

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

MINUTES
THE ZONING BOARD OF APPEALS
OF BRISTOL, RHODE ISLAND

08 JANUARY 2018
7:00 PM
BRISTOL TOWN HALL
BRISTOL, RHODE ISLAND

BEFORE THE TOWN OF BRISTOL ZONING BOARD OF REVIEW:

MR. JOSEPH ASCIOLA, Chairman
MR. BRUCE KOGAN, Vice Chairman
MR. DAVID SIMOES
MR. TONY BRUM
MR. CHARLIE BURKE
MR. DEREK N. TIPTON, Alternate
MR. DONALD S. KERN, Alternate

ALSO PRESENT: ATTORNEY ANDREW TIETZ , Town Solicitor's Office
MR. EDWARD TANNER, Zoning Enforcement Officer

Susan E. Andrade
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Bristol, RI 02809
401-253-5570

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08 JANUARY 2018

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

**1. APPROVAL OF MINTUES:
30 OCTOBER 2017; 06 NOVEMBER 2017; 04 DECEMBER 2017**

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MR. ASCIOLA: First order of business is the approval of the minutes of the October 30, 2017, the November 6th, 2017 and the December 4, 2017 meetings.

MR. BURKE: I'll make a motion to accept the minutes of October and November, as written.

MR. BRUM: I'll second the motion to accept October and November.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

MR. BURKE: I'll make another motion to postpone the approval of the December minutes, pending our approval to the February meeting.

MR. SIMOES: I'll second that.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

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MR. KOGAN: Aye.

MR. BRUM: Aye.

MR. BURKE: Mr. Chairman, I'd like to make another motion to grant an extension, this is in Correspondence, Item No. 6 on the agenda, a request from Joseph T. Murray, regarding Fairview Drive; an extension for a variance that was granted and expires in 2018. My motion would be to grant it for a one year extension.

MR. BRUM: I'll second.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTIONS WERE UNANIMOUSLY APPROVED)

SITTING AS THE BOARD OF APPEALS:

**2. 2017-35
BRISTOL ENTERPRISES, LLC Buttonwood St. & Franklin St.: M**

Appeal of a Notice of Zoning Violation issued by the Zoning Enforcement Officer for operation of a junkyard and for the keeping of storage/shipping containers.

Attorney John Ennis, represented the LLC regarding this appeal. He noted that the purported findings of the Zoning Officer, specifically the suggested lack of personal knowledge regarding the nature of the violation. Specifically, the finding indicated that it appeared to be a storage unit. They don't believe there's been any testimony related to there being a storage unit there.

Chairman Asciola asked for advice, as this matter was brought up last year and had already been through Court and there is a Court decision, he wondered what the reason was that it was back before the Board.

Mr. Tietz stated that he believes that the question is is whether or not there was something different about this than the previous hearings of the previous year. He advised that the Board hear the argument. He continued and explained that this has been dealt with by the Municipal Court and there's no question about the use being legal or not, it's really just a question about what the use is there. If there's a question about what the use it, the Board should hear what they have to say.

Mr. Tietz asked each Board member to please indicate for the record if they had all personally been by this site and inspected it.

Upon being questioned by the Chairman, each member; Mr. Burke, Mr. Simoes, Mr. Asciola, Mr. Kogan and Mr. Brum stated that they had personally inspected this site.

Mr. Christopher Pimental was asked to describe what is located on the property. Mr. Pimental stated that it was personal property vehicles; approximately five vehicles, cars and three trailers. He explained that there are two auto trailers and one tractor trailer that is registered and insured. He testified that he is not storing anything in the trailers.

Mr. Pimental confirmed that he had been to Municipal Court approximately in 2015. At that time he, or a related company did not own the property next door to this one. Since that time, another LLC, of which he is the Sole member of has purchased the property adjacent and perpendicular to this property on 58 Magnolia Street, which is a manufacturing/commercial building. He does have tenants in that property and the lot in question is a vacant lot. As part of his relationship with his tenants at 58 Magnolia Street he is allowing them to use the lot in question for parking; which they park approximately 7 or 8 vehicles. He stated that he is not using this property in question as a junkyard, he is using it for storage of his personal vehicles and using them in conjunction with his commercial property, owned by a different LLC at 58 Magnolia Street. He was not sure if he owned the additional property at the time of the Municipal Court decision. To his knowledge, however, he did not own the additional property.

Mr. Pimental stated that he is familiar with the surrounding neighborhood. Mr. Ennis stated that it has been suggested that one can have only one so-called storage shipping container. Mr. Ennis stated that he doesn't have any storage containers on the property. The three trailers that he described earlier are all registered and insured and can be attached to a vehicle and moved, as they are road worthy. He does sporadically move

them. The two trailers that are towed behind his vehicles is insured under whatever vehicle he is using to tow them.

In response to questioning about the five vehicles on the property being registered and insured, Mr. Pimental stated that at least one of them is, to his knowledge, he's not sure of which one. Mr. Kogan then asked if those vehicles are operative or inoperative at this time. Mr. Pimental stated that it depends on one's definition of operative. The reason he is parking them there is to be able to work on them in his building next door. Mr. Kogan asked if they are vehicles that can run and move. Mr. Pimental stated that right now if he were to put the key in he could start them; some the battery might be dead and some can't be operated at all and some with very little effort. Mr. Kogan asked if those are the 1950's Mopar cars. Mr. Pimental stated that there are various different kinds of cars there. Mr. Pimental stated that off-hand he didn't believe that any of those vehicles being discussed are registered or insured at this time. Mr. Pimental stated that if necessary he would be prepared to register all of the vehicles.

Mr. Tietz asked if there were copies of the registrations of the ones claimed to be registered to be put on the record. Mr. Ennis stated that they did not. Mr. Pimental stated he didn't; and as far as he knows one of the antique vehicles there is registered and the trailer is registered and insured. Mr. Pimental stated that he didn't bring any evidence of it because he didn't think anyone would dispute his sworn testimony that they are registered.

Chairman Asciola noted that Mr. Pimental stated that there are seven to eight cars being parked there from his other property and asked where those cars are coming from.

Mr. Pimental stated that he has a tenant on one corner of the lot that has his own vehicles there and he also has some tents up.

Mr. Kogan noted that a photograph was submitted to the Board that was taken on August 30, 2017 that shows a 1990's vintage Chrysler of some sort with significant front end body damage and asked if that vehicle is still on the lot. Mr. Pimental stated that it was; it is not currently registered and is a vehicles is going to work on.

