

**TOWN OF RYE – BOARD OF ADJUSTMENT
MEETING**

Wednesday, August 26, 2020

7:00 p.m. – via ZOOM

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Rob Patten, Charles Hoyt, and Alternates Chris Piela and Greg Mikolaities *(sitting only for application #1)*

Present on behalf of the Town: Planning/Zoning Administrator Kimberly Reed

I. CALL TO ORDER

Chair Weathersby called the meeting to order at 7:05 p.m. via Zoom teleconferencing.

Statement by Patricia Weathersby:

As chair of the Rye Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: www.zoom.com ID #823-1350-0136 Password: 309467

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at: town.rye.nh.us go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 603-379-0801 or email: Kim Reed at KReed@town.rye.nh.us.

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance of members:

1. Chris Piela
2. Rob Patten
3. Charles Hoyt
4. Shawn Crapo
5. Burt Dibble
6. Patricia Weathersby

(Each board member confirmed that there were no others present with them in the room.)

II. APPLICATIONS

Note: *Burt Dibble recused himself from the following application and Greg Mikolaities was seated.*

Sitting for application: Patricia Weathersby, Shawn Crapo, Rob Patten, Charles Hoyt and Greg Mikolaities

- 1. Underwood Engineers, Inc. for Star Island Corporation for property owned and located at Caretakers Building, 2 Star Island, Tax Map 28, Lot 3 requests a waiver from Building Code §35-14.C.1 to allow the bottom of the proposed effluent disposal system to be less than 6' above the top of any bedrock or impermeable substratum. Property located in the Single Residence and Historical District. Case #27-2020.**

Robert Saunders, Underwood Engineers, representing the applicant, presented to the Board. He noted that the application has to do with the construction of a septic system on the island. It is not a replacement system. He explained there is an existing septic system on the island that handles a number of the buildings that see various levels of use, in the shoulder seasons, the period when the island is ramping up to go into full usage for the summer season, and the fall when the usage is ramping back down. The current system is largely an unknown entity. It is not known when it was built, as it was done long before permitting. After some research, it was found that it is a stone and pipe system and the size of the system was determined. However, it is clearly not a system that was designed or permitted for how it is used today. The proposed system is intended to pull the only building that is occupied year-round off that system and construct an actual engineered designed permitted system for that building. The building is the caretaker's cabin (also known as the EMB building) and for five or six months out of the year it is occupied by two individuals. However, during the shoulder season there may be others using the system so it is an oversized system that is being proposed. It is really only intended to serve this one building that is occupied year-round. This project has come about due to some problems that have been experienced over the years with the current system. It is quite a bit away from this building located between the caretaker's cabin and the existing field. There have been frozen lines and other difficulties. Access to the island in the wintertime is not optimal for getting crews out there to make repairs on the system. Having a solid reliable system that will service the caretaker's cottage year-round is the goal for this system. He pointed out that doing that will take away loading that is going to the existing system. There is no increase in flow, as it

already exists on the island. It is just being relocated to be much closer to the caretaker's cabin and to make sure it does not require any electrical needs. Certain buildings on the current system had to be pumped at times for the system to operate. He commented that in the wintertime there is no electricity on the island. The uniqueness of the site is the fact that it is an island, it does not have power year-round and is basically a 40-acre rock with anywhere from zero soil to as much as 40" of soil, which is the place that the new system will be going. There are no abutters. It is a unique parcel and a unique project. The goal is to design a currently conforming system by State regulations, designed and installed per the manufacturers guidance to handle an existing flow that occurs on the site. Mr. Saunders noted that the existing field is probably 100' to the east of the EMB, which puts it 70' east from the proposed system. It is not really a large shift in location between the proposed field and the existing. The fields are generally in the same area of the island.

Chair Weathersby stated the Board has received the submittals and has read all the responses in regard to the criteria.

Mr. Saunders reiterated there will be no increase in flow. The intent is to build a conforming permitted system, as opposed to the one that is there now. Because of some of the constraints of the island, if they were to try to find or create a place on the site that had the 6' as the regulation requires, the system would have to be built up. There is a hardship potential, which is mostly financial, of bringing dirt onto the island. In order to create enough dirt on the island, it would require stripping dirt from other locations, which is not desirable from an erosion and habitat standpoint. There are a lot of limitations on the island that are not present on the mainland. Some of the limitations translate to costs but they also translate to other hardships that would extend to environmental and ecological. He continued that the folks on the island year-round have a very tight water budget. While the system is designed for 300 gallons per day for the cottage and another 150 gallons per day, this will not happen because there is not enough money in water budget to utilize. He noted the 300 gallons per day is the minimum system the State would require for this location.

Chair Weathersby opened to the Board for questions.

Referring to electricity not being available year-round, Vice-Chair Crapo asked if this is due to a physical impossibility or more of a choice.

Mr. Saunders replied that to his knowledge there is no power onto the island. The power that is used during the summertime is a combination of generator and solar with battery backup. The caretakers have a generator on site but with it comes the need to bring fuel onto the island. They get monthly deliveries that come with logistical challenges during the winter. The fuel will also need to be stored on the island, which is a risk by itself. He noted that they are looking at options to improve the solar on the island and increase the capacity, but that is not in the cards at this time. He pointed out that if they were looking to pump the effluent to another location on the island, it would have to be created as there is no location on the island with 6' of clearance. The only spot on the island with 40" of dirt was found for this system, which is not all native

dirt. There were some residuals found in the test pits of a fire. It is thought that some of this fill was pushed out from a building that had previously burnt. The goal is to remove a lot of the existing native soil and replace it with sand, so there will be a good bed to the system that will function for many years. The existing soil that is there is not even going to be utilized, as it is very rocky.

Chair Weathersby asked for clarification on the distance of the bottom of the bed to the ledge.

Mr. Saunders replied it is about 30", which is the requirement for this particular system. He explained the tanks are in a crawl space under the building and the bed is about 30" above ledge, at the location where the test pit was dug. He further explained that the ledge profile has a slope to it. As the flat bed is created, towards the other side of the bed, it will be approaching 38" to 40" in depth.

Chair Weathersby asked if it would be between 30" to 40".

Mr. Saunders replied it will be more like 28" to 40".

Member Mikolaities asked the status of the State permit.

Mr. Saunders confirmed that a State permit has been received for the project. He noted they are looking to do this project ASAP to take advantage of the tide conditions and growth cycle on the island. Construction in early fall will be less likely to happen.

Referring to the septic plan, Member Mikolaities stated it says "issued for approval and construction 2018". It then says "system drawing March 2020". He asked for confirmation on what plan the system is being built too.

Mr. Saunders explained the 2018 date must be a typo on the plan, as everything is current. The application has been approved at the local level by the building department, two or three weeks ago, and the State last week. He further explained the project is being funded by the SRF loan that Star Island has for their waste water treatment plant upgrade. The contract with Star Island for the waste water treatment upgrades goes back to 2018. This plan is part of that plan set that has now come forward to fruition. The intent was to always build this field, but they needed to get further into the upgrade project to make sure there was enough money left in order to advance this design. That is where the 2018 date is coming from.

Hearing no further questions from the Board, Chair Weathersby opened to the public. No comments were heard. Chair Weathersby closed the public hearing at 7:38 p.m.

Member Mikolaities noted he is all set. At 450 gallons per day maximum, he is fine with the proposal.

Vice-Chair Crapo commented the nature of the use of the island that is put on the system is self-limiting. There is not much risk to the system.

Member Hoyt stated the system has been well sited. Its been done in a clever way with a limited area in which to put the system.

Member Patten agreed. He commented there are some unique circumstances on the island. This is a well-engineered solution to the problem.

Chair Weathersby agreed. She called for a vote on the request for building code relief to § 35-14.C.1;

- **Would enforcement of Section 35-14.C.1 do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

Gregg Mikolaities – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes;
Rob Patten – Yes; Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the relief requested by Underwood Engineers for Star Island Corporation for property owned and located at Caretakers Building, 2 Star Island, for a waiver from Building Code §35-14.C.1 to allow the bottom of the proposed effluent disposal system to be less than 6' above the top of any bedrock or impermeable substratum. Seconded by Rob Patten.

**Roll Call Vote: Gregg Mikolaities – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes;
Rob Patten – Yes; Patricia Weathersby – Yes**

Motion passed

Note: Gregg Mikolaities was unseated as a board member for the remainder of the meeting and Burt Dibble was reseated.

