



# Town of Portsmouth

ZONING BOARD OF REVIEW  
2200 East Main Road / Portsmouth, Rhode Island 02871  
www.portsmouthri.com

(401) 683-3611

## ZOOM MEETING

### MINUTES

**AUGUST 20, 2020**

Mr. Nott called the virtual Zoom meeting to order at 7:07 p.m. in the Town Council chambers.

#### I. ROLL CALL

**MEMBERS PRESENT:** Mr. James Nott, Chair, Mr. John Borden, Vice Chair, Mr. Benjamin Furriel, Secretary (7:30 p.m.), Ms. Kathleen Pavlakis, Mr. Eric Raposa, Ms. Sue Horwitz, First Alternate and Mr. William Wladyka, Second Alternate

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Solicitor Kevin Gavin was present on Zoom as legal counsel for the Board, Michael Asciola, Assistant Town Planner and Barbara Ripa as recording secretary.

#### II. MINUTES

A motion was made by Mr. Raposa and seconded by Mr. Borden to accept the May 21, 2020 minutes as presented. The motion carried 6 – 0 with Mr. Borden, Ms. Pavlakis, Mr. Raposa, Mr. Nott, Ms. Horwitz and Mr. Wladyka voting in favor.

#### III. CHAIRMAN'S REPORT

#### IV. OLD BUSINESS

##### **IV.I. (R-20) Christopher and Debra Burnett (Owners) Seek a Special Use Permit to Construct a Small Solar Energy System (Art. V Sec. J.3.) Located at 415 Sea Meadow Drive (42A - 55).**

Debra and Christopher Burnett, 415 Sea Meadow Drive (second residence) were sworn in. Mr. Burnett read a little history of how the solar array came about. He had already installed a similar solar array at his home in New Hampshire. Installers would not install solar panels on his roof here in Rhode Island. At the time, the Town had no solar ordinance. In fall 2018 he got a bid for equipment. The Town, meanwhile, got into a court fight regarding a solar farm and lack of an ordinance. The federal tax credit was sun-setting and the Town was sitting on his solar permit so he ended up missing grants.

The Town's draft solar ordinance went through while he was in NH. He had already built a similar array for his house in NH, so he built the solar array for the house here in RI and he says it is fully compliant, but he received no permits or inspections. Mr. Burnett said he received no feedback from the town.

Mr. Asciola said the panels are built on a shed that is not in the rear yard. They extend over the roof of the shed. There is a 12' height limit in the ordinance. Mr. Burnett said the height is 11.5'.

Mr. Furriel logged onto the Zoom meeting at about 7:30 p.m.

Mr. Burnett said a RI licensed electrician helped him, but he is not one. An official from the town has never come to look at what he's done or inspect it.

The Chair said there were letters sent to the Board from abutters that he was going to read.

A letter from Constance Keogh, 395 Sea Meadow Drive was read and entered into the minutes. The body of her July 9, 2020 letter to Chair James Nott said:

I wish to object to issuance of a special use permit to construct a solar energy system located at 415 Sea Meadow Dr., which is immediately adjacent to my property at 395 Sea Meadow Dr. I note that the system has already been built without prior issuance of a permit and is clearly visible from our home.

While I am fully supportive of responsible installation of energy conserving technology such as roof top solar panels, we know that many potential buyers of my property would consider ground level installations of the kind currently installed at 415 Sea Meadow Dr. to be unsightly and discomforting. The system is more reflective of those installed on industrial sites than on residential homes. Consequently, I feel the existence of this structure both has and will continue to have a negative effect on the value of my property. Moreover, I feel its presence is detrimental to many surrounding homes in the Sea Meadow community, one of the most highly valued communities in Portsmouth.

Because I may not be able to be present at the time of the July 16 Zoning Board of Review meeting, I request that this letter be read aloud to all those in attendance and entered into the minutes of the meeting.