Mr. Burke asked what the plan, or time frame was, for fixing the vehicles and getting them out. Mr. Pimental stated he doesn't do that as an operating business, or get income from it; so he fixes them whenever he gets to it. Mr. Burke asked if they could stay there indefinitely. M. Pimental answered, no. He would work on them at his earliest convenience; but even once they're finished they may stay. After consulting with Mr. Ennis on the sideline, Mr. Pimental stated that he could possibly finish working on the car in question in four months or less. However, even once it is fixed, it will still be parked there for the building next door.

Mr. Simoes asked about the north corner, next to Ferriera plastering; he noted there is a station wagon, a trailer, a truck, some tents on the property and it looks like a junkyard. Mr. Pimental stated that it is not a junkyard, it is his tenant's personal property. Mr. Simoes stated that it has been there for over a year. Mr. Pimental stated that it has, but that there is no evidence to demonstrate that it is a junkyard.

Mr. Asciola asked if in the Town of Bristol a vehicle needs to have a registered plate on it to store it in one's yard. Mr. Tietz stated, yes, it has to be registered. Mr. Asciola continued that this seems to be the same issues that were discussed a year ago

and seems very repetitive and that the Board is going over the same things on this site that haven't changed since last year.

Mr. Tietz stated that the Ordinance allows one trailer; and it's not just limited to trailer, it talks about storage and it would include even the smaller trailers, as well as the tractor trailer. At footnote 5 of the USE Table, for in the M-1 zone, "prefabricated, relocated steel buildings, box trailers, or shipping or cargo containers, are allowed by Special Use Permit in the Manufacturing Zone. Mr. Pimental applied for this Special Use Permit and was denied and did not appeal it. The only exception to that is footnote 5 that goes along with that, which states that "not more than one pre-fabricated relocated steel building, box trailer, or shipping, or cargo container shall be permitted as of right for a single period of no longer than 60 days as a temporary use of any property by the property owner. Temporary use must first be approved by a permit from the Building Official and Zoning Enforcement Officer, to insure compliance with the Standards of 28-150(i). During that 60 day period, property owner may apply to the Zoning Board for a Special Use permit to maintain the structure for an extended period of time". So, breaking that down; first of all there's no more than one, and it doesn't limit it to tractor trailers; it's any kind of trailer. So, the two trailers that are used for the cars, those are also considered. So, also, it's the 60 days and the Board has the photographs from August, and also the Board has their own inspection who have seen this site. So, that's the first thing, they are in violation of this section regarding the storage structures. It doesn't matter whether they are empty or if anything is in them. The Ordinance doesn't allow them, except under the specific conditions. The second question is the junkyard and that would be question of the unregistered vehicles; does it constitute a junkyard. As

one of the members has testified and there are photographs of other materials there; does that constitute a junk yard. When the Municipal Court judge dealt with it, she said she didn't even have to get to the specific question on whether it was an operating junkyard or not. The fact that those multiple unregistered vehicles were there made it a junkyard. That is not binding on the Board, they can make their own decision, they could choose to follow it or not, but that is what the Municipal Court said. There was testimony here that confirmed that there are at least four vehicles on the property presently that are unregistered and operative. He agreed with the Chairman that he hadn't heard anything new to contradict the original issues. Just because another piece of property is purchased next door, doesn't change the context of what's being done on this property. Even if it was being actively used to repair; the fact the length of time that these vehicles have been sitting there and what's there allows the Board to make their findings, if they so choose.

Mr. Kogan asked Mr. Pimental that when he was before the Board a year or two ago and his appeal was denied at that time and a Special Use permit was denied, that lot to a large extent was cleared of those old cars, they were relocated somewhere else and asked if that was accurate. Mr. Pimental stated he couldn't recall at this time. Mr. Pimental stated that he could not recall what was on the lot at that time to each of Mr. Kogan's questions. Mr. Kogan stated that he could tell from photographs and his own inspection that the cars presently on the lot were there in 2017 and was asking if they were there from the time that Mr. Pimental was before the Board previously; had they been on this lot for more than the last six months. Mr. Pimental stated he could not recall.

Mr. Ennis stated that the purchase of the other building creates an ancillary use for that building, whereby it's used in conjunction with the building. In terms of the so-called three trailers that are registered and insured when in use; so they fall within the criteria of storage facilities; they're really traveling facilities. They don't fall with the exceptions or the requirement of the Zoning regulation. In terms of junkyard; it's a subjective term. Junk yard means a parcel of land, or portion thereof, on which junk or scrap materials are collected, stored, salvaged, dismantled or sold. So, the question then becomes are they scrap materials or junk. It becomes a subjective decision, which requires some degree of evidence beyond merely, well there's a vehicle that doesn't operate, it's junk. The distinction for junk is whether or not it's so beyond repair of operability that it is no longer a vehicle. Because they talk about computers, plastics, wood, metal and other material determined to be junk; so it requires an evidentiary hearing that there is in fact junk, other than mailing a picture. So, he believes that upon Mr. Pimental registering the vehicles, and he indicated, and at his suggestion that he tries to get it done as soon as possible. If Mr. Pimental get those vehicles operable within a fairly short period of time, that will no longer be an issue. On the other part, he doesn't believe there's proof that it is in fact a junk yard. He believes the neighborhood is such that there are significant, more than one locations in the neighborhood where there are more trailers on property that is not currently being enforced. So, he believes that Mr. Pimental can demonstrate that it's not a junk yard. And that the three so-called trailers are operable vehicles that are registered and insured when use; and therefore they don't fall within that criteria, which is basically designed to prohibit storage. For those reasons, he believes the appeal should be granted.

Mr. Simoes stated that it's at least an open-air storage area and is a disgrace in the neighborhood and should at least be screened off. Mr. Pimental stated he would be willing to screen it off.

Mr. Tietz noted that they have been down that road also before. He stated that there's two things and they can't let them get confused. One is this question of the trailers and whatnot. And, in fact, it doesn't even really matter if they're registered or not. The point is you can't have them there for more than 60 days. And this is where the Board can take a look at the photographs and their own personal observations on a regular basis. They don't move; that's the evidentiary standard that makes a difference. If this were tractor trailer or trailers and they were going in and out on a regular basis; but everyone has all seen them sit there and sit there and sit there without moving for more than the 60 days. The second question about the junk yard. Mr. Ennis carefully didn't read the very last phrase of a definition of a junk yard, which says, “; inoperative or unregistered vehicles, or other inoperative machinery”. So, by definition, inoperative, or unregistered, it doesn't even have to be both, if it's inoperative, or if it's unregistered, it is a junk yard; that's by definition what's there. So, if the Board can find that there are inoperative or unregistered vehicles there, it's a junk yard. They don't have to find the first part of the definition, they don't have to make that determination about “determined” to be junk, because it's already in the definition.