Sitting for remaining applications: Patricia Weathersby, Shawn Crapo, Burt Dibble, Rob Patten and Charles Hoyt

- 2. Mary E. Getty, Trustee of the Mary E. Getty Revocable Trust of 691 Exeter Road, Hampton NH for property owned and located at 35 Big Rock Road, Tax Map 5.2, Lot 72, requests variances from §190-2.4.C(1) for a shed 10.5' from the rear boundary where 30' is required and from §190-2.4.C(2) for a shed 10' from the side boundary where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #28-2020.**

Attorney John Ratigan, representing the applicant, spoke to the Board. Referring to the plan by TF Moran Engineering, he explained the proposal is for a shed to be located in the right rear corner within the side and rear yard setbacks. Letters were submitted with the application from three neighbors who are all in support of the proposal. He noted there is a 6' fence on both the

backside and on the side where the shed would be located. The visual impact of the shed would be minimal, if at all. He also noted that when Ms. Getty acquired the property in 2017 there were actually two sheds on the property. Those were removed. The two sheds added aggregate area larger than the shed that is being proposed. The applicant is now asking for relief to allow the one shed on the lot. He pointed out that many properties in the area have sheds that are within the setbacks. This overlay district is comprised of small lots and the houses were built before zoning was put into place. To add something like a shed onto the property would require relief.

No questions were heard from the Board.

Chair Weathersby noted that letters were received from;

- Sandra Tucker Chaisson, Madden Group Realty – stating that in her opinion the construction of the shed will not diminish the value of surrounding properties
- **Eileen & Michael Sarson, 11 Oak Ave** – in support
- **Anne & Mitch Gagnon, 55 Myrica Ave** – in support
- Another abutter (**Barbara**) – in support

Chair Weathersby opened to the public. Hearing no comments, the public hearing was closed at 7:48 p.m.

Vice-Chair Crapo commented the proposal makes sense. The neighborhood has quite a bit of properties with sheds in the backyard. There is not a lot of setback area to deal with other than to end up with a shed in the middle of the backyard.

Member Hoyt stated it is in keeping with the fabric of the neighborhood. It will fit well and he has no objection.

The members of the board had no objections to the proposal.

Chair Weathersby called for a vote to the variances requested to 2.4.C(1) and 2.4.C(2);

1) Granting the variances is not contrary to the public interest?

Shawn Crapo – Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble - Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Shawn Crapo - Yes
Charles Hoyt – Yes

Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

5) There are special conditions of the property that distinguish it from other properties in the area?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

7) The purposed use is a reasonable one?

Shawn Crapo - Yes
Charles Hoyt – Yes

Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

Motion by Burt Dibble to grant variances to Mary E. Getty for property owned and located at 35 Big Rock Road as advertised. Seconded by Charles Hoyt.

Roll Call Vote: Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;

Burt Dibble – Yes; Patricia Weathersby – Yes

Motion passed

3. Gregg & Ann Mikolaities for property owned and located at 1 Willow Lane, Tax Map 17.4, Lot 24, requests variances from §190-6.3.A for expansion of a non-conforming structure (house); from §190-2.4.C(2) for a generator pad 17' from the side boundary where 30' is required; and from §190-3.4.E for dwelling coverage of 31% where 15% is allowed; and for lot coverage of 42% where 30% is allowed. Property is in the General Residence, Coastal Overlay District. Case #29-2020.

Gregg Mikolaities, speaking as the applicant, presented his proposal the Board. He noted the property was last before the Board on February 6, 2019 and four variances were granted; expansion of a non-conforming structure, covered porch 9' from Willow Lane and 0' from Williams Road, porch 22' from the rear property line and work within the 100' tidal buffer. He explained the house was purchased three and half years ago as a retirement house. It's a small lot of 5,462sf. It's a corner lot that sits on two private gravel rights-of-way; Willow Land and Williams Road. The lot was formed in 1898 and the house was constructed in 1920. Back then, the owners built a fireplace on a 6' mound of ledge and built the house around it with no regard to setbacks. He noted it's a modest house of 1,260sf total with two-stories. The water lines are susceptible to freezing. There's extraordinarily high energy use for a 1200sf house. There are only three houses on Willow. When the power goes out, those homes are not the priority for putting power back on. He commented that he has been there for three winters and the power has gone out each winter.

Mr. Mikolaities stated that Architect Lisa DeStefano prepared some plans. The intent is to downsize, not increase. (He presented his proposal on the screen for the Board's review.) He pointed out that the work for Phase I was completed. When submitting for Phase II, the building

department said another variance was needed to do the north side. The intent is to enclose the porch on the north side and replace the steps with trex steps. This increases the living space by 259sf, which increases the dwelling space from 23% to 31% where 15% is allowed. This variance was missed when it came before the Board 18 months ago. The second part of the request is for the wood stairs. He is looking to replace the wood decking and stairs with trex decking and steps. The building department says that there is nothing in the file that shows there has ever been a permit to do that. Mr. Mikolaities pointed out that he submitted the tax cards to show he is being taxed on the deck and shed. He also submitted the 2009 plan that was signed by the planning board, which showed the deck and shed. The building department has asked that this be cleaned up. He is submitting a variance request for the decking. He noted that he thinks that they also need to add the setback from the property line. This was not included in the request. He pointed out that the deck has been there and is not anything that he added to the house.

Mr. Mikolaities explained it is the same situation with the shed. He submitted for a building permit to replace the roof and bring it up to modern standards. The idea is to have it as an art studio/office. The shed is 10X12 and there will be electricity to it, but no plumbing. The shed sits on the property line with a 0' setback on the south side and 14' to 12' on the west side. He has spoken to the neighbors who have lived in this neighborhood for over 50 years. They have confirmed the shed has been rebuilt four or five times. The shed shows on the tax card as being taxed and is also shown on survey plans.

Mr. Mikolaities continued there is an outdoor shower. He is looking to put in an emergency generator in place of that shower. The generator pad is 2x8 and would sit in that location. The last request is for a modest 10x10 stone patio in the location of the fire pit, which currently sits on ledge and old concrete. He noted that he included his responses for the variance criteria. He also noted that the last time this was before the Board he got letters from his abutters, but he did not get additional letters this time. He has spoken to the abutters and they have no issues with the proposal.

Speaking to Planning Administrator Reed, Chair Weathersby noted that setback relief has not been requested for the patio. She asked if they have treated patios as structures in the past.

Mrs. Reed replied there has not been any consistency.

Vice-Chair Crapo commented he is not seeing the shed in the notice.

Chair Weathersby stated she thinks the shed is grandfathered. She asked Mr. Mikolaities if that is his position.

Mr. Mikolaities replied yes. He noted that he was told it exceeds lot coverage, so he put everything under lot coverage; the shed, stairs and decking.

Vice-Chair Crapo asked if the building department said that setback relief was needed.

Mr. Mikolaities commented he is thinking that it is needed.

Chair Weathersby asked if setback relief is needed for the deck and stairs.

Mr. Mikolaities commented that he does not know. He pointed out that it is already existing and he just wants to replace it in kind. The discussion with the building department was more on lot coverage.

Member Dibble asked if the reconstruction of the deck is intended to be the same as what is there, only different materials.

Mr. Mikolaities confirmed.

Chair Weathersby asked when the deck was constructed.

Mr. Mikolaities replied that in talking with the neighbors, they said as long as they can remember there has always been a deck. There used to be an outhouse and this was the deck to the outhouse.

Referring to the proposed patio, Member Dibble asked if this is being done with pervious materials.

Mr. Mikolaities explained it will be bluestone pavers with gaps in between each one. It will be better than what is there because there will be sand underneath the bluestone, where it is now all ledge and concrete. He confirmed the shed will be the size of the existing shed 10x12 with the same height.

Chair Weathersby asked if the shed was constructed prior to 1957.

Mr. Mikolaities confirmed.

With regards to the deck, Chair Weathersby stated if it was built prior to 1953, relief is not needed, as it is grandfathered. If it is built after 1953, it will need setback relief.

Mr. Mikolaities commented it was well before 1953.

Chair Weathersby asked if it is his position that the deck, stairs and shed were all built prior to 1953.

Mr. Mikolaities confirmed. He commented that he did not get letters from his neighbors because he thought this was all set. One of the neighbors has lived in the area for over 60 years. The other neighbor's family owned their house for over 100 years.

Chair Weathersby asked if the neighbors' testimony is that the shed, deck and stairs were there.

Mr. Mikolaities confirmed.

Mrs. Reed noted that Chantal Kimball called her and was surprised that she had received an abutter's notice. Ms. Kimball said those things have been there forever.

Vice-Chair noted that in the picture with the deck, it looks like the piers under were just blocked out and poured concrete. If this was done in the last 20 to 40 years, his guess is that they would be looking at sonotubes. Construction wise, he can see some definite age.

Chair Weathersby opened to the public. Hearing no comments, she asked the Board if there are any further questions.

Referring to the stone patio, Chair Weathersby stated the explanation was great, as far as, stone on stone and not creating further drainage issues. However, that will be new, so they will need the dimensions for the setbacks. She asked if it meets the setbacks.

