shoreland Protection Overlay District is to protect the environment; water quality, wildlife, and aquatic vegetation. Attorney Pasay stated the proposed addition is not contrary and the net result of what is proposed will result in a property that better fulfills those purposes than what currently exists. Attorney Pasay explained the proposed addition will not alter the essential character of the neighborhood; it will beautify the property, improve the ecological and environmental perspective, and will be consistent with the character of the neighborhood. Attorney Pasay stated the net result of the property, after the work is complete and the impervious surface area is removed, it will be a property more closely aligned with Article 12 of the town zoning ordinance than currently exists. Attorney Pasay stated there is no discernable benefit to the public with in denying the variance request and will advance the public interest with regard to the environmental perspective. Attorney Pasay stated the applicant provided, Exhibit 8, a letter from Jameson



Dustin, Bean Group real estate agent, who stated there will be no impact to the surrounding property values. Attorney Pasay explained literal enforcement of the provisions of the ordinance will result in an unnecessary hardship. Special conditions of this property, which distinguish it from properties in the area, there is no fair and substantial relationship between the point of the regulation and its application to this project. Attorney Pasay explained the special conditions is the size of the property, larger than properties in the area, and the location of the building itself, which is entirely within the town's 150 ft shoreland protection district, as well as the properties ability to accommodate exactly what is being proposed. Attorney Pasay explained physical improvements of a property can constitute the basis of a hardship. The existing building was constructed close to Squamscott River and is now non-conforming because it is located within the 100 ft from the shoreline and the actual building presence entirely in the 150 ft is the hardship. Attorney Pasay explained this regulation does not make sense to apply to this property because it will not advance its purposes. Attorney Pasay stated the variance criteria has been met and requests the same condition on the approval that the board provided on the special exception to remove the impervious surface area within the 150 ft of the shoreline and replace with pervious surface area.

Mr. Dolan asked if there were any comments from the public in opposition of the variance application.

David Kisver, 9 Boat Club Drive, stated the applicant's description of a "small" impact will create a big impact. Mr. Kisver stated the present location of the property to the water does not agree that creates a hardship. The Harborside reference is a commercial property and does not have the same comparison to a homeowner that does not have a business that exists in the same fashion as a hotel.

Jay Ward, 10 Boat Club Drive, stated he does not see that this application consists of a hardship. Mr. Ward stated when his property was built he questioned the town to build closer to the river and was denied by Terry Barnes that under no circumstance a home could be built within 150 ft. because the hardship criteria was not met. The Cleary home was built near 50 years ago and served three (3) previous owners well.

Mr. Pasay explained the Harborside reference was regarding the hardship criteria requires a two prong analysis; are there special circumstances and, if there are special circumstances is there a reasonable basis to apply the regulation because of the special circumstances. The Harborside reference stands for the proposition that in the first determination determining whether or not there are special circumstances it is ok to consider the actual physical improvements on the property as special circumstances and is the situation here. Mr. Ward may not have been able to build within the shore land protection district new, without the variance, but this property is existing and no improvements on building can happen without a variance and is clearly distinct from the situation that was addressed by the abutters. Mr. Caparso made a motion to close the public portion of the hearing. Mr. Goulet seconded the motion. Motion carried unanimously.

Mr. Wolph stated the applicant is seeking relief from the wetland section of the ordinance and the board needs to have finding of fact relevant to the variance criteria.

Mr. Caparso stated Mr. Kisver and Mr. Ward make a good point and this is precedent setting. When the applicant argues the property cannot be used being within this zone and the board accepts that argument then every homeowner within that zone can make the same argument and development into the wetlands will occur when it shouldn't. Mr. Dolan stated each case

that comes before the board is to be decided on its own merit and not on the basis of precedent or potential future cases coming before the board. Mr. Pierce questioned when the original structure was built. Mr. Cleary stated 1980. Mr. Pierce questioned when the Shore land Overlay Protection District was established. Mr. Dolan stated 1991-92. Confirmation that the Shore land Overlay Protection District was established after the existing home was built. Mr. Wolph clarified that the applicant is not proposing to build into the wetland. Mr. Wolph stated a building inspector does not have the authority to tell an applicant that they do not meet the criteria, only to deny a building permit and then the applicant has the right to apply to the zoning board for a variance.

