

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant:** The Sagamore Group, LLC

**Owner:** Split Rock Cove Family Trust of 2019, JP & Gail Nadeau Trustees of 507 State Street, Portsmouth NH

**Property:** 15 Sagamore Road, Tax Map 24, Lot 22  
Property is in the Commercial and Single Residence Districts

**Application case:** Case #45-2021

**Date of decision:** November 17, 2021

**Decision:** The Board voted 5-0 to grant a variance from Rye Zoning Ordinance §190-6.3.B for the removal of one commercial structure and three residential structures and replacing them with two commercial buildings and three residential structures not in the same locations or of the same dimensions as those being replaced.

The variance was granted upon continued compliance with the following conditions:

1. The portion of this property in the Single Residence District shall at all times comply with §190-2.3(5) (re impervious coverage);
2. The northern house shown on the plans shall not be built and no Building shall occupy that location;
3. A notice shall be placed in all deeds for properties on this lot which are in the Single Residence District to the effect that the homes are located adjacent to a commercial district and the uses of that district may cause noise, odor and traffic- the exact wording shall be determined by the Planning Board.

**The applicant withdrew the following variance requests:**

- §190-2.2.D(1) for four residential buildings on a lot;
- §190-2.2.J(1),(2) for 40' buffer between the commercial use and the residential district line;
- §190-2.3.A(1) for four single-family dwellings in a Single Residence District;
- §190-2.3.C(5) for overall impervious coverage of 24%; and
- §190-7.1.B for change to district boundary line by not more than 50'.



**Patricia Weathersby, Chairman**

**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:** BSL Rye Investors, LLC d/b/a Benchmark Senior Living

**Property:** 295 Lafayette Road, Tax Map 10, Lot 3  
Property is in the Single Commercial District and Aquifer, Wellhead District.

**Application case:** Case #46a 2021

**Date of decision:** November 17, 2021

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

- §190-2.11.C(3) for a bioretention pond approximately 20' from the front boundary;
- §190-2.11.C(7) for building heights as shown on the JSA Plan Set dated 8-1-2021 and presented to the Board, the maximum height being 42.03' as measured from existing grade.



**Patricia Weathersby, Chairman**

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# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

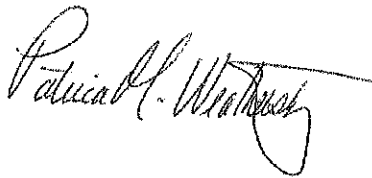
**Applicant/Owner:** BSL Rye Investors, LLC d/b/a Benchmark Senior Living

**Property:** 295 Lafayette Road, Tax Map 10, Lot 3  
Property is in the Single Commercial District and Aquifer, Wellhead District.

**Application case:** Case #46a 2021

**Date of decision:** November 17, 2021

**Decision:** The Board voted 5-0 to continue the Applicant's administrative appeal regarding the building inspector's September 7, 2021 decision that a bioretention pond is structure requiring relief from §190-2.11.C(3) and the building inspector's measurement of grade to its January 5, 2022 meeting.



**Patricia Weathersby, Chairman**

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**TOWN OF RYE**  
**ZONING BOARD OF ADJUSTMENT**  
**Wednesday, November 17, 2021**  
**6:00 p.m. – Rye Public Library**

*Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Chris Piela, and Alternates Gregg Mikolaities, Kevin Malley, and Sandra Chororos*

*Also Present for the Town: Planning/Zoning Administrator Kim Reed*

**I. CALL TO ORDER**

Chair Weathersby called the meeting to order at 7:02 p.m. and led the Pledge of Allegiance.

Gregg Mikolaities and Sandra Chororos were seated for the meeting.