Mr. Mikolaities pointed out that the far corner of the shed, which is the most southern corner, is 14'. The next corner is 12'. The first corner of the patio would be 12' and the last corner would be a little over 10.5'. The patio would be 12' and 10.5' from the property line.

Chair Weathersby stated that the relief that she thinks is needed is to 6.3.A for the expansion, 2.4.C(2) for the side setback for the generator pad, 2.4.C(2) for the stone patio being approximately 10' to the side property line and 3.4.E for dwelling coverage of 31% and lot coverage of 42%; assuming that the Board agrees the shed and deck are grandfathered.

Chair Weathersby closed the public hearing at 8:20 p.m. She stated that the first thing the Board needs to determined is whether they believe the shed, deck and stairs are grandfathered or whether they need setback relief. She polled the Board on whether they feel the shed is grandfathered;

Shawn Crapo – **Yes**; In looking at the construction of the shed, it looks to be consistent with something that is several decades old.

Charles Hoyt – **Yes**; It's obvious and proof that it has been there a long time.

Rob Patten – **Yes**; He agreed, based upon going on site and looking at it in the pictures. He had a structure a lot like it that was built in the 30's. There is little to no question in his mind that it is grandfathered.

Burt Dibble – **Yes**;

Patricia Weathersby – **Yes**; She believes the shed is grandfathered, based on the information and testimony.

Chair Weathersby called for a poll vote on whether the deck and stairs are grandfathered;

Shawn Crapo – **Yes**; Charles Hoyt – **Yes**; Rob Patten – **Yes**; Burt Dibble – **Yes**;

Patricia Weathersby – **Yes**

It was agreed that setback relief for the shed, deck and stairs was not needed.

Chair Weathersby reviewed the relief needed would be;

- 6.3.A – for expansion of the house (enclosure of the open porch)
- 2.4.C(2) – generator pad being 17' from the side setback and stone patio approximately 10' from the side property line
- 3.4.E – dwelling coverage of 31% and total coverage of 42%

Member Dibble commented that a variance for the stone patio has not been applied for.

Chair Weathersby noted that Mr. Mikolaities has verbally amended his application.

Mr. Mikolaities confirmed that he is amending his application to add the setbacks for the stone patio.

Chair Weathersby stated she is comfortable with that, as it was part of the whole package.

Vice-Chair Weathersby stated he is comfortable with granting the relief requested. It uses the words expanding and non-conforming but in reality, there is no physical expansion. It is just enclosing the space. The neighbors are not going to be affected by any further advances towards them. He sees it as a modernization of the home. He does not see anything that warrants denial.

Member Hoyt commented he has no problems with the application.

Member Patten stated that in looking at the overall project, this is a massive improvement and is done in a way that is quite modest. The application was incredibly thorough and well thought out. It's an overall modest ask. He supports it 100%.

Chair Weathersby stated that enclosing the porches, repairing the deck and shed are just modernization of what is already there. The only new things are the generator, which is a really good idea to have, particularly with this being so close to the marsh and the road that is sometimes underwater. The newer ask is the stone patio, which increases the lot coverage. However, as it was explained, it is basically stone on stone, so it is not going to change much.

Chair Weathersby called for a vote on variances to §190-6.3.A for expansion of the house; §190-2.4.C(2) for generator pad of 17' from the side and stone patio approximately 10' from side; and §190-3.4E for dwelling coverage of 31% and lot coverage of 42%;

1) Granting the variances is not contrary to the public interest?

Shawn Crapo – Yes

Charles Hoyt – Yes

Rob Patten – Yes

Burt Dibble - Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

5) There are special conditions of the property that distinguish it from other properties in the area?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes

Burt Dibble – Yes
Patricia Weathersby - Yes

7) The purposed use is a reasonable one?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

Motion by Burt Dibble to approve the approve the variance request for Gregg and Anne Mikolaities for property owned and located at 1 Willow Lane to §190-6.3.A for expansion of a non-conforming structure, §190-2.4.C(2) for a generator pad of 17' from the side, §190-3.4E for dwelling coverage of 31% and lot coverage of 42%, with the addition of a stone patio as described. Seconded by Shawn Crapo.

Roll Call Vote: Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;

Burt Dibble – Yes; Patricia Weathersby – Yes

Motion passed

- 4. Bluestone Properties of Rye, LLC for property owned and located at 33 Sagamore Road, Tax Map 24, Lot 6, requests a special exception pursuant to §190-7.1 and 190.3.1.G(2) to allow for a driveway access 22.2' and 26.2' from wetlands/perennial stream. Property is in the Business District. Case #30a-2020.**
- 5. Bluestone Properties of Rye, LLC for property owned and located at 33 Sagamore Road, Tax Map 24, Lot 6, requests variances from §190-3.1.H.2(a), (e), and (g) for a building 67.4', pavement 22.2' and disturbance 13.6' from the wetland where 75' is required and for pavement 26.2' and disturbance 17.1' from a perennial stream where 100' is required and the removal of 1 dead tree and 5 live trees >4.5" in diameter greater than 4' from the ground; and from §190-2.10.C.3 for a building 23.7' from the Elwyn Road front boundary, parking spaces 22.2' from the Elwyn Road front boundary and parking spaces 21.2' from the Sagamore Road front boundary where 30' is required; and from §190-2.10.C.8 for a building height of**

40.25' where 35' is required; from §190-5.0.A for 54 parking spaces sized 9'x18' where 10'x18' is required; and from §190-5.0.C for 9 parking spaces 22.2' from the Elwyn Road front boundary and 11 spaces 21.2' from the Sagamore Road front boundary where 30' is required. Property is in the Business District. Case #30b-2020.

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He noted that 33 Sagamore is at the round-a-bout coming from Portsmouth into Rye. It's across the street from Atlantic Grill, which Bluestone also owns. He thinks everyone would agree that Mike Labrie and his family do a very nice job at Atlantic Grill, in terms of the way they treat the property. Mr. Labrie and his family also completely take care of the inside of the circle at the round-a-bout. The same kind of treatment will be given to this land as it moves forward. The parcel is a 3.9-acre non-descript lot. It is the location of the former Foye Homestead from a couple of hundred year's ago. The lot was much larger at one point, but over the years, due to primarily takings, the old farmstead that was fairly close to the circle came out and there were four or five different buildings. It was an active farm for many years. Now it is basically an old gravel lot with a falling down building that violates the front setback. When the State built the round-a-bout they took some more land and used it as a staging area. Over the years, the site has been heavily disturbed. The taking of the property, which was prior to current ownership, left the lot that is there now and pushes any development towards the south close to the wetlands.

Eric Weinrieb, Altus Engineering, explained that property is the former Foye Homestead and more recently, there were seasonal cabins on the property. (He presented on the screen the site plan showing what the property looked like when the Labries purchased the property. The plan showed the former cottages that were on the property. It also showed the wetland delineation and wetland setbacks.) Mr. Weinrieb pointed out the location of the perennial stream. He noted that when the Labries purchased the property, a survey had already been completed with a wetland delineation being part of that work. The soil scientist identified that as a seasonal stream. Joe Noel identified the fact that it is a perennial stream and is part of Witches Creek. It shows up on USGS so its natural perennial stream which creates a 100' wetland buffer. Mr. Weinrieb also pointed out the area of the very poorly drained wetland, which is beyond any of the setback criteria, so it does not come into play at all.

Mr. Weinrieb noted the parcel is 3.9-acres in lot area and almost exceeds the minimum lot size by four times. However, due to site constraints of the wetlands and wetland buffer, there is a very tight developable area. He continued that in 2014, after a long process, municipal sewer was extended to the site, which was paid for by the Labrie Family. This was done to bring sewer to the Atlantic Grill, this property, and for other users down the corridor from the City of Portsmouth down to the intersection. (Mr. Weinrieb presented the proposed site design on the plan.) He explained the proposal is for a driveway opposite the Atlantic Grill driveway. He noted that there is a substantial mound off the other end of the site. Coming in off Elwyn Road, would put the driveway way back from the intersection and would go up an existing hill, still being in the wetland buffer. The proposed location is opposite an existing driveway, as far away from the round-a-bout as possible, creating a safe intersection. He continued that as the vehicles

come into the site, there will be a looped driveway system and a raised median in the center with head in parking stalls on both sides. There will be four seasonal parking spaces on grass pavers. All the parking spaces were designed to be permeable pavement with traditional pavement in the travel isles. DES accepts a 4 to 1 ratio; 4sq of impermeable pavement can go to a permeable surface, so there is more than adequate permeable surface to drain the impervious surfaces on the site.