A letter from David Gugliotta, President of the Sea Meadow Farms Home-Owners Association was read saying the array is not in line with the design of the neighborhood nor was a proper process followed.

A letter from Ken and Tia Scigulinsky, 368 Sea Meadow Drive was read and entered in the minutes. The body of her July 9, 2020 letter to Chair James Nott said:

We object to the (R-20) Installation of a Solar Energy System by Christopher and Debra Burnett at 415 Sea Meadow Drive for the following reasons:

Such a structure is in clear violation of the Sea Meadow Farms restrictions, which state: "**No structure shall be erected upon the granted premises for any purpose or use other than for one single family dwelling**

**house and for one private garage for the housing of a maximum of three vehicles. No outbuildings of any description shall be erected on the granted premises provided, however, that uses accessory to the residence, such as a greenhouse, pergola, or arbor are permitted."** The previous statement was extracted from the SEA MEADOW FARMS RESTRICTIONS as recorded in the Land Evidence Records, Town of Portsmouth, Rhode island in Book No. 73 Page 233-237. Our current and past association members have worked hard to maintain the intent of the restrictions.

A structure-supported solar system is totally alien to the character of the neighborhood that has sought to preserve a setting of unique, but beautiful home sites. Although partially concealed by bushes, there is no guarantee that will always be the case. Severe weather and plant disease may reduce concealment and allow greater visibility to an ugly structure that does not belong in our neighborhood.

Although the Sea meadow Farms restrictions specify dwellinghouse placement shall be at least 35 feet from the front line of the property and 15 feet beyond any other boundary line, we do not know if the illegal solar system complies with current zoning restrictions. Every violation of the Sea meadow Farms restrictions serves to diminish the unique appeal of the neighborhood and accordingly the property values also are affected.

Please deny the installation of this renegade solar system.

Mr. Nott then noted, for the record, that covenants and restrictions are a civil matter and the board will not take them into consideration. This is only a special use permit and the Board will look at special use permit criteria only. For the record, Mr. Nott read the requirements for a special use permit:

- a) The desired use will not be detrimental to the surrounding area;
- b) It will be compatible with neighboring land uses.
- c) It will not create a nuisance or a hazard in the neighborhood.
- d) Adequate protection is afforded to the surrounding property by the use of open space and planting;
- e) Safe vehicular access and adequate parking are provided;
- f) Control of noise, smoke, odors, lighting and any other objectionable feature is provided;
- g) Solar rights of the abutters are provided for;
- h) The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth; and
- i) The health, safety and welfare of the community are protected.
- j) It is consistent with the Purpose of Design Standards set forth in Article IX. Section D. and, for developments within the Town Center District, the purpose of that district as expressed in Article III.

The Chair called for abutters or interested parties. There were none.

There was additional discussion including the Burnetts saying they would add additional plantings for screening. Cort Chappell said the Burnetts have a ticket in Municipal Court because he needs a variance for a shed to be located in a side yard. He also needs an electrical permit and the satisfaction of the Building Inspector, which he cannot get without getting these variances from the Board.

A motion was made by Mr. Borden and seconded by Ms. Pavlakis to place a condition on the petition if it is approved that the petitioner plant screening so the solar array will not be visible from any area

outside their property. The motion carried 5 – 0 with Mr. Borden, Mr. Furriel, Ms. Pavlakis, Ms. Horwitz and Mr. Nott voting in favor.

Christopher and Debra Burnett of map 42A, lot 55 are before the Board seeking a **special use permit** for the purpose of having a **7.4KW ballasted ground mount solar system** for behind the meter use.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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**Mr. Borden**                      **Not Applicable**                      **Not Applicable**                      **Approve**

This has been an interesting and complex petition. The petitioner tried to install the solar system without an ordinance in place. I believe the petitioner did try to comply with the State and Town in this matter, but was unable to due to the absence of an ordinance, and it's clear this matter will be addressed by the courts. If the petitioner screens the array, no one will know there is an array in place, so I vote to approve.