Mr. Pimental stated that it's an arbitrary definition, though. Mr. Ennis stated that he would also note that maybe if they were to parse that revisions, there's no subsequent calling, and he believes that what was enacted didn't properly describe, if you got junk yard means, and it lead up to the term, sold, including, but not limited to; and then it went

through the hazardous with a colon. But, there was no subsequent "and" or conjunctive language that would bring the hazardous, inoperative or unregistered vehicles, within the definition within the second part of it. Because there's no conjunctive "and"; there's only a use of a colon. It may seem picking at words, but he's not the one that drafted it. he would suggest that if you read it there's conjunctive, which includes that in the definitional section.

Mr. Tietz stated that he would perhaps be more sympathetic of Mr. Ennis' interpretation if the individual before them hasn't already been through this whole thing, and actually has a Court order enjoining him from bringing further vehicles onto the property.

Mr. Pimental stated that he disputes that, because the judge changed his plea without permission.

Mr. Ennis stated that the fact is there is no suggestion that he brought additional vehicles on.

Mr. Tietz stated that there is the eyesight determinations of the Zoning Board, and he would let them put on the record of what they've seen for themselves. He drives by there himself all the time; he's not giving testimony, he'll let the Board members give their own personal experience of what they've seen.

Mr. Ennis stated that then you have the finder of fact. Mr. Tietz stated that's what they are, they are the finders of fact on appeal. Mr. Ennis stated that then they become effective witnesses. Mr. Tietz stated, no, they are allowed to base it on their own knowledge of the neighborhood and their own inspection. Mr. Ennis stated he believes it requires evidence from the represent officers, but not adjudicated by the so-called views.

In the Court of Law that wouldn't work; and he thinks in a similar analogy here it doesn't work. It has to be evidence presented by the Zoning Official, not by outside views made by the adjudicated authority.

Chairman Asciola asked how about the evidence from the Court from last year. Mr. Kogan stated that he didn't think they have to do that, it's was time to ask Mr. Tanner some questions, as the Zoning Enforcement Officer, has viewed this property over a number of years that there have been issued.

Mr. Tanner testified that he has been familiar with the property at Buttonwood Street and Franklin Street for some period of time. He confirmed that the property came to his attention as a result of complaints filed with the Town of Bristol. Those complaints were about cars, trailers, box trailers and other items located on the lot. At the earlier proceeding, several years ago that led eventually to a Municipal Court determination and led to this Board's denial of the appeal and denial of the Special Use Permit, Mr. Kogan asked how many apparently unregistered vehicles were on the lot at that time. Mr. Tanner stated he was not sure if he had an exact number, maybe 40. Mr. Kogan asked if it was more than what is presently on the lot now. Mr. Tanner stated more than present, correct. Mr. Kogan asked then that after those proceedings were concluded, was it Mr. Tanner's observation that Mr. Pimental removed many of the inoperative and unregistered vehicles that were on the lot. Mr. Tanner stated, yes and in fact he presented a letter that he wrote to Judge Jane Howlett of the Municipal Court, dated October 21, 2015, where he reported back to the Judge that all of the inoperable vehicles had been removed; in compliance with her Court Order. Mr. Kogan stated that was his recollection as well, but asked what about the, at that point, either two or three box trailers that were

on the lot, because some of them had vehicles in them back then; were they removed as well? Mr. Tanner stated, yes they were. Mr. Kogan stated, so the lot was cleaned up almost completely at that time. Mr. Tanner stated that he believed so, yes. Mr. Kogan stated that then some period of time went by before Mr. Tanner started to receive complaints again about the condition of the lot at Buttonwood and Franklin Streets. Mr. Tanner stated he was correct. He started receiving those complaints started in August of 2017. He observed the condition of the lot at that time. Mr. Kogan asked that if the condition of the lot that Mr. Tanner observed in August 2017 depicted in a series of photographs that are submitted as part of the record in this case. Mr. Tanner stated, it is. Mr. Kogan stated the photographs had those three antique Mopar cars from the 1950's, the box trailer, the car trailers, the 1990's damaged Chrysler vehicle, the Jeep vehicle and the other things depicted on this property. Mr. Tanner, stated yes, correct and confirmed that he saw those in August of 2017. He also confirmed that he has been by the lot in the intervening period of time between August of 2107 and this hearing tonight, on numerous occasions. The conditions have not significantly changed during that time period. And in regards to whether or not additional inoperative or unregistered vehicles been added to the store of vehicles on the lot right now, it looks fairly similar to him. Mr. Kogan asked if any additional trailers, box trailers or cargo trailers, or storage trailers been brought on to the lot since August of 2017. Mr. Tanner stated he didn't believe so. Mr. Kogan stated that then the same condition that was depicted in August of 2017 is what Mr. Tanner's testimony is that still continues today. Mr. Tanner stated that was correct. Mr. Kogan stated and that certainly is consistent with his observations and may with other members of the Board. Mr. Asciola stated that it is his observation as well.

Mr. Ennis as if Mr. Tanner was familiar with the address 259 Franklin. Mr. Tanner stated, no, he doesn't know exactly what property that is. Mr. Ennis showed Mr. Tanner a photo of the property, which he believes is diagonal to this. Mr. Ennis stated that property has four containers. Mr. Tanner stated that those are structures that were permitted with building permits and those are permitted structures. Mr. Ennis asked if they are containers. Mr. Tanner stated no, they are fabric buildings, but they are large enough that they require building permits, they have engineered plans submitted to the building official, they are considered accessory building structures; they're buildings.

Mr. Ennis asked Mr. Tanner if he knew if any of the vehicles on the property are inoperable. Mr. Tanner stated he did not; they do not appear to be operable to him. Mr. Ennis asked how he made that determination. Mr. Tanner stated, the hoods are open, they don't appear to have any internal parts, they have tarps over them; they do not appear to be operable.

Mr. Burke stated that he believes there was testimony from the appellant that they are not operable and that he plans on making them operable; that's one way they would know.

Mr. Tietz stated to clarify that it's not speaking in favor or against, but this is a public hearing and asked that any statements from the public be directed to the subject of the appeal; anything that they've seen as evidence that would help the Board decide the appeal.

