

Town of Newington, NH  
Board of Adjustment Meeting Minutes  
Thursday February 22nd, 2024

A video recording of this meeting may be found at:

[https://townhallstreams.com/stream.php?location\\_id=149&id=58477](https://townhallstreams.com/stream.php?location_id=149&id=58477)

**Present:** Chair Jennifer Kent Weiner, Member John Frink, Member Emily Savinelli, Member Bob Byrnes, Alternate Roger Dieker, Alternate Derick Willson, Alternate Meaghan Wayss, Town Planner John Krebs, Attorney Keri Roman, Attorney Tim Phoenix, Cory Colwell from TF Moran, Cyrus and Robin Noble, Durham Town Planner Michael Behrendt, Rabbi Berel Slavaticki and Eleanor Boy, Recorder.

J. Kent Weiner called the meeting to order at 6:30pm.

J. Kent Weiner said that alternate Board of Adjustment member Roger Dieker will be seated as full member for this meeting.

J. Kent Weiner welcomed everyone to the February 22, 2024 public hearing and meeting of the Newington, NH Board of Adjustment. The Board will hear two applicants tonight.

The procedure that the Zoning Board of Adjustment will employ is as follows:

After the petitioner has presented the case, those who wish to speak in favor of the petition shall be given one opportunity to speak.

When all those in favor of the petition have been given an opportunity to speak, those opposed will speak, and anyone with a question may ask for clarification.

Following this, those in favor of the application shall have one opportunity to rebut, and when that phase is finished, those opposed will have one opportunity to rebut.

When speaking, please announce your name and organization. If you are a Newington resident, please state your name and address.

In addition, the following general rules apply:

- All questions shall be directed through the Chair. Please no private conversations between board members or the audience as this can be very distracting.

- Please refrain from discussion of personalities and please keep in mind that this is a hearing, not a trial or a debate.
- On its own motion, the ZBA may continue either the public hearing or the board's deliberations to another date. The ZBA may also elect to confer with its legal counsel about a case.
- The Chair will announce when the public hearing is closed.
- The Chair will announce that all comments from the floor will be disallowed while the Board deliberates on the case. The Chair requests no conversations from the audience during Board deliberations.
- The Board will ask questions of the applicant and will be polled by the Chair on each of the 5 criteria.
- The Chair will ask if the Board is ready to vote after discussion of the 5 criteria. The Secretary, immediately following the vote, shall read aloud the name of each member and how that member voted. The Secretary shall record the vote by member name on the original application or other medium suitable to public inspection. Votes on motions, appeals for variance decisions, and appeals on administrative decisions shall be by hand or voice vote at the discretion of the Chair.
- The Board will either approve the application, approve with conditions, deny the application, continue the public hearing, or continue its deliberations on the application to another meeting date. Notice of the decision will be made available for public inspection within five (5) business days, as required by RSA 676:3.
- After a decision has been reached, the Chair shall declare the hearing on the case completed.

The first variance application is for Cyrus B. Noble Revocable trust, Cyrus B. Noble & Robin B. Noble, Trustees, 41 Carters Lane, Tax Map 5/Lot 1. The applicant seeks relief of Article VII, section 1, Dimensional Requirements and Article VIII, section 7, structural setbacks.

T. Phoenix is representing the land owners Cyrus and Robin Noble for this variance request. Cory Colwell from TF Moran did the site plan work which moves items further away from the wetlands.

C. Colwell explained that the lot is 1.07 acres and has 372 feet of frontage along Carters Lane. The lot is in flood zone X, with a 20-foot difference in elevation on the lot. The current home on the lot is proposed to remain and will be used as a family area with a bathroom. The back shed will be removed and some of the old driveway.