Mr. Weinrieb presented the grading plan. He stated with the infiltration and treatment areas the site will be improved for stormwater runoff. The site has been developed for hundreds of years with no stormwater management. This will be getting rid of a direct discharge into the wetland buffer, getting it into treatment areas and treated before it discharges into the wetland. For the runoff on the building, on the front portion of the site, the runoff goes into drip edges that go into the impermeable surfaces. On the back, the runoff goes into the drip edge and it then sheetflows through a filtered vegetative strip before going into the wetland system. Mr. Weinrieb pointed out there are six trees within the wetland buffer that need to be removed. (He pointed out the location of the trees on the plan.) He further explained the property is not within the 100-year flood zone on the draft maps. The building inspector felt that the flood maps were incorrect. The Labries went through the Letter of Map Amendment (LOMA) process with FEMA to have the entire area removed from the flood map zones. (He pointed the area out on the plan.) It was a long and costly process; but because it was something requested by the building inspector, they went through that process. (Mr. Weinrieb presented a historical aerial photo of the site and surrounding area.) He stated that even though the parking is within the front setback, 21' +/- and at 22.2', it is substantially back from the property line about 35' from Sagamore Road and 40' from Elwyn Road to the pavement. It provides adequate space between. The site was also designed similar to the Atlantic Grill with 9' wide parking spaces. In going through the process with Atlantic Grill, it came through at that point that 10' was excessive for this type of use. There was an ordinance drafted to go forward to a vote; however, there was an error in the posting so it never got on the warrant. After that time, it never came back to fruition.

Planning Administrator Reed noted that it didn't make it to the warrant the first year; however, it was brought back the following year and was voted down. It made it all the way to the ballot but the voters did not approve it.

Mr. Weinrieb stated that this is a modest and well thought out proposal. The project has been worked on since the Labries came forward for the Atlantic Grill. The Labries were master planning for the entire intersection at that time. There have been 30 some odd concepts before it went to this design. This is something that has been well thought out and it's a great project.

The architectural plans were presented on the screen.

Mike Labrie, Bluestone Properties, explained the Nathaniel Foye Farmstead is a farm to table program providing locally sustainable and organic food supply. The farm will specialize in unique native and heirloom varieties, providing inspiration to chefs, who will in turn share their inspirations; as well as, methods of cooking, growing and processing the natural harvest with

people attending workshops, lectures and classes. The group of buildings is carefully laid out to utilize the unique site. It is designed to represent a historically accurate farmstead one would expect to find in the early 19th Century. Great attention has been given to the siting of the buildings, so they will be a welcoming landmark at one of the main entry ways to the Town of Rye. The buildings were designed and will be built by Ben Auger, one of the State's top builders. Mr. Labrie stated it has always been important to him, in acquiring parcels around the intersection, to create a village feel the way it might have been in years gone by, rather than allowing the intersection to be built up. It is important that Rye ends up with quality development at that site that everyone can be proud of.

Mr. Labrie continued that the farmland will support herb, vegetable and edible flower gardens; as well as, honey and maple syrup production. The reproduction antique cape will house a special designed culinary classroom, which can also serve as an events space and finishing kitchen for events occurring in the barn style building. The gardens, fields and buildings will all support a curriculum which includes sustainable organic gardening, herbology, foraging, processing and preserving, as well as education and social events. These could include farm to table dinners, lectures, small weddings and other social gatherings. Additionally, there are plans to make these facilities available to key non-profit partners, in support of their ongoing historic and environmental missions. These include the Seacoast Science Center, Shoals Marine Lab and the Strawberry Banke Museum. He noted that he and his brother Peter have been involved in gardening, foraging, beekeeping and maple syrup production for many years. It is part of their personal mission to share this knowledge and bounty with others. He thanked the Board for giving him the opportunity to share his vision.

Attorney Phoenix reviewed the relief being requested;

- A special exception is needed for the driveway in the buffer. The proposed location for the driveway is for safety reasons. It will be matched up with the driveway for the Atlantic Grill and pulled away from the circle, where today's entrance is pretty close to the intersection. The proposed location is the safest place to enter and provides the circulation needed for access to the buildings.
- Trees are going to be removed.
- There will be surface alteration. It is a heavily graveled lot now and the surface will need to be altered in order to do construction of the buildings, parking lot and stormwater treatment.

Referring to the wetland to the left (on the plan), Attorney Phoenix explained that was originally a man-made wetland. It was an old farmer's ditch that they would use for filling with water and irrigation. It is now wet, but it is not the same quality of wetland like the stream or the more naturally occurring wetlands.

He continued his review of the relief needed;

- Front yard relief is needed for both the building and parking. The lot is on a corner so there is a front setback for both sides. There is a very small corner of the building along Elwyn Road that is within the front setback. A small part of the parking area, along Elwyn, is in the front setback. Along Sagamore Road, part of the parking is within the

setback. The visual or actual setback from the travelled portion is significantly more by another 20' or so. The proposed building is farther from Elwyn Road than the existing cottage that is there today.

- A small portion of the building is in the left side wetland buffer. This is being requested because the building really needed to be sited on top of the knoll. That is what leads to the height variance that is needed. The front of the building, the small connectors and front of barn, meet the height requirement; however, there is a significant elevation change about halfway down the building.
- The ordinance calls for parking spaces of 10x18 and the request is for 9x18, which is common in other communities. Typically, larger parking spaces are used for grocery stores or retail because of loading and unloading. In looking at the use of the site, people are going to come here to take a course in the building. This will not be a restaurant. It will be a site for specialized training and teaching people sustainable cooking. People who are coming to the site are not going to need the extra foot width for a parking space. Also, relief is needed for parking in the front setback.

Attorney Phoenix pointed out that the proposal has been reviewed by the Rye Conservation Commission and their letter is in the packet. Site plan approval is also needed. No DES approval is necessary for this project. He reviewed the criteria for the special exception;

- The proposed use is not injurious nor detrimental to the neighborhood – This will be a farmstead building that will beautify the site with a stormwater plan that does not exist today. It will be providing a benefit to the Town of Rye and to the public who will visit the site and learn these historic methods of foraging, cooking and eating. Since it is going to beautify the area and stormwater is going to be treated so the wetland is not negatively affected, there is no injury or detriment to the neighborhood. In fact, it is a benefit to the neighborhood.
- The proposed use is in harmony with the general purpose and intent of the ordinance and in accordance with the general and specific rules – The Wetlands Conservation District exists to protect the wetlands and that is being done. The driveway is close to the perennial stream; however, that will be dealt with. There will be a retaining wall in that location to help protect from runoff. The runoff from the entire site is being channeled so it gets treated and then into a culvert off the property. The driveway needs to go in the proposed location because of safety reasons, as well.
- Due to existing conditions, no feasible alternative route exists – The driveway could be located closer to the circle, as it is now. However, that is not feasible from a site operation and safety consideration. The driveway really needs to be located where it is proposed.
- The driveway is essential to the productive use of that land not so zoned.
- The construction will have the least possible detrimental impact on the wetland. The site cannot be developed without going into the wetland buffers. The wetland itself is not being touched. There is a stormwater water management plan that will treat water. The use of the property for sustainable purposes is also going to demonstrate that there is not a detrimental impact on the land.

- Economic advantage alone shall not be deemed sufficient reason for the exception. There is an economic advantage for doing this; however, it is not for economic advantage alone. Not much of anything can be done on this lot without some kind of relief.

Attorney Phoenix reviewed the criteria for the variances;

- Variances are not contrary to the public interest and the spirit of the ordinance is observed. Will the variances alter the essential character of the locality or threaten the public health, safety or welfare? This creates character in this locality. It develops in a beautiful way a largely unused site that is really just a gravel lot. The beautification will increase the value of this property and other properties. The essential character of the locality will not be diminished. The Labries have a right to reasonable use of the property. The primary concern is wetlands and its buffers. The encroachment will be as little as possible with the site and stormwater being treated in a way that will be more protective of the wetland and buffer today, as there is no stormwater treatment now.
- Granting the variances will not diminish property values. Slight relief is needed for setbacks and the buffer. A slight height variance is also needed. Overall, this property is going to increase in value significantly. There is no way it is going to diminish anyone else's property values.
- Special conditions exist that distinguish it from other properties in the area. This is an irregularly shaped property with two front setback requirements and wetland buffer requirements that take up a large portion of the 3.9-acres, with a perennial stream on the south side and the originally man-made farmer's ditch on the west side. Those buffers and setbacks force all the development towards the center of the lot. The existing grade is 8' or 9' in elevation. All those factors combined create special conditions.
- There is no fair and substantial relationship between the public purposes of the ordinance and its application. There are height requirements and yard setbacks to prevent overbulking, provide adequate access to air, light, separation from abutters, sight lines, and stormwater treatment. Because of the location of this building on a corner and the distance from the lot line to the travelled portion of the road, there is plenty of air separation, sight lines, air and light. Stormwater treatment will be handled. Parking size and location requirements are to provide space for vehicular circulation and parking and to ensure sight lines. The proposed size of the parking spaces and the location, slightly in the setback, are not harmful to anyone. They are of a size that is enough to adequately enter and exit vehicles. The proposed barn is further from the right boundary than the existing building. The right-of-way is wider than the travelled portion. The parking spaces are of a sufficient size. There are no reasons that the strict requirements of the ordinance should be applied. What is being done there is fair, reasonable and better than what has been there historically.
- The proposed use is reasonable.
- Substantial justice will be done. There is no benefit to the public from denying the variances. Denying the variances denies the Labries and the public of this wonderful idea in a wonder location that will beautify everything.