Mr. Caparso made a motion to close the deliberation and vote on the variance before the board. Mr. Goulet seconded the motion. Motion closed unanimously.

The board moved to vote on the criteria.

No variance shall be granted unless all of the following conditions are met:

- i. The variance will not be contrary to the public interest. Mr. Caparso voted no, Mr. Dolan yes, Mr. Goulet no, Mr. Pierce yes.

*Finding of Fact: Mr. Caparso stated the applicant has not provided enough evidence to support the argument of not being contrary to the public interest. Mr. Dolan stated the mitigating circumstances do show the impact is not significant and does meet the public interest. Mr. Goulet stated it is contrary to the public interest. Mr. Pierce stated it is not contrary to the public interest because the pervious area will be increased, the structure is proposed to be built further away from the existing structure.*

- ii. The spirit of the ordinance is observed. Mr. Caparso no, Mr. Dolan yes, Mr. Goulet no, Mr. Pierce yes.

*Finding of Fact: Mr. Caparso stated the spirit is not being observed due to building in the protected area. Mr. Dolan stated the spirit is observed because mitigation techniques are being implemented to protect the district. Mr. Goulet stated the spirit of the ordinance is not being observed due to not good stewardship as the ordinance is there to protect the environment and the applicant is only providing minimal mitigation. Mr. Pierce stated the spirit of the ordinance is observed because the applicant would remove more overall environmental impact then they would be adding.*

- iii. Substantial justice is done. Mr. Caparso no, Mr. Dolan yes, Mr. Goulet no, Mr. Pierce yes.

*Finding of Fact: Mr. Caparso stated substantial justice is not being done to the town with regards to the wetland protection ordinance. Mr. Dolan stated justice is done to the property owner. Mr. Goulet stated there is not enough public gain to override the impact of the proposal. Mr. Pierce stated justice is done by allowing the property owner to have real property rights and reduce the overall impact to the surrounding wetlands and S.P.D.*

- iv. The values of surrounding properties are not diminished; Mr. Caparso yes, Mr. Caparso yes, Mr. Goulet yes, Mr. Pierce yes.

*Criteria passed unanimously.*

- 501 v. Literal enforcement of the provisions of the ordinance would result in an unnecessary  
502 hardship. Mr. Caparso no, Mr. Dolan yes, Mr. Goulet no, Mr. Pierce yes.

503 *Finding of Fact: Mr. Caparso stated the specific application on the property the applicant*  
504 *didn't establish the hardship clearly enough. Mr. Dolan stated the hardship exists due to*  
505 *the home being built prior to the S.P.D being established and the legislation came after the*  
506 *existing house. Mr. Goulet stated the applicant didn't meet the bar of the "hardship*  
507 *criteria". Mr. Pierce stated the applicant did meet the bar of the hardship, because to build*  
508 *somewhere else on the property would be a financial hardship and the S.P.D. was created*  
509 *after approval and construction of the home.*

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511 The variance is denied due to lack of majority votes. The applicant has the opportunity to  
512 appeal this decision.

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514 **4. New Business:** The board discussed the need for new board members.

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516 **5. Other Business:** None

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518 **6. Adjournment**

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520 Mr. Caparso made a motion to adjourn at 9:30 pm. Mr. Goulet seconded. Motion passed  
521 unanimously.

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546 *Note(s):*

- 547 1. Materials related to the above meeting are available for review at the Municipal Center during normal business hours. For more information,  
548 contact the Stratham Building/Code Enforcement Office at 603-772-7391 ext.180.  
549 2. The Zoning Board of Adjustment reserves the right to take items out of order and to discuss and/or vote on items that are not listed on the  
550 agenda.