Mr. Paul Ferriera stated that he is owner of Ferriera's plastering, right next door to the junk yard. Mr. Ferriera stated that Mr. Pimentel keeps his pristine cars under the trailer, but the part that he rents out is about 50' x 80' next to his building has two

camping trailers there, there are a couple of junk jeeps that don't even run. They have tires there, bicycles, tractors, all kinds of junk back there. If that lawyer can't see it's a junk yard, he shouldn't be a lawyer. It's unbelievable and the Mr. Pimental gets away with it. He's blocked the back of his building with cement blocks, where he can't plow to let the paramedics out for an emergency. He's been going through this for four or five years, and a couple of times he didn't threaten him, but gave him some baloney. There is a couple of huts there that they fix cars under and run generators.

Ms. Cheryl Ferriera, resident of Grey Street, speaking as a resident of Bristol, just going up the area and looking at it, it really is a mess. And she finds it a little bit disrespectful to the neighbors that are right across or around the area, it's not kept well. You can't even get to the corner and see down, it blocks the view. It hinders the view of people driving and if it does become more of a junk yard then it already is, it will effect what's going down into the ground. And how the neighbors are being treated accordingly, if this gentleman doesn't feel that he can speak to people properly. Sometimes he needs to be a little kinder. She would appreciate it if the Board would not allow that to happen.

Mr. Kogan stated that to him the vehicles that are there are not registered, whether they're operable or not, the appellant has admitted that they are unregistered, at least three or four of his vehicles are unregistered. And it also appears that some of the tenants' vehicles are unregistered as well, the one who occupies the 50' x80' portion close to Mr. Ferreira. And although that's rented, it's still part of the use of this property that appears to be the outdoor storage of inoperable or unregistered vehicles. He didn't agree with Mr. Ennis that there should be a conjunction in there. He thinks it was intended to be written

in the disjunctive, where any one of those conditions, storage of computers, plastic, wood, metal, other materials; semi-colon, inoperative or unregistered vehicles, by themselves that would be enough. Doesn't have to be all of those things; anyone of them could constitute a junk yard as defined in the Ordinance. It was a junk yard in 2015, the appellant at that time remediated it by relocating the vehicles elsewhere, as he indicated in the hearing of 2015, he might be able to do with some other property he owned. He didn't understand why he's brought back junk cars that are unregistered and look to be; can't testify that they are inoperative, they certainly don't look operative in the condition of disrepair in which they appear to be observed. The storage containers are containers that he would have to get a Special Use Permit for. The Board denied him that, because he's not using them as part of an operating business, coming and going, as their Selector suggested. He asked for a Special Use Permit, it was denied it at that time and he's now sort of failing to comply with the requirements of the Ordinance and failing to comply with the Municipal Court's decision. So the Zoning Enforcement Officer issued a Notice of Zoning Violation, which says, in the conclusion and in the opinion of the Zoning Enforcement Officer, he's in violation of the junk yard provision and the pre-fabricated re-locatable steel building, box trailers or shipping or cargo containers provision. The evidence presented at this hearing appears to be he's in violation. He doesn't see this as a difficult case.

Mr. Asciola stated he feels the same way, he didn't see any change from the 2015 violation that was issued. It's still a junk yard and containers that are against our Ordinance; it's on a smaller scale, but it's still the same thing.

Mr. Simoes stated that it's an eyesore for that area, a disgrace. If they're proud of Bristol, they better do something about it.

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MR. KOGAN: If nobody else has anything to say, I will make a motion. I make a motion that the appellant's appeal from the Notice of Zoning Violation issued on August 25, 2017 be denied. And the reasons for that denial are as follows. The Notice of Zoning Violation cites the appellant for violating the permitted uses in Section 28-82, the Use Regulations, that does not allow in any Zoning district a junk yard, which is defined by our Ordinance to be " a parcel of land, or portion thereof, on which junk or scrap materials are collected, stored, salvaged, dismantled or sold; including but not limited to computers, plastic, wood, metal or other material determined to be junk and or hazardous inoperative or unregistered vehicles or other inoperative machinery." The testimony offered tonight by Mr. Tanner, the photographs offered into evidence and the admissions of the appellant that he is storing unregistered vehicles on this lot, makes that property a junk yard and, therefore, a violation as to the Section 28-82 Use Regulations. Is still in violation and therefore the appeal on that issue should be denied. The second portion of the Notice of Zoning Violation addresses what's permitted in Zoning Districts; and the table identifies pre-fabricated, re-locatable steel buildings, box trailers, or shipping or cargo containers, which are not permitted as of right in any Zone. And in the manufacturing zoning district, which this property is located in, they are permitted only

with a Special Use Permit, which the appellant had previously applied for and was denied by this Board. So, there is a box trailer on the property, there are two car trailers on the property. Those trailers are not permitted to be on the property without a Special Use Permit, except for the limited exception in footnote 5 to Section 28-82, which permits in a manufacturing zone no more than one of those storage container type structures, or vehicles. And not for a period of greater than 60 days. But they have to be approved by a permit by the Building and Zoning Enforcements Offices. There has not been any such permit issued. The box trailer and those car trailers have been there for greater than a 60 day period. There was testimony from Mr. Tanner that they were there in August, there are photographs of them in August. There was testimony from Mr. Tanner that he observed them as recently as just recently. And the Board members by their own observation have seen the condition of the property, as was depicted in the photographs from August; both in respect to the vehicles and the trailers. So, that violation is also well founded in the facts. So, since it's well founded in the facts and there's evidence to support the violations, it's my motion that we deny the appeal.

MR. SIMOES: I'll second that motion.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

08 JANUARY 2018

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(Appeal Denied)

SITTING AS THE BOARD OF REVIEW:

CONTINUED PETITIONS:

- 3. 2017-41
PAULO TANASIO/ 39R State St.: D
Historical Downtown Bristol Properties, LLC Pl. 9 - Lot 47**

Dimensional Variance to convert an existing mixed-use structure containing two residential dwelling units into a three-family residential dwelling with less than the required lot area per dwelling unit.

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MR. BURKE: Mr. Chairman, I'll make a motion to continue this, per the applicant's request. It is 2017-41 is the file number, 39R State Street; to continue it to the February 5, 2018 meeting.

MR. SIMOES: I'll second that.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition Continued)

NEW PETITIONS:

**4. 2018-01
BEN LUK/MOUNT HOPE LLC**

**180 Mt. Hope Ave: GB
Pl. 41 - Lot 126**

Special Use Permit to operate landscaping contract construction service business within a General Business zoning district.