Attorney Phoenix noted the Conservation Commission inspected the site in March. They wrote a letter which was generally in favor, but they identified a number of recommendations. He would like to go through those. While they are okay with many of them, some of them are problematic and the Board needs to know that. (The RCC's letter with recommendations was presented on the screen for review.)

#1 – *RCC recommends the new structures be placed outside of the 75' wetland buffer.*

Structures are slightly within the wetland buffer and the driveway is also. This is something the applicant cannot agree to as a recommendation.

#4 – *No garden development to occur in wetland areas with the exception of a Wetland Pollinator garden.*

Under the ordinance, agriculture is permitted in the wetland and in the buffer, which is what is going to be done here. Best management practices will be followed, along with having native plantings and edibles.

#5 – *Meadow on the west side will be maintained in its natural state as evidence of photos taken on March 18, 2020.*

It is going to be native plantings of some sort, but it is not going to stay exactly as it is today.

Referring to #2, no parking other than in designated areas, Vice-Chair Crapo commented he is guessing this would be for no public or guest parking. In order to do farming, there may need to be a vehicle towards the fields or off the parking lot.

Attorney Phoenix commented this is a good point. This issue came up at the site walk. The intent is for the guests and employees who are parking. If a truck or tractor has to get back to the field to do work, that is something that will be needed.

#11 – *Low nitrogen fertilizer to be used if fertilization is necessary.*

Best management practices will be used for the intent.

#12 – *Proposed planting plan for the entire site to be submitted prior to approvals.*

The applicant is willing to provide an overall vision for what he wants to plant; however, it might change from year to year. To give a precise planting plan would not work, as it is not sure exactly what the plants will be right now.

#14 – *Creation of a plan for further filtering of runoff water after it passes through the culvert under the driveway into the stream area.*

A very valid and thorough stormwater management plan has been done for the site. The water will be treated properly. Once it is treated, it will be going off the site.

Attorney Phoenix stated that usually an applicant agrees with all the recommendations of the Conservation Commission. Because of the nature of this project, he felt it was necessary to address the recommendations.

Referring to the grading and stormwater management plan, Mr. Weinrieb explained the site was designed so the paved area at the entrance way is back away from the wetland. There is also a retaining wall, so there is some treatment near the entrance on the upland side. The runoff is sent through a culvert and discharged on the other side of the retaining wall in the wetland buffer with

some riprap. If any further treatment is done in that area, more negative impact to the wetland buffer would be done versus anything that could possibly be done that would be positive. Putting something additional on that side of the retaining wall is not a benefit.

Referring to recommendation #13, Vice-Chair Crapo asked if RCC was interpreting that the snow would not be plowed on the parts of the parking lot that are in the buffer. He asked if they were just referring to snow storage.

Attorney Phoenix commented that they did not mean the snow cannot be plowed. They just meant it could not be stored or piled up in the buffer.

Mr. Weinrieb pointed out the locations on the plan for the proposed snow storage areas.

In regards to plant selection, Mr. Labrie pointed out that this is going to be a working farm. It is not a plant museum. An important part of what is going to be done here is teaching people plant identification. A great variety of plants will be planted on this site. The fact that there is a great variety of soil and wetland conditions helps a great deal. There are a lot of different plant environments that can support a variety of plants. Those plants may change from time to time. He commented that he needs to be able to plant what is needed to teach what he wants to teach there and not be overly restricted. It is not his intention to do something bad here. When everything is said and done, he thinks every member of the Conservation Commission will be thrilled with what is done. He noted that he is willing to give a list of the types of plants that are intended to be planted. However, he cannot be held to sticking with some planting plan on the front end of this venture.

Vice-Chair Crapo stated the Conservation Commission often makes recommendations on people doing planting. They provide a lengthy list they want chosen from. They don't necessarily say which ones. He asked Mr. Labrie if he might agree to a condition to not introduce any non-native plants or any plants that are not on the current list.

Mr. Labrie replied no. He continued that perhaps by the stream he might be more sensitive to planting blueberries, cranberries or wintergreen. He noted that there will also be some plantings that will have to occur in the meadow, not necessarily in the wetland ditch area. Heirloom tomatoes and different varieties of specialty lettuce are not necessarily native, but he needs to be able to plant those things. He is also going to be planting a lot of native plants, but there needs to be flexibility. He commented that he went through the list that RCC provided and it is not comprehensive at all.

Vice-Chair Crapo asked if it is foreseen that there would be any plantings that the RCC or DES may consider to be an invasive species.

Mr. Labrie replied never. He commented he is all about staying away from invasive species.

Attorney Phoenix commented that he saw a chat from a resident at 5 Elwyn Road indicating that she did not receive notice and wanted to speak. He pointed out that this resident is on the abutter's list and to the best of his knowledge a notice was sent to her.

Speaking to Mrs. Reed, Chair Weathersby asked her to address whether that person has received notice.

Planning Administrator Reed replied that the resident at 5 Elwyn Road was legally noticed on July 20th and a receipt of signature has been returned.

Chair Weathersby opened to the Board for questions.

Vice-Chair Crapo pointed out that the Conservation Commission letter is lengthy and the applicant agrees to some recommendations and disagrees with others. He asked Attorney Phoenix if a list was developed for the recommendations they agree to. In regards to the parking, he asked the percentage that would be used during an event. Currently, Atlantic Grill uses parking on this site for staff, in order to free up spaces on the restaurant site. He asked how this would be handled moving forward.

Attorney Phoenix commented that in regards to the RCC, he apologized that he did not write something up. He continued that he had a conversation with the Conservation Commission Chair and she did not seem to be too upset about this. At that time, RCC was talking about doing another site walk. He thought the issue could be raised then but they decided not to hold the site walk. His request would be that this be approved with the conditions, other than the ones where there are issues, with Mr. Labrie's pledge to use best management practices. Mr. Labrie has said that he would be happy to give the RCC plans as it is developed, which would give them opportunity to comment. As for the parking, for the use that is identified under the ordinance, there is more parking than what is necessary. They are not worried about excess parking for activities on the site. The site has been used for parking for the Atlantic Grill. The staff will be sent back to the Atlantic Grill for parking. The beauty is that there will be both sites available if it is necessary. Mr. Labrie has never had a problem with people parking on the streets. The intent is to continue to manage the parking so that does not happen.

Member Hoyt commented he is delighted to see the building follow some historical significance and proportions. He commented that the wetland boundaries are just being "nipped". He understands that the intent is to create the perfect portion of stonewall with the walkout underneath the building. He asked if the building could have been slid 8' more towards the Atlantic Grill by tweaking the center landscaped island.

Mr. Weinrieb explained that the landscaped island is necessary for site plan and zoning requirements. That island is essential for reducing the heat island effect. At 8' wide, there can be some nice landscaping. From an esthetic standpoint, the building should not be right up against the sidewalk and the pavement. There is some architectural depth with not having the building all aligned. That sets the building where it is proposed to provide a nice greenspace

between the walkway and entry. There is more greenspace for the larger part of the building so it does not have that overpowering feel. He commented that they are trying to find a balancing act of making the grading work in front and also creating adequate greenspace for a landscape buffer on the property. He noted that if the building moved closer to Elwyn Road, they would be asking for more of a variance for the front setback. With the building's height, it would crowd Elwyn Road.

Mr. Labrie replied that when they say they have done thirty-three conceptual plans; it is not an exaggeration. He feels that what is being presented is the best balance between esthetics and respect for the environmental issues. He commented the barn could be shortened up a bit to get that tiny piece out of the wetland buffer; however, he does not believe that is a critical wetland and that is okay in his mind. As far as the cape, it would be much more difficult to slide without making this building group look contorted and not like an authentic New England farmstead. A lot of money and talent is going to be spent on making this site look beautiful and something everyone in Rye can be proud of.

Referring to the buildings in the buffer, Chair Weathersby asked the purpose for the connector building. If that were shortened up a bit, it seems the cape type building could be pulled out of the buffer some. She asked the purpose of the connector and why it needs to be that size.

Mr. Labrie explained it is an important part of the historic group of buildings that gives the whole farmstead impression; as well as the fact it is the perfect place to put restrooms that meet handicapped accessibility, which it would not meet if it was shortened.

Chair Weathersby commented that there is more parking than is needed. She is wondering why this is. She asked if it could be configured differently to get all the spaces out of the buffer, if there were seven less spaces.

