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 INST# 17255  
 TOWN OF SOUTH KINGSTOWN, RI



## Town of South Kingstown, Rhode Island

**BUILDING AND ZONING DEPARTMENT**  
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August 19, 2021

### NOTICE OF DECISION SOUTH KINGSTOWN ZONING BOARD OF REVIEW

**Petition of Garrett Homes, LLC, 59 Field Street, Torrington CT 06790 for a Special Use Permit under the Zoning Ordinance as follows: The applicant is seeking to construct a 7,545 square foot retail trade structure. The applicant was previously denied a special use permit from the Zoning Board of Review, but has since revised the plan to include two adjacent lots. The Planning Board advisory Development Plan Review was granted April 27, 2021. Lot size is 94,902 square feet. A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table, Use Code 55) and Section 911 (Repetitive Petitions). Owner of the property is South Shore Mental Health Center Inc for premises located at South Kingstown, Assessor’s Map 40-1, Lot 125 and Alternative Living Concepts c/o Gateway Health Care for premises located at South Kingstown, Assessor’s Map 40-1, Lot 126. Both lots are zoned MU (Mixed Use).**

The above-captioned matter came before the Town of South Kingstown Zoning Board of Review (the “Board”) at a duly-noticed public hearing held on June 16, 2021, and continued to July 21, 2021. The Board met remotely pursuant to Governor McKee’s Executive Order 20-46, as modified by 21-60, issued on May 27, 2021, and Executive Order 21-72, issued on June 24, 2021.

On June 16, 2021, Joseph Brennan, Esq., represented Garrett Homes, LLC (the “Applicant”), who presented testimony in support of the application from the following individuals: Matthew Bruton, PE, civil engineer; Douglas Grunert, AIA, architect; and Edward Pimentel, AICP, a land use planning consultant.

The Board heard testimony from and/or received correspondence from the following individuals: John Dowling, expressing concerns regarding traffic impacts; Monica Hanson, also expressing concerns regarding traffic impacts; and Richard Menard, expressing concerns about potential diminution of property values in the surrounding area.

The Board received and reviewed the decision of the Planning Board, dated April 28, 2021, indicating that the Planning Board voted unanimously (7-0) to grant advisory development plan approval to the proposed development, with a number of recommended conditions on the special use permit.

Board members Daniels and Charkowick expressed concerns with the traffic study, which was prepared in May 2019. They jointly requested that the author of the traffic study appear before the Board, and also requested that the traffic study be updated. The Board continued the public hearing until such time as the applicant provided an updated traffic study.

The public hearing resumed on July 21, 2021, with K. Joseph Shekarchi, Esq., representing the Applicant. Michael Dion, PE, was presented and recognized as an expert in traffic engineering. Mr. Dion explained that the traffic study was updated to include supplemental traffic counts from November 2019 to address the concerns raised regarding traffic during the academic year for the University of Rhode Island (URI). Mr. Dion testified consistently with the opinion he offered in the written traffic study; specifically, that “the existing roadway network can readily absorb the small increase in traffic expected from the retail development with little perceptible change in traffic operations.” Member Daniels questioned Mr. Dion regarding the data and conclusions of the traffic study and related his experience visiting two existing Dollar General stores, during which he personally conducted traffic counts that suggested higher traffic volumes than what Mr. Dion’s report predicts for this location.

The Board acknowledged receipt of a written report from Edward Pimentel, the Applicant’s land use planning consultant, setting forth Mr. Pimentel’s opinion that the proposed development was consistent with the Comprehensive Plan and satisfied the standards set forth in the Zoning Ordinance for approval of a special use permit.

The Board acknowledged receipt of correspondence from Attorney Frank A. Lombardi, representing the Southwinds Condominium Association. The Southwinds condo complex is a 63-unit age-restricted (55+) located on Southwinds Drive, diagonally across Kingstown Road in close proximity to the subject Property. The correspondence related concerns about negative impacts of increased traffic if the proposed development were approved, which could in turn lead to reduced response times by emergency vehicles and a decrease in the property value of the condo units. Attorney Shekarchi noted that the correspondence did not cite expert evidence and also indicated that the Applicant would be willing to install a crosswalk across Kingstown Road.

The Board also received correspondence from Bonnie Baranowski, Ph.D., a resident of the Southwinds condo complex who was present and testified at the hearing. Dr. Baranowski related her opinion that the proposed retail use would have negative effects on traffic in the area.

After discussion, Member Walsh moved to direct legal counsel to prepare a written decision approving the application. The motion was duly seconded by Member Rosen. A vote was taken on the motion:

**Member Walsh: Aye****Member Rosen: Aye****Member Daniels: Nay****Member Charkowick: Nay****Chair Cagnetta: Aye**

The motion thus failed pursuant to § 45-24-57(2)(iii) of the Zoning Enabling Act, under which an application for a special use permit may not be deemed approved unless four of the five active members of the Zoning Board vote in favor of the application.

Members Daniels and Charkowick articulated their reasons for voting to deny the application. Member Daniels indicated his view that the application did not satisfy the standards for a special use permit set forth in Sec. 907(A)(2) of the Zoning Ordinance. Specifically, the application failed to satisfy the standard that “satisfactory provisions and arrangements have been or will be made concerning . . . [i]ngress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency or catastrophe.” He stated that the development would compromise safety and traffic flow, and specifically, making left turns would compromise the heavy traffic flow on Kingstown Road. In his view, the changes to the application from the previous application that was denied and is currently under appeal relate only to internal lot structure, and do not impact ingress, egress, and traffic flow. The traffic study remains essentially unchanged from the version that was previously presented to the Board. He also noted that, based on his personal observations with existing Dollar General stores in other communities, the traffic counts in the Applicant’s study lacked reliability. Finally, he expressed his view that the proposed development would be inconsistent with the Comprehensive Plan and would alter the general character of the surrounding area, given the subject property’s close proximity to adjacent residential developments. The MU zone was designed to discourage strip malls and adjacent retail businesses.

Member Charkowick echoed the concerns of Member Daniels, and additionally pointed out that the property lies within the Kingstown Road Special Management District. Kingstown Road is identified in the Comprehensive Plan as a road that has the potential to develop into commercial strips which exacerbate traffic problems and create visual clutter and he believes that the addition of this business would do exactly that.

Accordingly, the Board’s decision is supported by the findings of fact and conclusions of law, as articulated by Member Daniels and Member Charkowick, that the application does not satisfy all of the standards set forth in Sec. 907(A)(2); specifically, the requirement that the proposed development will not alter the general character of the surrounding area or impair the intent or purpose of this ordinance or the Town’s Comprehensive Plan, and the requirement that the proposed development has made satisfactory provisions and arrangements for ingress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency or catastrophe.

Respectfully,

A handwritten signature in black ink, appearing to read "James Gorman". The signature is written in a cursive style with a large initial "J" and "G".

James Gorman,  
Building Official & Zoning Clerk  
Town of South Kingstown