Mr. Kogan stated he wanted to disclose that one of the tenant, MJV Landscaping, a principal of that business is Paul Viveiros, who presently here. He probably 15 years ago for a number of years was Mr. Viveiros' supervisor, as the Dean of the Law School at which Mr. Viveiros was employed at that time, at the University. He also employed, or retained Mr. Viveiros' business to do landscaping work on his property for a number of years, probably no more recently than 7 or 8 years ago. He didn't believe that that would require him to recuse himself, because he doesn't believe he has any on-going business relationship with Mr. Viveiros, whose operations are in part the subject of this hearing, but he did feel it was incumbent to put that on the record. And that if anybody feels that he should recuse himself, alternate was available. Hearing no objections, Mr. Kogan continued to sit on the Board.

Mr. Ben Luk, owner of Mount Hope LLC, 180 Mt. Hope Avenue presented the Petition to the Board. Mr. Luk stated he was requesting a Special Use Permit to operate a landscaping construction service business. He purchased the property about two years ago and come with the building was some of the tenants that were there. Ferraz Landscaping has been there for over ten years, almost 12 years. It recently was brought to his attention that he was there without a Special Use Permit, which is required for a General Business Zone. He is asking for the permit, so that they can remain in that

building. Mr. Luk confirmed that on the property is the restaurant, the day care in the back and then there's a barn that Mr. Ferraz has rented for almost 12 years, operating his business out of. He confirmed that behind the school is wetlands, which they have not touched. Over the last two years they have been trying to improve the property and get the restaurant going. They have been cleaning up the property, because over the years a lot of trash has been dumped on the property. In regards to the boats on the property, they are personal boats being stored by other people.

The Board reviewed the property and buildings on it in detail with Mr. Luk.

Mr. Luk confirmed that Ferraz is still utilizing the barn for his business without a lease; as he has been there for years and is a very good tenant. Mr. Luk confirmed that Mr. Ferraz does store his trucks and equipment on the property in the 200' x 72' area that was detailed on a plan submitted. Mr. Luk stated that MJV has also been storing his vehicles with that area with Mr. Ferraz.

Mr. Kogan noted that the most recent layout plan was submitted in a letter from Mr. Luk dated January 5, 2018 and received in the Town Hall on January 5, 2018, which depicts a rectangular 200' by 72' foot area surrounding the existing barn structure and that's the area in which vehicles will be stored, as well as the barn being used by Mr. Ferraz, MJV and also the American Tree Works. Mr. Kogan noted that on one of his inspections to the site one of the American Tree Works vehicles was not located within that area. Mr. Luk stated that they will be, they are cleaning up that whole area and all the vehicles will be stored in the area, after all of the existing mulch piles are removed.

Mr. Kogan noted that there was another layout plan submitted to the west of the property, designated as special use permit area number 2, 40' x 100'. He asked what use

would be made of that area. Mr. Luk explained that area right now is where MJV has been leaving their equipment and so forth. At one point they were cutting up trees that they had taken down and it creates a lot of noise. Mr. Tanner had come up to him and said there were complaints being filed about the noise. Since they were told of the complaint, they have stopped all of that operation. MJV would just be storing their equipment there at that location. They will not be cutting up trees and so forth. Mr. Luk confirmed that American Tree has been on the property for the past two years, since he purchased the property. They are all landscapers, they don't really do work there, they just need to store their vehicles there.

In regards to the large trees in the back of the property, Mr. Luk explained that they were all brought in. MJV began processing them, but when the noise complaints came in they stopped the processing. As far as trees being cut down on the property, some were cut because of the dangerous angles and the risk of property or personal injury.

Mr. Walter Ferraz, 94 DeWolf Ave, owner of Ferraz Landscaping explained that he has been storing his equipment on the property for about 12 years. And before anything else, he wanted to say that he has to praise Mr. Luk because he is very fair in the rent that he is charging. He believes that it's because Mr. Luk understands the nature of running a business in Bristol and it's hard to find a place to run a business. Mr. Ferraz outlined in detail for the Board the nature of his business and that he only enters to pick up his equipment in the morning and return in the evening. He does not wood splitting on the property or walk in retail customers. His workers do utilize the parking lot that belongs to Mr. Luk. He owns four truck and four trailers that he keeps on the property;

along with all the other equipment needed, along with a towable air compressor, which fits in about most of the designated area number 1. Mr. Kogan reviewed in detail the size of the equipment needed to be stored on this site with Mr. Ferraz. Mr. Ferraz confirmed that he should be able to store his trucks, trailers and air compressor on one side of the barn building. As far as the mulch piles, that material comes from his business, as it saves on composting fees, which are high. But if the Town wants it removed, he can do that.

Mr. Carlos Medeiros, owner of American Tree Works, explained that after his dad passed away two years ago and at the time the trucks were parked at the Industrial Park and they were remodeling and redoing the parking lot. At that time he spoke to Mr. Luk and asked if he could store a couple of trucks until he could figure out what he wanted to do with his father's business. They were having problems up at the Industrial Park with people stealing equipment; so this property was perfect, because there is a lot more activity in the area to keep eyes on it. He parks a couple of trucks, a couple of chippers. As far as the chips, he cuts the Town of Bristol Trees, he dumps chips at the transfer station free of charge and gives away a lot of it. If anybody wants wood, he gives it away. His employees pick up the trucks and leave until they return them at the end of the day. It's hard to find areas in Town to park those large trucks. If he couldn't park there, he would have to move his business out of town, as there is no land available. It's also very convenient, as he does emergency work for the Town and his employees can get to the trucks and get the job done easily. American Tree stores two trucks at this property and two chippers; American Tree owns 4 trucks, all with booms, aerial lift trucks. He presently parks his vehicles on the east side of the property. Mr. Medeiros approached

the bench to review the proposed plans with the Board. They reviewed the parking arrangements in detail. Mr. Kogan noted that towards the eastern edge of the property there's a small area of wetlands; Mr. Medeiros stated that he is not parking on the wetlands, he is parking in the field to the north of the compost pile. Mr. Kogan asked that once the compost pile is removed, did Mr. Medeiros expect to fit his vehicles in the proposed 200' x 72' rectangle area marked area number 1 on the east side of the barn and Mr. Ferraz could put his vehicles on the west side of the barn. Mr. Medeiros stated that would be no problem. Mr. Medeiros confirmed that he does own chainsaws in order to conduct his business, which are stored in the work trucks; however, unless a tree fell down on this property, his employees would have no reason to run them at this location.