Mr. Labrie commented the parking will be utilized. The buildings, which generate the parking requirements, are not the only location in which classes will be conducted and generating parking need. He has a 3-acre site outside of that area where tours will be conducted. That also generates parking need.

Chair Weathersby asked for further clarification on the retaining wall; such as, materials and the amount of fill that will be brought in.

Mr. Weinrieb stated that it is anticipated that some of the ledge will be able to be removed with just an excavator. However, some of it will have to be mechanically removed. Blasting is not anticipated for the site. The materials for the retaining wall have not been specified at this point, but a modular block wall is anticipated, as this will allow for an architectural face.

Chair Weathersby asked if there will be a lot of new fill towards the wall.

Mr. Weinrieb explained they have not done a fill quantity for the overall site. He anticipates that there will be a fair amount of fill because with the finished grades, as depicted, they have to go down 2' to get to subgrade. (He pointed out on the plan the area where a fair amount of material will be hauled out, which is up further on the pitch.) He anticipates it is more of a cut site than a fill site.

Chair Weathersby commented that there is no request for a setback variance for the retaining wall. She pointed out that it looks to be in the front setback.

Mr. Weinrieb confirmed it is in the front setback.

Attorney Phoenix pointed out that his submission lists front yard retaining wall 1.6'.

Vice-Chair Crapo commented relief is also needed from the buffer.

Mr. Weinrieb stated it is on the plan and the first variance requested. (He pointed out the variance request listed on the plan.)

After some research, Chair Weathersby confirmed the relief was requested on the application for the retaining wall 1.6'. There was also a request for surface alteration within the buffer with a disturbance of 17.1'. She is not sure if this is for the retaining wall. She commented that the 17.1' looks like it goes beyond the wall. She clarified they are all set.

Chair Weathersby stated that it was said that best management practices will be used for farming in the wetland buffers. She asked if there are written best management practices available.

Mr. Labrie replied he has not looked at the State of New Hampshire, but he feels confident there are best management practices for farming within watersheds. He pointed out that U.N.H is a big proponent.

Referring to the barn, Chair Weathersby asked if the 10/12 pitch is for historical accuracy.

Mr. Labrie replied it is for esthetics.

Member Dibble asked how the perennial brook flows off the property and onto the restaurant property.

Mr. Weinrieb explained there is a culvert system that goes across the road. It runs up the road in front of the Atlantic Grill and crosses over to Pioneer Road. When Cavaretta's Market was there, the culvert system actually went under the building. When DOT did their work, they improved the crossing in the round-a-bout area.

Member Dibble asked for more clarity about treatment for the drainage off the driveway.

Referring to the plan presented on the screen, Mr. Weinrieb explained the stormwater treatment design for this area.

Member Dibble asked the height above the ground for the top of the gable on the front of the barn.

Mr. Labrie replied he is assuming the variance is for the other end of the gable of the barn for the height. The front end, towards Sagamore, would be roughly 8' or 9' less than that.

Chair Weathersby pointed out that Exhibit B shows the height of the barn at 33'9".

Mr. Weinrieb pointed out this is for the front, looking at the site from Sagamore Road.

Referring to one of the earlier questions, Mr. Labrie noted that New Hampshire does have a manual of best management practices for agriculture in that location.

Member Hoyt noted there is also a guide for agriculture entitled 'Farming in Wetland Resource Areas' that is produce by the Massachusetts Department of Environmental Management.

Chair Weathersby commented that she loves this idea. However, this idea is driving the need for variances. She asked if they have looked at other ideas that would require less parking and have everything fit into the building envelope.

Mr. Labrie replied the parking is needed for this use. This is designed in a way that gives the esthetics they were looking for with the beautiful buildings and still have the parking.

Chair Weathersby asked if other uses were considered.

Mr. Labrie explained he had this idea in his mind for a long time. A number of banks wanted to locate here but it is just not what he wanted for that intersection and for the gateway to Rye.

Member Patten asked if both this project and many other types of projects would fit easily into the scope of available land without the need for a variance for the wetland buffer, if it was not taken for construction of the rotary.

Mr. Labrie replied that if the land was not taken, he would probably not own this land. There would probably be something fairly ugly there already. The former owners were convinced they could put in a little strip center and there was talk about a CVS. He pointed out that not everyone cares so much about what goes on to a piece of land.

Member Patten asked if it is the taking of the land that is responsible for this being pushed back into the buffer.

Mr. Labrie confirmed.

Chair Weathersby clarified the land was purchased in its current configuration after the land was taken.

Mr. Labrie replied yes; however, it was with a different wetland delineation that would have really changed a lot of facts on the ground.

Chair Weathersby opened to the public for comments.

Larry Dukes, 18 Elwyn Road, stated the neighbors had a little meeting the other day. Two of the neighbors are concerned about blasting and the usage of the site; such as, weddings and other functions. The neighbors are concerned about the hours that these events would occur. He asked if there would be any restrictions. If there are going to be any weddings, they do not want it to be late into the evening and it should be held in the building. In regards to blasting, the neighbors were concerned that it might disrupt their foundations. The preference would be to have the ledge cut instead. Mr. Dukes stated that the neighbors are also concerned about any vegetation that might spread outside the site. He pointed out that the neighbors are concerned about the parking and don't want to see it, once this is built. He asked if the vegetation currently on the front (Elwyn Road) side is going to go away or if there will be more vegetation so neighbors won't be looking at cars. Referring to the back corner where there are four parking spaces, he asked if a fence or vegetation could be put in this area to block the vision of cars. Those are the issues that are concerning. The neighbors want to be sure they are not impacted. Mr. Dukes pointed out that the backside of the property is 45' but if there is lighting all night long from the parking lot that would be disturbing.

Amy Holder, 9 Elwyn Road, stated she concurs with some of the concerns that Mr. Dukes just brought up with regard to functions and how that might impact the area. It was mentioned that there may possibly be some small functions, including weddings. She asked if they could define what "small" means in terms of numbers. With regards to blasting, if it were to be involved, she assumes there was a chance to research the possible impacts to the surrounding community. She wonders what was found to be the possible positive and negative impacts, if this went the blasting route. For larger functions, she asked if there was a plan for the traffic flow impact and how it might affect Elwyn Road and the rotary. She pointed out that she realizes there will be lighting during the function times. She was wondering if there will be lighting for security purposes at night. She asked if it has been considered how ambient lighting might affect other properties. She asked if there has been consideration for habitat and how that might be affected. She also asked the hours of operation for the new structure and the functions that might be held there. In regards to noise, she asked if they have defined what the limits during a function might be.

Roy Tieglund, 30 Sagamore Road, stated the he would like to speak in favor of what Mr. Labrie is trying to do. Everyone was apprehensive about the Atlantic Grill, but they have done a great job and have followed through with everything they said they were going to do. Referring to the site in question, he commented that it is currently an eyesore. He noted that he has lived in this area for 40 years. The Labries have clearly put in more effort and money to beautify this end

of town. He encourages the project and knows they will follow through with everything they say they are going to do. He is in favor of the proposal and hopes the Board will grant the variances to move forward.

Emmanuel MacMillan, 14 Elwyn Road, stated that overall, he loves the idea of what is being done. He thinks it will better this property overall by quite a bit, in terms of its appearance. Right now, it's a pretty ragged looking lot. He thinks the neighbors covered any concerns that he would have; such as, lighting in the parking lot. As far as the variance for the building that is closest to his property and the height of the barn, he does not have any issue to those as a neighbor.

Conrad Desrosiers, 60 Elwyn Road, stated his property is probably the largest parcel to the south that abuts this property. Witches Creek goes right through his property and is a recipient of water that drains a lot of land. His biggest concern is the drainage going into the creek and the lack of ability for it to handle it, especially during major storms and spring runoffs. He commented that if the wetlands were to become larger, it would be approaching his house and that is a major concern. He does not believe the raingarden is sufficient. He believes it will drain back into the creek and cause backup over time, especially in the spring. A lot of other concerns that people have been expressed are also his concerns.

Hearing no further comments, Chair Weathersby asked Attorney Phoenix to address the issues raised. She noted that noise, lighting and those things are not really subjects for the Board tonight. There will be a planning board process where all that will be addressed.

Attorney Phoenix stated he appreciates the professional nature of the responses of the neighbors and the respectful manner in which they brought them up. He noted that after this goes through the zoning board, which is addressing compliances with the zoning ordinance, it has to go to the planning board for site review. The planning board will address many of the things that were raised; including, traffic, lighting, blasting, effect on wildlife, hours of operation and noise limits. With respect to the water that is leaving the site, there cannot be an increase in volume or speed post construction compared to existing conditions. He noted there will not be a problem nor will it affect downstream.