The proposed home is 4,515 square feet and will be outside of the 100-foot tidal buffer zone. The proposed patio is inside the 100-foot tidal buffer, but it is pervious. The proposed leach field will be outside of the 100-foot tidal buffer zone. The proposed septic system will have two tanks, the first tank is within the 100-foot tidal buffer zone, the second tank is outside of the zone. The trees along the shoreline will remain and additional vegetation will be added. They plan on removing the existing leach field that is within the 50-foot tidal buffer. The grading on the property would be around the septic system and around the driveway. There will be no new impervious areas within the 100-foot tidal zone. Most of the trees in the 50-foot tidal buffer zone will remain, plus additional plantings will be added to that buffer. There will also be additional landscaping along the southern boundary line and between the home and Carters Lane. C. Colwell believes that when this project is done, it will improve the property considerably by reducing the amount of impervious area on the lot, the leach field within the 50-foot buffer will be removed, they are adding plantings within the buffer to help filter out any storm water in a storm event that might go into Great Bay.

C. Colwell said that this plan was presented to the Conservation Commission and they liked the project and recommended approval of the project, but asked that the patio be pervious, that they have a planting plan and that a location for the propane tank and the generator be added to the plans.

T. Phoenix believes that this plan is making everything better than what is on the lot now. They are removing 1,300 square feet of impervious surfaces within the 100-foot tidal buffer zone. The existing home on the property is going to remain and become a family area with a bathroom. It will not be a dwelling, just a family area. The proposed leach field is 13 feet from the front set back instead of 40 feet, which was intentional because this would allow the entire leach field to be outside of the 100-foot buffer zone. The septic tank is 89.6 feet from the wetlands and the patio is 67.6 feet from the water, but it is impervious. Care was taken to have the entire proposed house outside of the 100-foot buffer.

T. Phoenix addressed the five criteria.

1 & 2. The variance will not be contrary to the public interest and granting the variance is not contrary to the spirit of the Ordinance. The issue is whether granting a variance unduly and in a marked degree conflicts with the ordinance such that it violates the ordinance's basic zoning objectives. T. Phoenix doesn't believe this is true in this project because they are removing 1,300 square feet of impervious surface. They don't believe

the variances that they need violate the basic purposes of the ordinances. The current septic system is old and very close to the water, this plan would improve that with an advanced treatment system. The leach field will be outside the 100-foot buffer. The variances will not change the character of the locality.

3. Substantial Justice is done.

T. Phoenix believes that the improvements to the property are a gain to the general public. The variances are a very minor ask compared to the improvements.

4. The values of surrounding properties are not diminished.

It is a beautiful designed home and improvements to the lot and believes the value of surrounding properties will not be diminished.

5. The hardship test.

- Specific conditions that distinguish this property from others.

T. Phoenix thinks the size and shape of the lot creates special conditions.

- There is no fair and substantial relationship between the general purposes of the ordinance and its specific application in this instance.

T. Phoenix said that no sight lines or storm water management will be harmed by these variance requests for the set back of the septic tank and leach field. Both new locations are an improvement to what exists on the lot now. They are not violating the purposes of the ordinance they are improving the purposes of the 100-foot wetland set back.

- Is the proposed use reasonable?

T. Phoenix said that these aren't use variances they are dimensional variances.

J. Kent Weiner asked if there were any members of the public that would like to speak in favor or opposed to this plan. There were none.

**J. Frink moved to close the public hearing. E. Savinelli seconded the motion. All were in favor.**

J. Frink asked if gravel was considered a pervious surface and pointed out that they are adding a lot of new impervious surface outside of the 100-foot buffer zone. They are removing some inside the buffer zone, but adding more outside of the zone.

J. Krebs said that the Town Engineer would consider gravel as impervious because over time it becomes impacted.

R. Dieker asked about the square footage and number of bedrooms of the existing home. R. Nobel said about 1,150 square feet with two bedrooms.

J. Krebs said that Newington doesn't allow detached ADU units. The existing house can stay there as a "bonus room". It could be part of a conditional approval.

The new house is 5,500 square feet with a four-car garage.

M. Wayss asked about the two proposed driveways and thought that the Town only allowed one driveway. J. Krebs said that the Planning Board tries to limit driveways to one per lot, but have issued two driveway permits, but they would have to get permission from the Planning Board to have two driveways.

M. Wayss also questioned the current home being converted into a function room with a bathroom. J. Krebs said that since the home is there now, it is grandfathered in as long as there are no bedrooms.