Mr. Paul Viveiros, 44 Michael Drive, owner of MJV Landscaping explained to the Board that he rent another spot on 24 Vernon Street; that's where he has most of his trucks and his equipment for landscaping. They wanted to get another spot to put logs down and also be able to cut the logs and split the logs, two or three months out of the year, as an extra side; because at this time of year business is slow. When they started the log cutting, because of the noise complaint they stopped doing it. They do store the wood there, hoping to find another spot to go to process the wood. They lost six weeks' worth of cutting and splitting and thousands of dollars, because they didn't want to get Mr. Luk in trouble or have any more problems with the whole situation that came about. When they first went there to use the place, Mr. Luk said he wanted it all cleaned up and they put natural wood chips down from American Tree; six or eight inches over the whole area that was all grass and mud. They cleaned up the whole area so that they could store some of their equipment there, lawnmowers and trailers that needed to be stored there.

He has nine trucks, but he doesn't keep all nine there, he keeps them in his other building. He's allowed to keep five at the other location. One is at his house, two are at his son's house. So, there's never going to be nine vehicles there, probably one or two or maybe three at a time. They weren't trying to cause trouble, just trying to make a living. They've been all working very hard to clean up this area for Mr. Luk and thought people in the neighborhood would be happy about that. He understands about the noise and if they can't do it they can't do it, he understands. In the beginning they were putting the logs down and cutting them right near DeWolf and processing them. There were some days they did cut five or six hours at a time and they did sell them, about 15, 20 cords of wood all split and processed. When they got word that there was a complaint, they stopped. He confirmed that he was doing the wood cutting on the designated area on the plan submitted as 100' x 40' Special Use Permit area number 2. That would also be the area that he would, without the wood cutting and splitting, he would plan to park two or three of his vehicles, along with three small trailers. One has wheel barrels and other equipment. There would be no noise coming from that area, other than moving the vehicles in and out of the area. If they had been allowed to continue cutting, all the wood that is there now would be gone. He explained the wood cutting process in detail with the Board. He explained that they tried to be aware of the neighbors in the area and would run the chain saws approximately 4 hours a day, not in the early or late hours and basically only for one tank of gasoline and then stop. The wood the Board sees on the property is only there because they had to stop their wood cutting and log splitting operations. If he were allowed he would continue the wood business, which the season ends in February. The process of cutting and splitting would start in the slow summer

season sometime in July and run through August and September; once or twice a week about four hours a day. Around October people start buying the wood that has been processed over the summer months.

Mr. Burke expressed concerns about what jurisdiction and requirement DEM has on this area and the process that needs to be followed and making a decision without knowing where the parking spaces can actually go. Mr. Kogan stated that it was a bridge to cross once they figure out whether or not they can park there and then it can become a condition.

Mr. Burke reviewed the property owned by Mr. Luk. Mr. Luk stated that they have had contact with DEM also. He explained that they can maintain what was there before; so the area they have been using, DEM is okay with it; he cannot change it further. Mr. Luk stated that at some time in the future he is going to propose a self-storage on the site, so they have hired an engineer and a biologist to flag the area already. So everything is already flagged on what they can and cannot do. Mr. Luk explained that he is only asking to use the area as it has been being used through the years. Mr. Kogan noted that the designated Special Use area number 2 was not previously used until MJV has been using it. Mr. Luk stated that if they look at the map, there was storage being utilized in the area. They have cleaned it up and removed the containers that were there and are just using the same area and there are only two containers left there, which MJV owns.

Mr. Kogan asked again about the containers on the site. Mr. Luk stated that there were eight containers on the site, which they removed, as they were an eyesore and the

retained two for MJV to use. Mr. Viveiros stated that they are two aluminum containers, 23' x 20'; they sit on logs, so they can be removed if he has to.

Ms. Sara Barber, 69 DeWolf Avenue, stated that the Board received a letter from her father, who is a Urban Planner that he can't be present, as he is repairing property that was damaged during the hurricane. She also wrote a letter, a rebuttal of the statement that was included in the original application. Ms. Barber stated that this application is very general, very large, it's encompassing three different contractors. She feels that there should be a completely separate application for Ferraz Landscaping with Ben Luk, because none of these issues came up before the new contractors, specifically MJV Landscaping came to the property. Obviously Ferraz Landscaping has been there for a long time and she thinks they should file an application that specifically deals with their having a permit to continue operating as they have been in the community for the past 11 years. In regards to Mr. Viveiros' firewood business, at the Federal Industry and State levels; firewood processing is a wood product. It is defined as a wood product, it falls under lumber and wood products and that Use is specifically not permitted on General Business land. The reason they got shut down was the issue of noise pollution in addition to the eyesore and impact on the surrounding wetlands. She presented a power point of photos and audio of what has been going on over the past 60 days. Since they had a snow fall a couple of days ago, a lot of things that should be able to see clearly was covered by the snow. Ms. Barber stated that her rebuttal was based on the original plan submitted and now she's hearing information about an area 2 recently submitted, which she approached the Board to look at. She pointed out that since the original application, the area has been increased. Ms. Barber stated that MJV started their wood cutting on

October 19th; on November 15th she talked to Mr. Tanner, who said they would move their chainsaw activities to the center of the lot; but he also said that if it continued to be a nuisance that they would stop. On November 15th Mr. Tanner agreed that MJV would stop all wood cutting activity; that was a phone call at 11:32. Ms. Barber then played an audio of the wood cutting activity going on in the neighborhood for the Board, so that they could realize that it is noise pollution in their community and it is not acceptable. The audio was taken on December 4th. The Board reviewed the presentation in detail with Ms. Barber, which showed the area, which shows an office trailer on the property, which is empty and has a broken door, which is in violation of S28-150(i) Special Use Standards for pre-fabricated re-locatable steel buildings, box trailers, shipping or cargo containers, which have also been there for over 60 days. The trailer used for hauling wood, two cargo containers, which haven't moved, tons of equipment, backhoe and a ton of logs; everything is adjacent to DeWolf. In the past 60 days, the contractors have been dumping truckloads of yard debris from off-site jobs on the protected wetlands and within the wetland setbacks, of which she had pictures in her presentation. In the past 60 days MJV has substantially increased their operations; they've been stockpiling logs because they hope to continue a commercial firewood processing business. She continued with her power point presentation and showed pictures over the last 60 days of the area in question, Special area 2. The debris from off-site jobs have been being dumped on the protected wetlands and within the wetland setbacks. She presented pictures to show the area in and around the wetlands. Her presentation concluded with photos of their beautiful neighborhood, where everyone cares about their well-maintained properties. She stated that this new company in the area is violating 28-6; 28-82, Table

A, Permitted Uses; 28-150, Special Use Standards for Containers; noise Ordinances S10-31; S10-33; their violating environmental nuisances Ordinances by having all of that stored wood on the property. They're violating health and sanitation ordinances, 1336, 1337 and 1339 and 1340. This is a General Business Zone District, it's supposed to be for commercial areas that serve Town-wide regional commercial needs for retail services and professional establishments. Also, allowing the application to go through is directly against the Comprehensive Community Plan of the Town Bristol. The Plan says that any economic development should be formally and neighbor oriented. And it shall have conservancy and stewardship as a given. The goals of the Town Plan are to buffer neighborhoods from incompatible land uses, such as firewood processing. It also says that people should get involved to ensure that actions today shall not impair the quality of life for the future generations. The way she sees that is, decisions were made in the past; maybe there were 10 containers on the property when the Balzanos owned it; but that doesn't mean that wrong decisions should be allowed to continue.