**II. APPLICATIONS**

- 1. The Sagamore Group, LLC owned by Split Rock Cove Family Trust of 2019 for property owned and located at 15 Sagamore Rd, Tax Map 24, Lot 22** request variances from §190-2.2.D(1) for four residential buildings on a lot where 3 exist and one is permitted; from §190-2.2.J(1).(2) for 40' between commercial use and the residential district line where 50' is required; from §190-2.3.A(1) for four single-family dwellings in a Single Residence District where one is permitted; from §190- 2.3.C(5) for overall impervious coverage of 24% where 15% is allowed; from §190-6.3.B for removal of one commercial structure and three residential structures, two of which are located in the commercial zone, replacing with two commercial buildings entirely in the commercial zone and four residential buildings located within the residential zone; §190-7.1.B for change to boundary line by not more than 50' where the boundary line divides a lot and single ownership. **Property in the Commercial District.**  
**Case #45-2021.**

**Mike Garrepy, from the Sagamore Group,** addressed the Board. The subject property is a 2+/- parcel located on Sagamore Road. Formerly, a floor tile business was located in the main part of a commercial building. Also on the property are three single-family homes. He noted that 7.1.B allows the Zoning Board, upon request, to change the zoning line no more than 50' in either direction. (He pointed out on the plan the line that bifurcates the parcel from commercial to residential.) The intent is to adjust the zoning line, which is an act through a motion by the Board to adjust the line. (He pointed out on the plan the proposal for the adjusted line.) By doing this, it would allow for the existing three single-family units to be located entirely within the residential zone. This will make a better delineation for the line in order to properly locate the residential buildings in the residential zone.

Mr. Garrepy stated that the proposal is to have four single-family homes, entirely located within the residential zone, with two commercial buildings that have a shared patio space. One of the owners of the existing businesses is very interested in being a part of this project. They would be relocating to the new building and would have a separate roasting area, along with a retail space for their coffee sales.

Chair Weathersby asked how far over the zoning line is being moved at its widest part.

Mr. Garrepy replied 50'. It then narrows down. The intent is to get the line as parallel to Sagamore as possible.

Chair Weathersby noted that residential uses are allowed in the commercial district. She asked if the rationale for moving the line is so there is no commercial opportunity in the residential dwellings.

Mr. Garrepy explained that the rationale was to allow the three single-family homes and the addition of the fourth to be located entirely within the residential zone, so there will be a clear delineation. The goal is to provide as much of a buffer as possible from the residential uses to the commercial use with plantings and fencing.

Vice-Chair Crapo asked why moving the zoning line wouldn't make more of the lot commercial, if not all depending on where the 50' lies.

Mr. Garrepy noted that at the Planning Board conceptual, they hadn't even suggested changing the zoning line. Attorney Donovan had suggested that there is the ability to change the line by the Zoning Board. It can go 50' in one direction. The intent was to adjust the line to make the property a bit more uniform and provide a separation. He continued that some tired structures are being removed that are not compliant. The structures are currently tied into antiquated septic systems. Everything will be tied into the Portsmouth sewer system, which runs along Sagamore Road. The buildings will all be code compliant and meet all setback requirements. A better situation is being created overall with this proposal. The hope is to continue along the theme the Labries have created for the gateway to Rye.

Member Piela asked the depth of the barrier between the commercial and residential.

Mr. Garrepy replied 40'. He noted that they have asked for a variance for 40'. He does not think this applies to this proposal, but it has been requested out of an abundance of caution. He believes that section of the ordinance applies to existing adjacent uses. This is a unique situation because of the existing non-conformities and mixture of uses that are there now. More separation between residential and commercial is being provided than what exists there today; however, it's not 50' as the ordinance requires.

Attorney Kevin Baum explained that although there is not 50' between the proposed zoning district boundary and the residences, there is more than 50' between the commercial buildings and the residential.

Mr. Garrepy stated it is their contention that this section of the ordinance does not apply, as it is all one parcel. He feels that it applies to adjacent parcels and adjacent existing uses. The variance was requested because it was brought up through code enforcement review.

Member Mikolaities asked if there is a grading and drainage plan because impervious coverage relief is being requested.

Mr. Garrepy noted that the drainage has not been designed yet.

Attorney Baum explained they are not asking for overall impervious coverage relief. It's only for residential zone. The overall coverage for the whole lot is about 17.64%. The coverage for the residential buildings, compared to the whole lot, is 10.25% and 15% is the requirement. The commercial is 7.38%.

Member Mikolaities clarified this is being treated as one lot.