E. Savinelli questioned if there was going to be a walkway or pavers connecting the house with the bonus room. C. Noble said that it was going to be grass.

B. Byrnes asked if the proposed patio would be at the existing grade. C. Colwell said yes. T. Phoenix said that the patio is pervious, so most of the storm water will go through it into the ground. In a large rain storm the water would sheet off of it towards the north north-west. B. Byrnes pointed out that it is quite steep coming up from the water and the patio is only about ten feet from the drop off to the bay. It seems that the plan will be moving water to a concentrated place and then there could be erosion problems.

T. Phoenix said because the patio is pervious, in 80% of storms there won't be run off from the patio, the water will go through it. B. Byrnes said that his biggest concern is the runoff and feels it is a detriment to the public interest because we need to protect the bay.

D. Willson asked about the bathroom that will remain in the old house. C. Colwell said that it will be pumped to the new septic system. The septic plan is done, but DES won't approve it until they receive local approval. This plan also requires a wetland permit and a shoreline permit from the State.

J. Kent Weiner agrees that the leach field and the septic tank are in a better place and understands the variance request for them. J. Kent Weiner's concern is with the patio and how big it is. It is over 1,300 square feet and asked if it could be smaller to comply with the ordinances. C. Colwell said that there are doorways coming from the house to the terrace and patio. The Nobles have four children and want a large area for the family to gather. J. Kent Weiner asked if there was a maintenance plan to upkeep the patio because it takes a lot of maintenance to keep it being an efficient pervious patio. T. Pheonix said that a condition of approval could be to maintain the patio.

J. Kent Weiner asked if they could sever the pipe to the old septic system. T. Phoenix said that they would remove the pipe and fill the tank with sand and would be open to a condition for approval being that they cut the pipe and fill the tank with sand.

M. Wayss said that she appreciates all the improvements they are doing to the lot, but is struggling with the decision to keep the old house on the lot and thought that the Town didn't allow more than one principle building on a lot. J. Krebs said the proposed house is compliant with the Town's ordinances and the Board should look at the existing house as a garage or bonus room above a garage.

K. Roman said that the way the ordinance is written is that the use of the existing house is allowed under the Town's ordinance. It is an accessory building. It's not a principal building and it's not a dwelling unit. The Board could put conditions to ensure that it doesn't become a dwelling unit. Their proposed use of the existing house on the lot is allowed, but the existing house does not comply with the setbacks, but it is preexisting so it is grandfathered in.

J. Frink asked if the Nobles would be willing to give up the using the existing house as a bonus room in order to get this variance. T. Phoenix said that the existing building can stay there no matter what they do on the rest of the lot and believes that they have improved the lot substantially. They should be allowed to leave that building there because it is grandfathered in.

K. Roman said the Newington doesn't have an impervious coverage in a residential area limitation. The impervious coverage is an issue, but it is compliant.

T. Phoenix said that they are asking for relief on three issues. The leach field is better in the front set back than within 100 feet of the water, part of one of the septic tanks and the pervious patio. These are all improvements and not a big ask and the owners shouldn't be required to remove the old house, especially since it is grandfathered in.

E. Savinelli asked about the two driveways. J. Krebs said that they would have to go before the Planning Board to get approval for two driveways, but it is premature for them to do that before they get approval for these variances. J. Krebs could carry the driveway concern from the Zoning Board to the Planning Board for their consideration.

J. Kent Weiner reminded the Board that they are considering three variances tonight.

- The leach field is 13 feet from the front setback where 40 feet is required
- One of the septic tanks is 89.6 feet from the wetlands where 100 feet is required
- The pervious patio is 67.6 feet from the water where 100 feet is required

B. Byrnes voiced his concern about the amount of runoff that would be going into the bay.

K. Roman said that the existing home is a concern of the Board and would the Nobles consider a restrictive covenant on the existing home to ensure that it will never be used as a dwelling unit. The Nobles said that they would agree that it won't be a second dwelling and even if the Newington's laws change. It could also be part of the deed so this stipulation would be permanent.