Mr. Jamie Lebao, 9 Jewett Ave, Bristol explained that he just inherited his house after his mother passed away. On November 4th the noise was so loud he had to leave his house that day. He even texted his brother and said they were either selling the property or doing something about it because he can't live with the unbearable noise. He teaches 7th grade history with 35 kids all day and when he get home he wants peace quiet.

Mr. Michael Riccio, 14 Jewett Avenue and also owns property at 75 DeWolf Avenue, which is directly across from the wetlands. His family has owned the property for 98 years and he's watched everything go on. Many people over the years looked the other way when Tweet was doing things; he got away with it because he was who he was.

But like what has already been said, it doesn't need to continue. During the cutting process at his house on Jewett Avenue, he took a walk down to Mason Avenue, the next street down and it was just as loud, just as annoying in the residence. General Business is retail. They've lived with the restaurant for years and it has always been a nuisance in the neighborhood, but it's a minimal nuisance. They didn't even know Mr. Ferraz was in the barn, because he never did anything to upset the neighborhood. Now they have the additional trucks lined up, which he doesn't really have a problem with. The wood processing doesn't belong in a residential area. The residents didn't buy into this; this is nonsense and should not be allowed. He also approached the Board and reviewed a map showing the wetlands area, which needs to be protected. He also lost potential tenants at his rental property once they saw and heard what was going on in the area. In response to questioning by Mr. Kogan, Mr. Riccio confirmed that he didn't have a problem with the vehicles utilizing the property, as long as they are monitored to avoid contamination of soils into the wetlands. He also admitted that the storage of boats and trailers on the property over the years didn't bother him. However the eyesore of the containers and the fact that they attract rodents is a problem that spread throughout the neighborhood.

Ms. Theresa Capello, DeWolf Avenue stated that she also grew up on DeWolf Avenue; she lives next to the Balzano family residence, so she's been impacted by a lot of changes recently. To Mr. Luk's credit that when he first took over the property, they were very encouraged by the cleanup that was happening. She also knows Paul and it's nothing personal against him, but aside from the noise, her biggest opposition is the blight that it adds to the neighborhood side, the west side of the property. Most of the other commercial stuff happening is on the east side; and it's not right in the

neighborhood that you drive by on DeWolf Avenue. They take pride in their neighborhood and want to be good neighbors to Mr. Luk as well. But they really have to be considerate about the neighbors in the neighborhood as well.

Mr. Brian Vivieros, MJV landscaping; stated that he really just wanted to apologize for any noise that they have caused or interrupted any of their lives. It was not their intent. They didn't know that they couldn't do wood there. They went there thinking this was okay. They stopped the day of the complaint. We have also not done anything to disturb any of the water way. He is personally the guy who volunteered his truck and went up to his knees in the water to take all the rims, the tires, the spray cans, the refrigerators, microwaves and paid out of his pocket to bring it to the Town dump. They have never hauled anything to the property from any outside property; all of his debris is brought to the Bristol Town dump and he has the bills to prove it. The only thing they did bring in was wood chips, because as they were driving in and out, because they thought it was okay, they did put natural chips down on the ground so that the tractors and the trucks didn't get stuck in the mud.

Ms. Cynthia Espisito, 186 Mt. Hope Avenue explained that when Mr. Luk first purchased the property the neighbors were all delighted, as he was beautifying the area. Then the whole woodworking business came in and the noise is excruciating. Being a third generation owner of this property, she believes that this type of activity shouldn't be allowed in a residential area.

Mr. Steve Neal, 4 Siegal Street, employee of MJV landscaping, stated that this is how he lives during the winter time, splitting wood. He just wanted to say, they didn't mean to start any problems, but there are quite a few of them that make their living

splitting wood. If this isn't allowed they don't have work for the winter, which means there's no money to live.

Mr. Luk just wanted to clarify a couple of things. The stuff that is brought into the lot is not actually from any of them, but from people who think that they just can dump there. He has filed police reports about the dumping since he has taken over. He believes that all Mr. Ferraz has brought in is from yards and so forth. When the noise complaint came in, he spoke with Mr. Tanner and they actually tried moving it to another location in the middle of the lot; but that didn't work either and they stopped the operation completely. He also plans on continuing to clean up the property.

Chairman Asciola stated that the public hearing was no closed to comment.

Mr. Burke stated that he was still concerned about the impact on the wetlands and thought it would be a good time to go through a comprehensive review and bring everything into compliance to the best of their ability. Obviously the noise is an issue and he would like to address the storage containers and bring those into compliance also.

Mr. Tietz stated that in regards to the procedure required by State Law to give the Board advisory on Special Use Permits. They usually only get Staff reports, but for a Special Use Permit, the Planning Board is required to review it and provide the Zoning Board with their recommendation and they did spend a fair amount of time looking at it. Obviously it wasn't a hearing and what the Board has received is based on their review of it and believes that their letter is self explanatory.

Mr. Kogan noted that the two salient reasons that the Board appears to rely on are the potential encroachment of the operations into the wetlands on the site and the negative impact on the surrounding residential neighborhood. And for that reason they

unanimously recommended that the Special Use Permit to operate landscape construction services within the General Business Zoning District at 180 Mt. Hope Avenue be denied. Mr. Tietz confirmed that the Planning Board was assuming that the wood processing operation would continue; they looked at the whole thing.

Mr. Kogan noted that he does believe that the wood cutting operation most closely fits into industrial lumber and wood product manufacturing. That is a Use that is identified in 28-82 Table of Uses; and which is permitted only in the manufacturing zone. So that use could not be permitted even by Special Use permit in a General Business Zone. So, he thinks the wood processing, wood product manufacturing is completely off the table.

Detailed discussion was held between the Board members on areas that would allow the businesses to store their equipment, without allowing the wood cutting/splitting business.