Referring to the ledge, Mr. Labrie stated they have not done any geo-technic work to see what will be required. It is Mr. Weinrieb's opinion that it will not require blasting. As far as hours of operation, at the Atlantic Grill, with the exception of summer, the kitchen is normally closed at 9:00 p.m. There is a larger capacity in the function room at the Atlantic Grill for the possibility of a wedding. He thinks they can do a 140-person wedding; however, they do not do many weddings because it is not large enough for most of today's weddings. The restaurant mostly does rehearsal dinners and that type of event. He continued that weddings and functions at this location is really not his focus. If someone really wanted to do a wedding, it would probably be for about 50 people. In all transparency, he wants to say that some people may want to have social gatherings on site. He noted that there will not be weddings out in the field because they will trample on the plants. The barn really isn't big enough for a large wedding. He does not

believe weddings are going to be much of a factor. As far as screening, for the parking on the banking there will be some trees removed for the construction of the buildings. For the remaining parking there is already maples and screening. On the far side, it is his intention to plant a whole hedge of elderberries that grow 12' tall, along with sumac and other woody plants that will create a beautiful screen.

Mr. Labrie commented that in regards to traffic flow, there will not be large functions on the site. Certainly, anything that happens there is going to be smaller than what happens at the Atlantic Grill. He noted that the things that will be planted will attract birds and smaller creatures. He may have to protect the plants from deer eating them. In terms of hours of operation, he noted that they do not conduct late night operations now and it is not the intent to do so in this location either. With regard to noise, he pointed out that cooking and teaching is not very noisy. There is no plan to have outdoor entertainment. He thanked Roy Tieglund for his kind words. He thinks Mr. MacMillan will be very happy with what is done. He does not think Mr. Desrosiers has to worry about the stream backing up. The flow is not going to be increased into the brook. The flow will only be cleaned up what goes into the brook.

Speaking in regards to the blasting, Mr. Weinrieb reiterated that they do not know if they are going to do mechanical methods or actual blasting. If blasting has to be done, DES has requirements that have to be followed. There has to be a pre-blast survey completed with access to the abutters' homes to make sure that the blasting does not cause any damage. It is up to the abutters whether they want to allow the contractors to come in to create that baseline. If there is blasting and if there is damage, this is a way of documenting it. He noted that one reason to not do blasting is that the pre-blast survey costs a lot of money. A lot of ledge would have to be blasted to make it worthwhile.

Chair Weathersby asked Mr. Weinrieb to address the comment by Mr. Desrosiers about the drainage to the creek. She asked if it is correct that there will be no increase of flowage of stormwater off this property from what is there presently.

Mr. Weinrieb explained that Mr. Desrosiers is significantly upgradient of the site. In looking at the grades of his property line to the grades of Sagamore Road, it would most likely top Sagamore Road before it backed up onto Mr. Desrosiers property. He commented the flow will be reduced. However, even if that was not the case, there is no way that this project could cause impact to his property.

Vice-Chair Crapo asked what type of margin of error is used.

Mr. Weinrieb explained they use the 1" to 5, 10, 25 and 100-year storm events. The Cornell method was used, which is the accepted method for runoff. They also used what is considered in the AOT and stormwater regulations, which is 15% and that was added to the Cornell numbers. There is a 15% increase in margin of error from what is recognized.

Chair Weathersby asked if there is an issue with the culvert being of sufficient capacity, during a 100-year storm, to get all the flowage through from the upstream properties without backing up.

Mr. Weinrieb noted they have not modeled what is happening in this entire watershed. They modeled Mr. Labrie's site. It is known that the peak and volume is being reduced. If something is going to flood from upstream events, it is not going to be because of a fault of this property. He explained that this site is at the bottom of a giant watershed. As the water runs off the site, its going to go off in a matter of minutes because the watershed is very short; whereas, the other watershed is 100's of acres in area. By the time that peak runs through it and through the culvert, its going to be hours and hours after the site has seen its peak.

Hearing no further questions from the Board, Chair Weathersby closed the public hearing at 10:32 p.m.

Chair Weathersby suggested they first talk about possible conditions that could be attached. She opened back up to ask if the property will be served by municipal sewer.

Mr. Weinrieb confirmed. He pointed out that it will be served by municipal water, as well.

Chair Weathersby re-closed to the public. Referring to the municipal water and sewer, she commented that can be added as a condition or not, as it is part of their proposal. She suggested a condition for the permeable pavement that it be installed and maintained to remain permeable. She also suggested conditions for planning board site plan approval, no invasive species and the ones that were agreed to from the Rye Conservation Commission. She asked the Board if there are additional conditions that they feel would be appropriate.

Member Patten stated that they went into the discussion about the Conservation Commission and saying that these were conditions. He pointed out that the RCC said they "have no objections to the plan as presented as long as the following recommendations are followed". Not only is the RCC saying they are not conditions, but they are also saying they have "no objection". He thinks the Board has gone under this with the assumption that there has to be conditions of those things in the Rye Conservation Commission letter. Member Patten commented he is not opposed to the spirit of the letter and he knows the applicant is not opposed to many of them. He pointed out that some of the recommendations fall outside what the code would even allow; for example, "no garden development to occur wetland areas, with the exception of a wetland pollinator garden". He pointed out that agriculture is permitted in the buffer. He stated that recommendations are somewhat restrictive. He noted there are 17 conditions. It is an ambitious and big project, but he thinks they get "bogged down" in authoring conditions. They are not putting in a strip mall or a bank. It is going to be a farm and not something that is going to be a detriment to the environment. If anything, Mr. Labrie might know as much, or a little bit more, about what might be good for the property than the Conservation Commission. Is it really necessary to condition them on planting blueberry bushes and native plants? That is the whole intent of this project.

Vice-Chair Crapo stated that the only condition he can see, other than saying follow best management practices, is #3 which says to make sure the pervious pavers (pavement) remain, which is a condition that the Board already does.

Referring to the RCC letter, Chair Weathersby commented that a lot of these are not appropriate. It is worthwhile to point out that the Conservation Commission cannot approve. They can give the Board guidance, but they do not add conditions. The Board can choose to accept them or not. She agrees that a lot of them don't fit. She commented #1 does not fit, nor does #3, #4 or #5; however, she thinks they should add a condition that gardening and farming will follow best management practices.

Member Patten stated that he does not see how in the spirit of what's being done here that Mr. Labrie would not follow better than best management practices.

Chair Weathersby stated she agrees that Mr. Labrie will do that. He has been a good steward of the Atlantic Grill and other properties, but he may not own it forever. If someone is going to be farming on the site, they should be using best management practices because they are going to be working in the wetlands and wetland buffer. She would be in favor of a condition, which they have agreed to, that the agricultural uses on the property will follow best management practices. She continued that they have agreed to #6, #7 and #8. She feels that #10 is probably overreach and #11 is out, if they use best management practices. She does not think they need to do a planting plan.

Vice-Chair Crapo suggested summarizing it by saying "any and all farming and agricultural activities follow best management practices", which basically covers the entire list.

Chair Weathersby summarized that they are left with #2; "No guest or employee parking other than in the designated parking area"; also, #6, #7, #8, #9 and "agricultural practices on the property will follow Best Management Practices of the State of New Hampshire".

Vice-Chair Crapo suggested changing #2 to "no event" parking; otherwise, it is restricted more than any other property.

Chair Weathersby commented that employees should not be parking off the paved areas.

Vice-Chair Crapo pointed out that it is a farm.

Chair Weathersby suggested "no guest parking".

Vice-Chair Crapo stated the intention is to be sure that during an event the parking lot does not get filled up so cars park in the planting areas. He commented that they need to be careful with putting restrictions on that are overburdensome and would not be on a similar property.

Chair Weathersby summarized the proposed conditions;

- Served by municipal water and sewer;
- Parking spaces to be installed and remain impermeable;
- Site plan approval
- No invasive species
- No guest parking other than in the designated parking area on the plan
- Area along the stream cleared of invasive species
- Woody materials remain in the stream as habitat
- Natural debris and natural existing vegetation left intact
- Grass clippings near the stream to be removed
- Agricultural practices on the property will follow Best Management Practices of the State of New Hampshire

Vice-Chair Crapo stated he is not sure he is comfortable with #8.

Member Dibble stated that he heard Mr. Labrie say that there may be species appropriate to that area that could well be planted there as a beneficial opportunity. He thinks the idea of determining what could be planted where on the property is beyond the Board. This gets into the concern about micro-management.

Chair Weathersby commented that she agrees. However, #8 says “along the stream, all other natural debris and existing vegetation should be left intact”, meaning don’t start excavating in the stream and pulling out plants that are there.

Vice-Chair Crapo commented it says “along the stream”. He asked where the border would be. He thinks that needs to be defined because the entire property is along the stream.

Member Patten stated that they ask that some debris be removed and some be left. There is to be some mitigation of some deadwood but not all. He noted this is where it becomes a little crazy. In looking at what they have done with the property across the street (Atlantic Grill), he fully trusts this is going to come out looking as good, if not better, and the whole situation does not have to be micro-managed. In his opinion, he would throw out #8, for sure.