**Mr. Furriel**                      **Not Applicable**                      **Not Applicable**                      **Deny**

I vote to deny due to c. and i. of the special use criteria because safety has not been met. Nothing has been approved by the Town.

**Ms. Pavlakis**                      **Not Applicable**                      **Not Applicable**                      **Deny**

I concur with Mr. Furriel and I vote to deny.

**Ms. Horwitz**                      **Not Applicable**                      **Not Applicable**                      **Approve**

I approve for reasons previously stated by Mr. Borden.

**Mr. Nott**                      **Not Applicable**                      **Not Applicable**                      **Deny**

The Chair is going to deny. I went through the special use criteria and c. and i. jumped out at me as well. Mr. Burnett isn't an engineer – is it installed correctly? He hasn't met the special use criteria. The petition has been denied.

**V. NEW BUSINESS**

**V.I. (R-20) Donovan Gray Distributing, LLC (Owners) Seek an Amendment to a Special Use Permit Granted on April 4, 2019 to Develop a Farm Brewery (Art. V Sec. C.6.) with the Renovation of an Existing Building to House Brewery Facilities on an Existing Agricultural Operation Located at 54 Bristol Ferry Road. (28 - 17)**

Chair Jim Nott recused himself from this petition and sat in the audience. Mr. Borden assumed control of the Chair.

Matthew Gray, 87 Col. Christopher Greene Road was sworn in on Zoom. Mr. Gray is one of the owners of the LLC. Mr. Gray said they would like to revise the special use permit granted in April 2019 and would like to refurbish the existing barn structure and place the brewery in it rather than do new construction. They will freshen up the building - they have received favorable opinions. They have been talking to Aquidneck Land Trust. The previous landscape plan has not changed. They plan on having a curb cut coming back so there is one-way traffic in and one-way traffic out. They are hoping to move in 2020 – 2021. The only thing that has changed is the 10,000 square foot building has been eliminated and replaced with the existing 3,600 square foot building.

The Chair called for abutters or interested parties. There were none.

Mr. Borden said Donovan Gray Distributing, LLC is seeking **an amendment to a previously approved special use permit.**

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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<b>Mr. Furriel</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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I approve this amendment. The revision has reduced the impact and given the original petition satisfied the a – j criteria, then this satisfies that criteria and I approve.

<b>Ms. Horowitz</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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I vote to approve for reasons previously stated.

<b>Ms. Pavlakis</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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I vote to approve for reasons previously stated. I’m a proponent of using existing buildings and leaving open space.

**Mr. Wladyka                      Not Applicable                      Not Applicable                      Approve**

I approve for reasons previously stated.

**Mr. Borden                      Not Applicable                      Not Applicable                      Approve**

I approve, it's very favorable – the Town wins, there is less impact to the special use criteria, it's a win-win.

Mr. Nott resumed the Chair and called for a break at 8:23 p.m.  
 The Chair called the meeting back into order at 8:28 p.m.

**V.II. (R-10) Frank Fusaro (Owner) Seeks Dimensional Variances for Two Side Yard and a Rear Yard Setback and Lot Coverage (Art. IV, Sec. B) and a Special Use Permit to Construct a Deck and Boardwalk on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 259 Riverside Street (15 - 59).**

Frank Fusaro, 259 Riverside Street was sworn in on Zoom. Mr. Fusaro said he got rid of rotted stuff and put a patio and boardwalk down. A violation was given because work was done without a permit. The wood patio is completed but not inspected.

The Chair called for abutters or interested parties. There were none.

Mr. Nott went through the special use criteria with Mr. Fusaro and he testified the petition would meet the criteria.