Discussion of the five criteria questions began on the first variance requested, to allow a leach field 13 feet from the front set back where 40 feet is required:

**1. & 2. The variance will not be contrary to the public interest and the spirit of the ordinance is observed.**

- Would granting the variance unduly (excessively) and in a marked (striking obvious) degree conflict with these objectives?
- Would granting the variance alter the essential character of the neighborhood?
- Would granting the variance threaten the public health, safety or welfare?

J. Frink thought that it served the purpose of the ordinance to have their septic system located with a small amount in the buffer zone because it is an improvement to what was there previously.

All five members of the Board agreed for the variance for the first two criteria.

**3. Substantial Justice is done**

- Is there a gain to the general public by denying the variance requested?

J. Frink didn't think so. B. Byrnes said that it is a grandfathered lot and the septic system needs to exist and doesn't think it could be moved anywhere on the property and meet the requirements.

- What is the loss to the applicant if the variance is denied?
- Does the gain to the public outweigh the loss to the applicant?

**4. The values of surrounding properties are not diminished**

- Will surrounding property values be negatively affected?

J. Frink said that this plan goes to the edge of every setback every time. The reason that they need a variance is because their plan fills up the space that they can have. If the house wasn't so ambitious, they wouldn't need this variance. As far as abutting property values, J. Frink has been contacted by some of the abutters that are concerned about their property values. At some point, J. Frink feels that the Board has to be cognizant that there is a significant concern with the surrounding property values, not because of the septic system. If the house was a little smaller, then they could fit everything in and not need a variance for the setbacks.

K. Roman said that this point could be made under the hardship part of this process.

J. Kent Weiner asked if the location of the proposed leach field affects surrounding property values.

The Board members didn't think that it did.

5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.

A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The propose use is a reasonable one.

- Is there a hardship as a result of specific conditions of this property and not the area in general?

E. Savinelli said that it is a non-conforming lot. Its an oddly shaped lot.

- What are the General Public Purposes of the Ordinance Provision at issue?

J. Kent Weiner read the purpose of this ordinance.

This ordinance promotes health, safety, morals, convenience, economic prosperity, and general welfare in the Town of Newington, NH. It regulates use, civic design and arrangement of structures and land for trade, industry, residence, transportation and other public requirements in accordance with the Town Master Plan to retain the rural charm now attached to our town. The ordinance seeks to achieve its purpose by defining standard terms; establishing districts; setting limits on structures and land use; identifying requirements for specific facilities, businesses and land use; and identifying procedures for the administration, amendment and enforcement of the Zoning Ordinance.

K. Roman said that, generally, setbacks are meant to allow for space, for distance between properties, buildings and structures.

- Apply this public purpose of this property-does a fair and substantial relationship exist-is it fair to tie the public purpose to this property given the property's special conditions?

J. Kent Weiner thought that the proposed leach field will be an improvement from what exists on the property now. The Board members agreed.

- Is the proposed use reasonable?

The members said yes.



**E. Savinelli moved to grant a variance to allow a leach field 13 feet from the front set back where 40 feet is required. R. Dieker seconded the motion. J. Kent Weiner called for a vote.**

**B. Byrnes-Yes, J. Frink-No, R. Dieker-Yes, E. Savinelli-Yes and J. Kent Weiner-Yes. The motion passes.**

Discussion of the five criteria questions began on the second variance requested, to allow a septic tank 89.6 feet from the tidal wetland buffer where 100 feet is required:

**1. & 2. The variance will not be contrary to the public interest and the spirit of the ordinance is observed.**

E. Savinelli thought that it wasn't contrary to the public interest because they are making an improvement.

**3. Substantial Justice is done**

- Is there a gain to the general public by denying the variance requested?

E. Savinelli said that there is an improvement with the new placement of the septic tank on the lot.

**4. The values of surrounding properties are not diminished**

- Will surrounding property values be negatively affected?

The members thought it was an improvement and wouldn't diminish the values of the surrounding properties.

**5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.**

A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

i, No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The propose use is a reasonable one.

- Is there a hardship as a result of specific conditions of this property and not the area in general?