Mr. Garrepy replied yes.

Member Mikolaities asked the coverage for the one lot.

Mr. Garrepy stated that for the one lot, they meet the coverage requirements. Taking the individual zoning areas, it runs into an issue with a slight overage. He noted that the variance was applied for so they wouldn't have to come back, but they didn't necessarily feel they needed the variance. He further noted that once they get through this process, they will go through the process of doing the drainage design.

Member Chororos stated that on sheet C-2, it says the total impervious area of the commercial zone is 19.3% and it was said 17%. If 19.3% is added into the residence zone, it's more. She's confused about the actual calculations.

Chair Weathersby stated that Plan 2 says the total impervious area is 71.7% of the lot.

Attorney Baum explained that 17% was based on all the buildings over the entire lot.

**Joe Coronati, Jones & Beach Engineers**, explained that Note 3 shows a breakdown of the total impervious and building coverages. The total lot area is 83,988sq.ft. and the total building area is 12,000sq.ft., which is 15% of the lot. The total impervious coverage is 51% of the lot. This lot has two zones, so it was broken out to each zone as well. The building area allowed in the SR zone is 15% and this is at 16.5%, just over the building area if only the SR zone is counted. However, the impervious coverage is normally based on the entire lot. This is a split zone lot so

it makes it more confusing and the zone line is being moved at the same time. He noted that they are separating out the SR zone with the proposed zone line. The commercial zone requirement allows a building area of 75% coverage and it's below that at 71.3%.

Chair Weathersby clarified that overall coverage for the entire lot is 51.3%. With the zone line adjustment for each separate district, the single residence is 16.5%, which is why the variance was requested because 15% is allowed. The commercial is 71.75%, which is under the 75%.

Vice-Chair Crapo asked if they are using building or the total impervious coverage in the commercial.

Mr. Coronati replied it's the total. They are using the asphalt around the buildings, as well. Using 75% for the building would be tough, as it would be all building with no parking. The zoning was interpreted to include asphalt in that number.

Chair Weathersby asked if they considered subdividing the land to make it clean having two lots.

Mr. Garrepy noted that variances would be needed for frontage and lot size.

Vice-Chair Crapo that there is a request for a variance to 2.2.J(1) and (2). J(1) talks about buffers adjacent to residential districts. The last sentence says, *"Where the buffer area is developed, further encroachment may occur only by a special exception."* He thinks it's pretty arguable that this center strip of the land, which is already developed, is part of what's there right now. He is kicking around the idea of special exception versus variance. In looking at B under 2 it says; *"If new residential development and new non-residential development are part of the same development, the buffer shall be provided around the non-residential development in the residential district."* He noted that there is no commercial proposed in the residential, so that negates this. It continues; *"around the residential development in the non-residential district."* With the proposed change, there is no residential in the commercial. His instinct tells him that perhaps the buffer doesn't apply to the internal of this lot and only to abutting properties.

Mr. Garrepy stated this is their interpretation also, but it was applied for in order to have that discussion. The buffering section of the ordinance is a bit confusing.

Vice-Chair Crapo stated that the way he reads it, the internal buffer is not even needed. If it was, the criteria would be special exception, not a variance.

Chair Weathersby commented that 2(B) doesn't really get them off the hook from the buffer between the districts.

Vice-Chair Crapo stated he thinks it gets them off the hook for the buffer between the districts as it pertains to the center of this parcel. He can see it applying to the abutting properties. He doesn't think they are encroaching into the 50' with the neighboring properties.

**Architect Mick Khavari** reviewed the architectural plans for the Board. He pointed out the two commercial buildings along Sagamore. There is one building length wise on the property and another at ninety degrees. The two buildings cradled create an elevated patio 18” above grade. There is an open breezeway that passes through the two buildings. The passage is simply to provide some delivery space into the rear of the building. It also separates egress to the buildings and provides access to the patio. He noted there is a small office space in the upper level in one of the buildings. The desire is to provide a commercial space that is in character with the Town of Rye and the quality of The Atlantic Grill. The patio has a structural pergola to act as a shading devise.