Mr. Nott said Frank Fusaro is before the Board for map 15, lot 59 seeking a **20' rear yard setback**, an **8' side yard setback**, a **7' side yard setback**, a **21.48% lot coverage variance** and a **special use permit** to construct a deck and boardwalk.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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**Mr. Borden                      Approve                      Approve                      Approve**

Regarding the special use permit for a substandard lot of record, it has met all the criteria and I approve. Regarding the dimensional variances, on the surface it seems excessive, but the lot is 3,920 square feet in an R10 zone. I think patios and walkways that are ground level aren't really structures and I think he overstated the lot coverage. He's really added 355 square feet and to deny would amount to a hardship

more than a mere inconvenience.

**Mr. Furriel**                      **Approve**                      **Approve**                      **Approve**

I vote to approve the special use permit, the dimensional variances, and the lot coverage variance for reasons stated by Mr. Borden.

**Ms. Pavlakis**                      **Approve**                      **Approve**                      **Approve**

For reasons previously stated, I approve of the special use permit, the dimensional variances, and the lot coverage variance. But she thinks it sets a bad precedent because he knew he was supposed to get permits previously but didn't.

**Ms. Horwitz**                      **Approve**                      **Approve**                      **Approve**

I approve of the dimensional variances and the special use permit for reasons previously stated.

**Mr. Nott**                      **Approve**                      **Approve**                      **Approve**

The Chair also approves of the dimensional variances and the special use permit for reasons previously stated by Mr. Borden.

**V.III. (R-10) Randall and Kimberly Blanchette (Owners) Seek Dimensional Variances for Rear Yard Setback and Lot Coverage (Art. IV, Sec. B) and a Special Use Permit to Construct a Pool and Deck on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 153 Massasoit Avenue (5 - 3A).**

Randall and Kimberly Blanchette, 153 Massasoit Avenue were sworn in on Zoom. Mr. Blanchette said he is seeking a variance for a 12' x 18' in-ground pool in the rear left area of his yard. When he added stonework around the pool, he had to add a request for an increase in lot coverage. There previously was an above ground pool that is gone. There is a paper road along the rear of the property where the pool will be. The rear yard setback needed is 8', so there will still be 12' to the property line.

The Chair called for abutters or interested parties. There were none.

Mr. Nott went through the special use criteria with Mr. Blanchette and he testified the petition would meet all criteria.

Randall and Kimberly Blanchette are before the Board with map 5, lot 3A seeking a **special use permit**, an **8' variance** for a **rear yard setback** and a **lot coverage variance** for the purpose of constructing an in-ground pool and deck.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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**Mr. Borden**                      **Approve**                      **Approve**                      **Approve**

I approve the special use permit for a substandard lot of record because they have testified the petition will meet the criterion. The 8’ setback variance is not excessive. No abutters will be impacted and I approve. Regarding the lot coverage, everything they are proposing is not a structure in my opinion, it is all ground level. A pool is a reasonable request to enjoy the permitted use of your property and I approve.

**Mr. Furriel**                      **Approve**                      **Approve**                      **Approve**

I vote to approve the special use permit, dimensional variance and lot coverage variance for reasons cited by Mr. Borden.

**Ms. Pavlakis**                      **Approve**                      **Approve**                      **Approve**

I approve all three applications for reasons previously stated by Mr. Borden.

**Ms. Horwitz**                      **Approve**                      **Approve**                      **Approve**

I approve all three applications for reasons previously stated.

**Mr. Nott**                      **Approve**                      **Approve**                      **Approve**

The Chair approves the special use permit, dimensional variance and lot coverage variance. To deny would amount to more than a mere inconvenience.

**V.IV. (R-20) Robert Yates (Owner) Seeks a Dimensional Variance for Rear Yard Shed Placement Requirement (Art. IV, Sec. C.5) to Construct a 10’ x 12’ Storage Shed Located at 0 Windstone Drive (48A - 72) Which Is an Adjacent Lot Under Common Ownership to the Principal Lot Known as 446 Windstone Drive (48A - 74).**

Attorney Cort Chappell, 171 Chase Road was present on Zoom representing Robert Yates. Mr. Chappell said Mr. Yates wishes to construct a 10’ x 12’ storage shed on a lot abutting his house lot where there is no dwelling or principal use. In all other ways the lot conforms.