Mr. Brum stated that you had a person doing business at that location for almost 12 years and now this may affect their business because of a new tenant that wasn't doing anything wrong, but created a situation.

Mr. Asciola stated that he doesn't think that the two businesses that have been there for a long time should suffer because of something that happened. Mr. Viveiros didn't realize that he couldn't do that; but this is what brought this all to a head now and he doesn't think the other two local businesses should have to suffer now.

Mr. Kogan stated he doesn't think it should preclude Mr. Viveiros from similarly storing vehicles there. And if the area for the storage of vehicles was moved to the northeast end of the property, then 14,000 square foot wouldn't have to include the barn

and then there might be enough room for all their trucks and trailers in a 1/3 of an acre area, outside of the wetland and outside the wetland perimeter up in that corner of the property. If Mr. Luk is willing to dedicate a different 14,000 square feet of his parcel for the storage of vehicles, that until just recently wasn't bothering the neighbors, shifting it a little bit away from the neighbors who have testified here, he could go along with that. It would also reduce the impact on the perimeter area of the wetlands that is currently being impacted and has been impacted, move the parking area to the northeast end of the property, and give them what they need, 14,000 square feet, not a second area. It cleans up the area that's impacted by wetlands and wetlands perimeter and doesn't endanger it, which was the reason that the Planning Board recommended denying this, because of the potential encroachment of the operations into the wetlands. They would be reducing the encroachment and moving it up to the northeast corner and reducing the impacts on the surrounding residential neighborhood.

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MR. KOGAN: Mr. Chairman, I will make a motion that the applicant's application for a Special Use Permit to allow landscaping contract construction service businesses within a General Business Zoning district be granted. The reasons for granting that are that, first that contract construction services, which the Zoning Enforcement Officer has interpreted to include landscape construction services, are permissible within a General Business zone only by Special Use Permit. So it is in fact a use specifically authorized by the Zoning Code. And that use is identified in Section 28-82, the Use Table as contract construction services, which appears, and

I'm willing to move, that it does include landscaping contract construction services. That there are no special Standards in Section 28-150, with regard to granting of a Special Use Permit for contract construction services. So the applicable Standard for granting this permit is 28-409(c)(2)(c); that the applicant demonstrate the granting the Special Use Permit will not alter the general character of the surrounding area or impair the intent of purpose of this Chapter or the Comprehensive Plan of the Town. The testimony provided by the applicant and the business operators is that what they propose to do at this location is for storage purposes of landscaping equipment, including trucks and trailers and a few other types of equipment, including a bobcat, a tractor and a towable air compressor. And that the use that they are proposing would be to have those vehicles and towable items on the property at night for storage purposes and then and that many of them, not necessarily all, but many of them would then leave and depart the location, driven by employees of these service businesses during the day, perform their services at work sites and then they would return in the evening. And that use was going on at this location for some 12 years by Mr. Ferraz's business, for the last two years by American Tree's business and that the testimony from the neighbors was that they were unaware, or undisturbed by the presence of these landscaping vehicles being on the property at night and leaving in the morning and coming back in the evening. There were some other activities that went on that were disruptive. The dumping of debris, the

processing of the wood; but that is not what is presently being proposed to be the use to be made of the property. So that would have less of an impact and not alter the general character of the surrounding area. The neighbors from DeWolf and Jewett testified to the quality of their residential properties in the immediate surrounding area. And the presence of a general business location, which has for many years been operating as a restaurant, with the consequences of a restaurant, a day care, or nursery school business on the property, they have been there for years. As it turns out, whether with or without Special Use Permit, there have been landscaping vehicles going in and out of this property for at least 12 years, which did not result in anybody complaining to the Zoning Enforcement Officer about that level of activity. So the level of activity is limited to storage of vehicles and equipment, consistent with vehicles that are going to be left there at night, taken out during the day and brought back in the evening; that does not appear to alter the general character of the area in a negative way. And doesn't impair the intent or purpose of the Comprehensive Plan, which in part is to protect the environment. And there is going to be a condition that I am going to propose to address that particular aspect. So, my motion would be to grant the Special Use Permit to permit landscaping contract construction service businesses, subject to a number of conditions. One of those conditions is that the activities only include the storage of equipment and vehicles. That's the first condition. That storage can either be in the barn building that Mr. Ferraz is presently

occupying or in an area no larger than 14,000 square feet, which would be located separate and apart from the barn building that Mr. Ferraz is presently occupying. And that would be situated towards the northeast sector of this property. And would be entirely outside of any delineated wetlands or any portion of the wetlands perimeter, the 50 foot perimeter outside, beyond the delineated wetlands. And that that area, once it is identified by Mr. Luk to the Zoning Enforcement Officer, be somehow delineated with fencing, or some other type of markings, so that it can be monitored that this is the area which the storage of landscaping contract construction services vehicles and equipment would be permitted by the Special Use Permit. It is also conditioned on there being no operation of gasoline powered small engine landscaping equipment, such as chain saws, log splitters, or other gasoline powered, or electrical powered landscaping equipment that produces the normal noise produced by chain saws and log splitters. That's not to be permitted, condition is that cannot be permitted. Another condition for granting the Special Use Permit to allow the landscaping contractor construction service businesses within this designated 14,000 square foot are to be identified by Mr. Luk to the Zoning Enforcement Officer is that the containers and metal storage container box trailers, or whatever they are that are presently located on the property all must be removed from the property within 120 days. That will get them off the property at a time past the winter; actually 120 days would still be... that would be until the end of April. There may be issues

of mud and soft property, I'd say 180 days. That it would be conditioned upon the eventual removal within 180 days from the granting of this Special Use Permit of all of those containers and trailers that are presently on the property. That doesn't foreclose him from coming back and asking at some other point for a separate Special Use Permit to keep storage containers, or box trailers on the property; but this permit is conditioned upon removal of them within 180 days, which seems like a reasonable period of time to accomplish that. If the designated area for the landscaping contract construction service businesses is entirely outside of the wetland perimeter area, there should be no need for a DEM action on this property. So that's my motion.

MR. BURKE: Thank you, I'll second.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(SPECIAL USE APPROVED WITH CONDITIONS)

08 JANUARY 2018

5. ADJOURNMENT:

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MR. BURKE: I'll make a motion to adjourn.

MR. SIMOES: Second.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(MEETING ADJOURNED AT 10:40 P.M.)

08 JANUARY 2018

RESPECTFULLY SUBMITTED,

Susan E. Andrade

TOWN OF BRISTOL ZONING BOARD
MEETING HELD ON: 08 JANUARY 2018

Date Accepted: _____

Chairman: _____