E. Savinelli thought that the shape of the lot and the fact that it is the cove is restrictive to what they can do with the septic tank. R. Dieker said that they are only restricted by the footprint of the proposed house and believes they could move the septic tank up closer to the road and believes there are other options. J. Frink feels that this lot is overbuilt and the hardship is because they have used every square inch of the nonsetback property for their structure, so that is not really a hardship because they have left themselves not enough room for their infrastructure. R. Dieker thinks that it is

an improvement from where the tank is today to where the new one is proposed to be. J. Kent Weiner also thinks it is an improvement.

- Is the proposed use reasonable?

B. Byrnes thought it was reasonable if they had no options, but they do have options.

K. Roman said that the proposed use is residential, so it is asking if the residential use is reasonable.

B. Byrnes thought the residential use is reasonable.

J. Kent Weiner asked for a straw vote of the Board on this variance.

R. Dieker, E. Savinelli and J. Kent Weiner would be in favor and J. Frink and B. Byrnes would be opposed.

J. Krebs said that the septic tank would have to meet all the State requirements and doesn't think there is a need for any conditions attached to this variance, but they could say that the approval is subject to all state approvals.

**E. Savinelli moved to grant a variance to allow a septic tank 89.6 feet from the tidal buffer zone where 100 feet is required with the condition that the approval is subject to all state approvals. R. Dieker seconded the motion. J. Kent Weiner called for a vote.**

**B. Byrnes-No, J. Frink-No, R. Dieker-Yes, E. Savinelli-Yes and J. Kent Weiner-Yes. The motion passes.**

Discussion of the five criteria questions began on the third variance requested, to allow a pervious patio 67.6 feet from the tidal wetland buffer where 100 feet is required:

**1. & 2. The variance will not be contrary to the public interest and the spirit of the ordinance is observed.**

- Would granting the variance unduly (excessively) and in a marked (striking obvious) degree conflict with these objectives?

J. Frink thought it would because they are unwilling to abandon the current house and barn on the property and want to build out into the setback. R. Dieker said that he understands the technology that C. Colwell is talking about but, the patio will still be at 67.6 feet instead of 100 feet.

**3. Substantial Justice is done**

- Is there a gain to the general public by denying the variance requested?

B. Byrnes thought that we need to protect Great Bay and need to keep things back away from steep grades going down to the shore. There is a potential for erosion when the patio is that close and it is that steep. That would be a potential negative to the public.

K. Roman asked if this variance was denied is there a gain to the public. The Board said that the gain to the public would be protecting the bay from runoff.

- What is the loss to the applicant if the variance is denied?

J. Kent Weiner thought an option could be to build a smaller patio. The Board thought that there is no loss to the applicant if the variance is denied.

- Does the gain to the public outweigh the loss to the applicant?

J. Kent Weiner thought the gain does outweigh the loss because of the protection to the bay.

#### **4. The values of surrounding properties are not diminished**

- Will surrounding property values be negatively affected?

The members thought it wouldn't diminish the surrounding property values.

#### **5. Literal enforcement of the provision of the ordinance would result in an unnecessary hardship.**

A. For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

i, No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

ii. The proposed use is a reasonable one.

- Is there a hardship as a result of specific conditions of this property and not the area in general?

E. Savinelli said that other homes in the area are trying to stay behind the setbacks.

- What are the General Public Purposes of the Ordinance Provision at issue?

K. Roman read the purpose of this ordinance.

To protect the public health, safety, and general welfare as well as the wetlands ecological integrity and function by controlling and guiding the use of land areas that which have been found to be wetlands. It is intended that this article shall a) prevent development of structures and land uses on the wetlands. K. Roman said that this isn't what is before the Board because the patio isn't proposed to be in the wetlands. b) Prevent destruction or significant changes to the natural wetlands that provide flood protection and provide filtration of water, augment stream flow and are connected to ground and surface water c) protect wildlife habitat, maintain ecological balances and enhance ecological values d) protect potential water supplies, existing aquifers (water

bearing stratum) and aquifer recharge areas e) Prevent unnecessary or excessive expense to the Town in providing or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands f) Prevent damage to structures and properties caused by inappropriate development of wetlands.