Member Dibble pointed out that he would throw out #6, #7 and #8.

Chair Weathersby asked if they are saying that they do not have to clear invasive species. She thought that would be non-controversial.

Member Patten commented he could go with that one.

Vice-Chair Crapo noted that some of these are going to get doubled up by state laws and regulations, along with other existing town zoning for what can and cannot be done in certain areas.

Chair Weathersby asked if they should have something like the applicant will work with the Rye Conservation Commission.

The board members replied no. It was the consensus of the Board to strike #7 and #8.

Chair Weathersby re-summarized possible conditions:

- 1- **Served by municipal water and sewer;**
- 2- **Parking spaces to remain impermeable;**
- 3- **Site plan approval from the Planning Board;**
- 4- **Will not purposely introduce invasive species;**
- 5- **No guest parking other than the designated parking area on the plan;**
- 6- **The area along the stream to be cleared of invasive species;**
- 7- **Grass clippings to be removed; and**
- 8- **All agricultural practices on the property will follow Best Management Practices.**

Chair Weathersby asked the Board how they feel about the proposal and the variances being requested.

Vice-Chair Crapo stated that it sounds like a bunch of relief; however, the overall total package and the way it is laid out makes sense. He believes the part of the wetland the building relief is from is arguably a less sensitive wetland than the wetland on the other part of the property adjacent to the parking lot. He does not have an issue with the building relief and the package as a whole.

Member Hoyt stated he is for just about everything about this project. He thinks anything that is a concern by the neighbors and himself, will be caught at the planning board. The project will definitely better the neighborhood and that area, as well as the Town of Rye. He likes the project and backs Mr. Labrie's vision. He was delighted to see a building of some historical significance proposed for that site.

Member Patten stated it is a big project but it is well thought out. Although it caused him to consider a number of different factors, he is definitely in favor. He is really happy to see that what is going back on the site is going to have some semblance of the old big house, little house, barn type of construction that can be seen around town. He believes that Mr. Labrie has been a good steward of the properties he owns and a good neighbor. Many of the questions and concerns that have come up from the neighbors, he believes Mr. Labrie will handle in a responsible way. He can get behind this project without any real reservation.

Member Dibble stated that others have checked off his issues about the concerns of the neighbors and the runoff from the property, which will be largely unchanged and better treated. He generally takes a dim view of exceeding the height requirements. However, this is one of those unique situations where the front is really the back. That was dealt with by the stone foundation, slope grading and the desire to achieve an attractive appearance to what is really the functional front of the property. He is not troubled by the height matter. He is convinced by the

argument that the issue of the taking has forced this project into the land that it otherwise would not have been. He is not as much troubled by the modest encroachments into the setbacks.

Chair Weathersby stated she shares a lot of the ideas that have just been expressed. She pointed out that she is generally not in favor of height variances. However, because of how they had to measure for the height variance, the building itself is less than 32' and 35' is allowed, if it was measured from the front. She thinks the dropping off of the land and the stone foundation adds a lot of character and authenticity. So, she is in favor of the height variance. All the wetland disturbances are kind of the edges of the wetland buffers. There is still some pretty good distance, especially for the buildings. The parking not so much. She does feel that this idea and design is driving some of the variance request. With that said, she thinks the vision for this property is spectacular and will environmentally be better for that area, the creek and the wetlands, than putting in a CVS, bank or a lot of the other things that could go there. She understands the setback issues and why they need to be there. She thinks it is a really interesting project and understands what is driving these requests. It is a reasonable request, although a big one.

Chair Weathersby called for a vote on the special exception request for the driveway access 190-3.1.G(2)

- **It has been shown that due to existing conditions, no alternative route is feasible?**

Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;
Burt Dibble – Yes; Patricia Weathersby – Yes

- **The driveway is neither injurious nor detrimental to the neighborhood?**

Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;
Burt Dibble – Yes; Patricia Weathersby – Yes

- **Is in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

Shawn Crapo - Yes; Charles Hoyt - Yes; Rob Patten - Yes;
Burt Dibble - Yes; Patricia Weathersby - Yes

**Motion by Shawn Crapo to grant the Special Exception for the driveway as requested.
Seconded by Burt Dibble.**

**Roll Call Vote: Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;
Burt Dibble – Yes; Patricia Weathersby – Yes**

Motion passed

Chair Weathersby called for a vote on the variances as advertised, along with a front yard setback for the retaining wall of 1.6' to the front property line (Sagamore Road)

1) Granting the variances is not contrary to the public interest?

Shawn Crapo -- Yes
Charles Hoyt -- Yes
Rob Patten -- Yes
Burt Dibble - Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Shawn Crapo - Yes
Charles Hoyt -- Yes
Rob Patten -- Yes
Burt Dibble -- Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo - Yes
Charles Hoyt -- Yes
Rob Patten -- Yes
Burt Dibble -- Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Charles Hoyt -- Yes
Rob Patten -- Yes
Burt Dibble -- Yes
Patricia Weathersby - Yes

5) There are special conditions of the property that distinguish it from other properties in the area?

Shawn Crapo - Yes
Charles Hoyt -- Yes
Rob Patten -- Yes
Burt Dibble -- Yes
Patricia Weathersby - Yes

- 6) There is no fair and substantial relationship between the general public purposes of the ordinance provisions and the specific application of those provisions to the property?**

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

- 7) The purposed use is a reasonable one?**

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

- 8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?**

Shawn Crapo - Yes
Charles Hoyt – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Bluestone Properties of Rye, LLC for property owned and located at 33 Sagamore Road for variances as requested, including a variance for the retaining wall to be 1.6' from the front lot line, with the conditions;

- 1. No event parking outside the designated parking areas will be used;**
- 2. Property maintenance of the pervious pavement will be taken;**
- 3. Best Management Practices in accordance with the State of New Hampshire will be used for all agricultural practices;**
- 4. Use of municipal water and sewer;**
- 5. The area along the stream to be cleared of invasive species;**
- 6. No introduction of invasive species;**
- 7. Removal of grass clippings in the brook area; and**
- 8. Planning Board approval**

Seconded by Charles Hoyt.

Roll Call Vote: Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;

Burt Dibble – Yes; Patricia Weatherby - Yes

Motion passed

III. OTHER BUSINESS

- The Board wished Gregg Mikolaities a Happy Birthday!
- Chair Weathersby noted that Shawn Crapo will be chairing the meeting on September 2nd. The agenda is quite long, so the Board may need to consider holding another meeting in September.
- Charles Hoyt announced, with heavy heart, that he will be stepping down from the Board of Adjustment, as he and his family will be moving to North Hampton.

The Board thanked Charlie for his service on the Board and wished him the best. He will surely be missed.

ADJOURNMENT

Motion by Burt Dibble to adjourn at 11:22 p.m. Seconded by Shawn Crapo.

Roll Call Vote: Shawn Crapo – Yes; Charles Hoyt – Yes; Rob Patten – Yes;

Burt Dibble – Yes; Patricia Weathersby – Yes

Motion passed

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Underwood Engineers, Inc. for Star Island Corporation

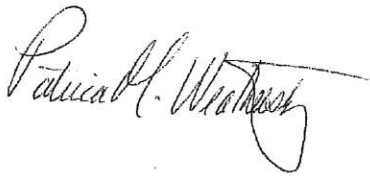
Property: 2 Star Island, Caretakers Building, Tax Map 28, Lot 3
Property is in the Single Residence and Historical District

Application case: Case # 27-2020

Date of decision: August 26, 2020

Decision: The Board voted 5-0 to grant relief from the following section of the Building Code:

- §35-14. C.1 to allow the bottom of the effluent disposal system to be less than 6' above the top any bedrock or impermeable substratum.



Patricia Weathersby, Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Underwood Engineers, Inc. for Star Island Corporation

Property: 2 Star Island, Caretakers Building, Tax Map 28, Lot 3
Property is in the Single Residence and Historical District

Application case: Case # 27-2020

Date of decision: August 26, 2020

Decision: The Board voted 5-0 to grant relief from the following section of the Building Code:

- §35-14. C.1 to allow the bottom of the effluent disposal system to be less than 6' above the top any bedrock or impermeable substratum.



Patricia Weathersby, Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Mary E. Getty, Trustee of the Mary E. Getty Revocable Trust
691 Exeter Road, Hampton NH

Property:

35 Big Rock Road, Tax Map 5.2, Lot 72
Property is in the General Residence and Coastal Overlay Districts

Application case:

Case # 28-2020

Date of decision:

August 26, 2020

Decision:

The Board voted 5-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- §190-2.4.C(1) for a shed 10.5' from the rear boundary; and
- §190-2.4.C(2) for a shed 10' from the side boundary.



Patricia Weathersby, Chair

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.