The Chair called for abutters or interested parties. There were none.

Robert Yates is before the Board with map 48A, lot 74 seeking a **dimensional variance for rear yard shed placement** to construct a 120' storage shed on an adjacent lot under common ownership.

Dimensional Variance(s) - For Rear Yard Shed Placement	Dimensional Variance - Lot Coverage	Special Use Permit
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**Mr. Borden**                      **Approve**                      **Not Applicable**                      **Not Applicable**

The request meets all setbacks and it is allowed under the ordinance to use abutting property for accessory use, so I approve. It is a hardship more than a mere inconvenience to deny.

**Mr. Furriel**                      **Approve**                      **Not Applicable**                      **Not Applicable**

I vote to approve the dimensional variance for reasons given by Mr. Borden.

**Ms. Pavlakis**                      **Approve**                      **Not Applicable**                      **Not Applicable**

I concur with Mr. Furriel and vote to approve for reasons previously stated by Mr. Borden.

**Ms. Horwitz**                      **Approve**                      **Not Applicable**                      **Not Applicable**

I approve for reasons previously stated.

**Mr. Nott**                      **Approve**                      **Not Applicable**                      **Not Applicable**

The Chair approves the dimensional variance for reasons given by Mr. Borden.

**V.V. (R-10) Patricia Faria (Owner) Seeks a Dimensional Variance for Front Yard Setback (Art. IV Sec. B) to Construct an Access Ramp to the Front Door on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 48 Oak Street (20 - 108).**

Patricia Faria, 45 Renfrew Avenue, Middletown was sworn in on Zoom. Ms. Faria would like to build a home on the lot and everything is in conformance with Zoning except for a 3' front yard setback needed on the north for switchback stairs and a narrow deck to the front door. She also needs a special use permit to construct a dwelling on a nonconforming lot of record.

The Chair called for abutters or interested parties. There were none.

Mr. Nott went through the special use criteria with Ms. Faria and she testified the petition would meet all criteria.

Patricia Faria is before the Board with map 20, lot 108 seeking a **special use permit** and a **3' front yard setback variance** for the purpose of constructing a new dwelling.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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**Mr. Borden**                      **Approve**                      **Not Applicable**                      **Approve**

I approve the special use permit for a substandard lot of record because she has met all criterion. The front yard variance of 3' is an extremely minimal request. She has a right to build a home on her property and it would be a hardship more than a mere inconvenience if denied, so I approve.

**Mr. Furriel**                      **Approve**                      **Not Applicable**                      **Approve**

I vote to approve the special use permit and the dimensional variance for reasons given by Mr. Borden.

**Ms. Pavlakis**                      **Approve**                      **Not Applicable**                      **Approve**

I concur with my colleagues and approve both applications.

**Ms. Horwitz**                      **Approve**                      **Not Applicable**                      **Approve**

I approve of both applications for reasons previously stated.

**Mr. Nott**                      **Approve**                      **Not Applicable**                      **Approve**

The Chair applauds the applicant for doing such a great job of conforming to the ordinance, and I approve the special use permit and dimensional variance for reasons stated by Mr. Borden.

**V.VI. (R-10) Stephen and Ann Perry (Owners) Seek Dimensional Variances for Front and Side Yard Setbacks and Lot Coverage (Art. IV Sec. B) to Construct an Enclosure Around the Existing Front Entry Stairway and a Dormer on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 1277 Anthony Road (1 - 16).**

Stephen and Ann Perry, 1277 Anthony Road were sworn in on Zoom. Mr. Perry said they are looking to enclose the front stairway and rebuild it to the second floor. The front of the house is 5' back from the property line already.

Glen Fontecchio, Architect, was sworn in. Mr. Fontecchio said the enclosure will not encroach any further than exists already.