- Apply this public purpose to the property-does a fair and substantial relationship exist-is it fair to tie the public purpose to this property given the property's special conditions?

J. Kent Weiner explained that many properties are unique, but the patio on this property, being so far out, is an infringement on the wetlands and the buffer.

T. Pheonix proposed that the applicant reduce the patio size by one third, a 560 square foot reduction.

J. Kent Weiner asked if the Board would be willing to discuss the proposed reduction to the patio. B. Byrnes-No, J. Frink-No, R. Dieker-No, E. Savinelli-No, J. Kent Weiner-No. The Board does not want to discuss the proposal.

J. Kent Weiner asked for a straw vote of the Board on discussing the proposed reduction of the patio from 1,375 square feet to 815 square feet. B. Byrnes-No, J. Frink-No, R. Dieker-No, E. Savinelli-No, J. Kent Weiner-No

J. Kent Weiner asked for a straw vote on the third variance requested to allow a pervious patio 67.6 feet from the tidal wetland buffer where 100 feet is required: No Board members would be in favor of granting the variance.

T. Pheonix said that he had gotten authority from the Nobles to withdraw the variance request for the patio.

The Board took a five-minute break.

J. Kent Weiner opened the public hearing on the variance application for Seacoast Chabad Jewish Center, 2299 Woodbury Avenue, Suite 5, Tax Map 19/ Lot 9. The applicant seeks relief of Article III, Section 2.B Principal Uses Permitted (1) to allow a Café' where restaurants are not permitted.

Michael Behrendt spoke on behalf of the Seacoast Chabad Jewish Center for this variance request. M. Behrendt explained that he is the Town Planner for the Town of Durham and a member of the Chabad Jewish Center.

The Chabad Jewish Center would like to open a small café for the members of the Chabad, other tenants in the building and the general public. Office space in on the decline and an onsite café' could be appealing for potential tenants in the building. M. Behrendt said that there is already a commercial kitchen in the building so no changes will need to be made to the buildings. The café' will only have approximately 10-20

seats. There is plenty of parking on the site to accommodate customers. The café' would enhance the community and only represents 10% of the entire building.

Rabbi Berel Slavaticki spoke about Newington has welcomed the community and the Police have been very supportive of the center.

J. Kent Weiner asked if there were any pubic speakers attending the public hearing that would like to speak in favor of this variance.

Mark Phillips, who is an abutter to the property, spoke in favor of the variance and said that the Chabad Center is a great neighbor and the café' is not a negative for anyone. M. Phillips explained the history of the office zone along Woodbury Avenue and the fact that the commercial zone, that allows all uses, is right across the street from the center. Another member of the public spoke in favor of the variance and spoke about the lack of kosher food in the seacoast and the need for it in the community. Another member of the community spoke in favor of the variance.

No members of the public opposed to this variance request.

**E. Savinelli moved to close the public hearing. R. Dieker seconded the motion. All were in favor.**

J. Krebs talked about the difference between the allowed uses in the commercial zone vs the office zone.

R. Dieker asked how many seats would be in the café'. Rabbi Slavaticki said 5-10 seats. J. Krebs thought that number wasn't realistic and thought it would be closer to 20-30 seats.

J. Frink asked if they would need a sign for the café'.

Rabbi Salvalticki said that they would need a small one.

Discussion of the five criteria questions began:

**1. The variance will not be contrary to the public interest and the spirit of the ordinance is observed.**

- Would granting the variance alter the essential character of the neighborhood?
- Would granting the variance threaten the public health, safety or welfare?

B. Byrnes said that he thought that approval for a restaurant, leaves the future wide open and a condition on approval should include a limit on the number of tables that

would be allowed in the restaurant.

K. Roman suggested language that would limit the number of tables in the restaurant and the approved only as an accessory to the Chabad Center. Which means if the Chabad center would leave that building the approval leaves with them.

E. Savinelli like the idea of putting a stipulation on the café approval leaving if the Chabad leaves.

- Would granting the variance unduly (excessively) and in a marked (striking, obvious) degree conflict with these objectives?
  - Would granting the variance alter the essential character of the neighborhood?
  - Would granting the variance threaten the public health, safety or welfare?

The members didn't think that this variance would alter the neighborhood or threaten the public health safety or welfare.

**R. Dieker-Yes, E. Savinelli-Yes, J. Kent Weiner-Yes, J. Frink-Yes and B. Byrnes-Yes.**

## **2. The spirit of the ordinance is observed.**

The members thought that the spirit of the ordinance is being observed.

**R. Dieker-Yes, E. Savinelli-Yes, J. Kent Weiner-Yes, J. Frink-Yes and B. Byrnes-Yes.**

## **3. Substantial justice is done.**

- Is there a gain to the general public by denying the variance requested?

The Board thought that there wouldn't be a gain by denying this variance.

- What is the loss to the applicant if the variance is denied?

The Board thought there would be a loss to the applicant.

- Does the gain to the public outweigh the loss to the applicant?

The Board thought the gain to the public does not outweigh the loss to the applicant.

**R. Dieker-Yes, E. Savinelli-Yes, J. Kent Weiner-Yes, J. Frink-Yes and B. Byrnes-Yes.**

## **4. The values of surrounding properties are not diminished.**

- Will surrounding property values be negatively affected?

Th Board agreed that the surrounding property values will not be negatively affected.

**R. Dieker-Yes, E. Savinelli-Yes, J. Kent Weiner-Yes, J. Frink-Yes and B. Byrnes-Yes.**

**5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.**

- A. For purposes of this sub paragraph, “unnecessary hardship” means that owing to special conditions of the property that distinguish it from other properties in the area:

No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and

The proposed use is a reasonable one.

- Is there a hardship as a result of specific conditions of this property and not the area in general?

J. Frink pointed out that it is a unique property and there isn’t anything like it in the area and a difficult property to develop.

- What are the General Public Purposes of the Ordinance Provision at issue.

J. Kent Weiner said even though the café’ is not technically allowed in this zone, it is consistent with other businesses in the area and with the other zone. The members agreed.

**R. Dieker-Yes, E. Savinelli-Yes, J. Kent Weiner-Yes, J. Frink-Yes and B. Byrnes-Yes.**

K. Roman reviewed what had been discussed so far that a condition of approval would be that the restaurant is only permitted or used as accessory to and part of Chabad principal use.

J. Kent Weiner asked for a vote on the variance application for Seacoast Chabad Jewish Center, 2299 Woodbury Avenue, Suite 5, Tax Map 19/Lot 9. The applicant seeks relief of Article III, section 2 B Principle Uses Permitted (1) to allow a Café’ where restaurants are not permitted.

**E. Savinelli moved to approve the variance requested by Seacoast Chabad Jewish Center, 2299 Woodbury Avenue, Suite 5, Tax Map 19, Lot 9 for relief of Article III, section 2B, Principle Uses Permitted (1) to allow a Café’ where restaurants are not permitted with the condition that the restaurant is only permitted or used as accessory to and part of the Seacoast Chabad Jewish Center. R. Dieker seconded the motion. B.**

**Byrnes-Yes, J. Frink-Yes, R. Dieker-Yes, E. Savinelli-Yes, J. Kent Weiner-Yes. All were in favor.**

K. Roman reviewed her findings of facts:

The location is unique and a gateway location. The office market is weak and there is difficulty filling office space. It is a large five-acre lot. There is already a large commercial kitchen on site making this property unique. Other buildings in the area are large "box type" buildings which aren't conducive to small public uses. This building is unique and conducive to small public use. The proposed restaurant will use less than 10% of the floor area of the building. It is a unique property converted from a farm. It is a multiple building, nothing like it around. There is already a large parking lot.

J. Kent Weiner said that alternate Board of Adjustment member M. Wayss will be seated as full member for the approval of the minutes from February 15, 2024.

**Minutes Approval:**

**J. Frink moved to approve to February 15, 2024 minutes as written. M. Wayss seconded the motion. All were in favor.**

**Adjournment: J. Frink moved to adjourn at 9:33pm. R. Dieker seconded the motion. All were in favor.**

Respectfully submitted,  
Eleanor Boy, Recorder