Mr. Nott went through the special use criteria with the Perrys and they testified the petition would meet all criteria.

The Chair called for abutters or interested parties. There were none.

Stephen and Ann Perry are before the Board with map 1, lot 16 seeking a **special use permit**, a **15' front yard setback variance** and a **4'6" side yard setback variance**, and a **lot coverage variance of 27.2%** for the purpose of enclosing their front stairway.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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<b>Mr. Borden</b>	<b>Approve</b>	<b>Approve</b>	<b>Approve</b>
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Regarding the special use permit criterion for a substandard lot of record, they will not encroach any further than currently and have testified the petition will meet the criterion, so I approve. It makes sense to enclose the stairs for safety, it is the least relief necessary, and to deny would be more than a mere inconvenience, so I approve.

<b>Mr. Furriel</b>	<b>Approve</b>	<b>Approve</b>	<b>Approve</b>
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I vote to approve the special use permit, the front and side variances and the lot coverage variance for reasons given by Mr. Borden.

<b>Ms. Pavlakis</b>	<b>Approve</b>	<b>Approve</b>	<b>Approve</b>
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I approve all three applications for reasons previously stated by Mr. Borden.

<b>Mr. Wladyka</b>	<b>Approve</b>	<b>Approve</b>	<b>Approve</b>
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I approve all three applications for reasons previously stated.

<b>Mr. Nott</b>	<b>Approve</b>	<b>Approve</b>	<b>Approve</b>
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The Chair approves the special use permit, dimensional variances and lot coverage variance for reasons given by Mr. Borden.

**V.VII. (R-40) Timothy and Anne Marie Corbett (Owner) Seek a Variance to Construct a Pool Without the Required Six-Foot Fence (Art. V Sec. I.5.) Located at 156 Fischer Circle (62- 74).**

Attorney Cort Chappell, 171 Chase Road was present on Zoom representing Timothy and Anne Marie Corbett. Mr. Chappell noted he was previously before the Board and made them aware of a change in the State of Rhode Island's Building Code regarding pool fencing safety. Pools that have a locking cover meeting ASTM F1346 standards do not have to have a fence around them, as the RI State Building Code has adopted the International Swimming Pool and Spa Code.

Mr. Chappell said the Corbetts were proposing an infinity pool that would face the Sakonnet River. The pool would have 4' "walls," whether made from fencing, landscaping, retaining wall, or pool wall. The pool would have a locking cover meeting ASTM F1346 standards.

The Chair call for abutters or interested parties.

Kathleen Tirrell, 189 Fischer Circle was sworn in on Zoom. Ms. Tirrell was concerned over safety, setting a precedent, and believed the 6' fencing requirement for pools should not be changed.

Rob Petrie, 153 Fischer Circle was sworn in on Zoom. Mr. Petrie was concerned about safety of the open moat, lowering the 6' fencing requirement for pools, and recommended changing the ordinance rather than getting exceptions to the ordinance.

Ray Miello, architect, 15 Ridgeland, Smithfield, RI was sworn in on Zoom. Board members had several questions for Mr. Miello.

The Zoning Board of Review typically does not meet past 10:00 p.m. As it was about that time, the Chair decided to end the meeting and asked for a motion to continue this petition and all remaining petitions to the next regularly scheduled meeting of the Board of Review.

A motion was made by Mr. Borden and seconded by Ms. Pavlakis to continue the petitions of Timothy and Anne Marie Corbett, William Breyer IV (NB V.VIII.), and Marc Smith (NB V.IX.) to the regular Board of Review meeting to be held on September 17, 2020 at 7:00 p.m. The motion carried with all voting in favor.

A motion to adjourn was made by Mr. Borden and seconded by Ms. Pavlakis. The motion carried with all voting in favor. The meeting adjourned at 10:03 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved: \_\_\_\_\_ Date: \_\_\_\_\_