Mr. Khavari continued that other than a peak through trees, it is likely the residential will not be seen from Sagamore. The residential buildings are about 2500sq.ft. There’s a tandem garage, in order to give more side yard room. There’s a partial basement for mechanicals and storage. The buildings appear smaller than what they actually are.

Referring to commercial building B, Member Piela asked if there is ever a potential for the building to be separated at the rear to be a third commercial business.

Mr. Khavari explained that right now the intent is to work on occupying the whole space. The only reason why the rear space is labeled “manufacturing” is simply because that would be an area used for roasting coffee. He commented that it could be used as its own business.

Chair Weathersby noted there is no public access, such as a front door for the public.

Mr. Khavari pointed out there is a door on the side, so it could be a separate shop.

Member Chororos noted that the August 25<sup>th</sup> memo says the project proposes four single family residences with footprints of 4384sq.ft.

Mr. Khavari explained that this was an error. The footprint on the ground is 1656sq.ft. The gross square footage of conditioned space is 2252sq.ft. The buildings are all the same. The homes will be condos for the upkeep of the property, but separate single-family homes.

Referring to the rear commercial section, Vice-Chair Crapo asked if that was calculated into the parking to see if that would become an issue, if it were to become its own commercial business.

Mr. Khavari stated the parking and use have to work together. What is being proposed is the intent and it works. If that area was to be office, it’s within 100sq.ft. of meeting the one space for parking.

Mr. Garrepy stated that any change of use on the site will be required to go before the Planning Board for a change of use. It will have to be demonstrated how the parking requirements can be met.



Member Chororos stated that when she thinks of “manufacturing”, she thinks of trucks and a much larger space required around the building to regulate what’s coming in.

Mr. Garrepy noted that he believes the Planning Board, when permitting ‘La Mulita’, assigned that space as “manufacturing” per the ordinance. So, it was assigned “manufacturing” for this purpose, as well. The intent is to not have manufacturing beyond bean roasting in that space.

Member Chororos stated she is just concerned about the radius for a bigger truck.

Vice-Chair Crapo noted the fire department will look at this. They have to be able to get to the condos to the rear.

Mr. Khavari pointed out there is a full loop road that runs through for access on both sides.

Chair Weathersby asked where they are at in the Planning Board process.

Mr. Garrepy explained the Planning Board process has simply been a conceptual, which was a previous six-unit proposal.

Attorney Baum stated they are not before the Board seeking any use relief. That was a label of convenience. The hope is to continue the present use. He noted that this has to go through site plan approval, which will deal with turning radius and such.

Vice-Chair Crapo stated that in looking at the conceptual renderings, it shows place holders for signage. It looks like it might be over the signage allotment. The proposal might not necessarily get those signs.

Member Mikolaities asked the existing proposed commercial square footage versus the proposed.

Mr. Khavari replied that the existing building, including the adjacent enclosed shop, is compatible in size with the new building. The new building will be slightly larger than the existing on site. The existing building is approximately 3500sq.ft. The proposed building is 3000sq.ft., plus 3200sq.ft. for the additional building, making it 6200sq.ft.

Member Mikolaities asked the size of the existing residential units.

Mr. Khavari replied they are about 1200sq.ft.

Member Mikolaities commented it’s doubling the size of the commercial and doubling the size of the residential.

Mr. Garrepy noted the residential units are going vertical, so it’s not doubling footprints.

Attorney Baum reviewed the criteria for the variances:

- In regards to promoting health and safety, the old, out of place structures will be replaced with brand new to code buildings. The wells and septic are going away and it will connect to municipal septic and water. In regards to promoting light and air, the new residential buildings are about 50' from the commercial. It is now generally open. The proposed landscaping is going to beautify the area. The overall area is going to ultimately be improved. There will also be a better buffer between the residential and commercial use by moving the line. This is a very large lot for this area. There is significant space and there's only an issue when limiting residential coverage to the residential zone. Overall, there is significant open space relative to what is mostly a commercial lot. This is an area that has really begun to improve. This will replace a fairly defunct property with a nice commercial and nice residential. It will be bringing an up-to-date project in this area, which is the gateway to Rye. It is clearly an improvement over the existing, not just in the buildings but also with reducing the existing non-conformities.
- There will be no diminution of property values, as tired, old buildings are being replaced with brand new to code buildings.
- Special conditions exist that distinguish it from others in the area. It's a fairly large lot for the area. It's probably the only mixed residential/commercial lot, in terms of current use in the area. Also, it's bisected by the current district line.
- Two of the variances are for having more than one residence on a single lot. The intent is to reduce overcrowding of residential lots. That really isn't the case here. Internal setbacks are being met. Three residential units already exist. The proposal will put the residences in a more orderly fashion and will improve overall conditions. It will also provide screening between the residential and commercial buildings, which does not exist now. The lot coverage requirements are intended to reduce stormwater impacts. Is overall stormwater runoff protected? It has been demonstrated that it is, given the size of the lot respective of the use. The plan also has to go through site plan review and the Planning Board will look at this issue, as well.
- To demolish and replace in kind doesn't make sense on this lot. Nobody wants these buildings in the current location and the current dimensions. The plan is a more useful orderly proposal. The proposal is going to greatly improve the existing conditions and will create a really nice mixed-use lot at the end of Rye to continue what's happening in the area.
- There is no benefit by denying the application. There is certainly a hardship to the applicant if any of the variances were denied and they were unable to complete the plan as proposed.

In addition to the variances, the applicant also asks that the Board adjust the district line in a way that makes more sense for the layout of the lot. It will create more distinction for better protection between the residential and commercial uses on the lot.

Vice-Chair Crapo stated that if the zoning line is moved, it looks like the only setback issue might be where the proposed dumpsters are located to the intersection of the two zones. He

asked if this is at least 50'. (Measuring from the southwest corner of the dumpster pad to the zone line at the abutting property.)

Mr. Coronati noted that it's 63' at that angle.

Chair Weathersby opened to the public for comments.

**Max Pruna, owner of La Mulita**, spoke in favor of the proposal. He noted that his business has been suffering from some issues of being in a very old building. One of them being the roof, which is in disrepair. This will allow for a place for the community to come together. It's a great location for people to gather to have coffee with friends. The current location combines both the production and café under one roof and it's pretty small. This will allow for both things to be separated and will allow for a better space. It's also much safer for vehicles exiting and entering the location.

Mr. Garrepy noted that there have been several conversations with the Labries, who have submitted a letter of their support.

Planning/Administrator Reed noted an email was received from Susan Labrie in support, which is in the Board's packets.

Mr. Garrepy also noted that they have spoken with most of the abutters and are working with them in regards to buffering.

**Ruch Pettigrew, Seaport Fish**, stated that he is not in favor of some of the parts of the proposal. One is the density of the project. He is also not in favor of taking away from the commercial property, as it's limited in Rye. The commercial buildings will definitely add to that area of the neighborhood. The problem is having four other residential buildings, which will not lessen any congestion. Being a commercial abutter and having the residential buildings right there is something that he never intended on happening. In his mind, the intent doesn't meet the intended use in the spirit of the zoning.

Vice-Chair Crapo commented there is a piece that is being increased commercial and a piece that is being reduced. He asked the net difference.

Mr. Garrepy stated it's probably a minor increase in the residential zone, but a calculation was not done.

Vice-Chair Crapo commented that on the Saunders development, the deeds all have a restriction that it's a working harbor. People can't move into the residence and then start complaining about the abutting commercial. Here, a potential neighbor could complain about fish smells. The intent should be that they know this moving in and it there should not be any complaints about the business in the future.

Mr. Garrepy stated that he has spoken to Rich about this. He has done this with other subdivisions. This is a commercial transition zone where there will be certain smells from the businesses. He agreed to craft some language that would be part of the deeds for the residential homes.

Attorney Baum noted there are existing residences and those have a right to continue. The proposal does not introduce residential where there was never residential before.

Mr. Garrepy stated that they are limited to what can be done in the residential zone to residential uses. The plan doubles the size of the commercial use. He continued that wetland has also been delineated on and off site. They're less than the requirement for setbacks.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:27 p.m. She stated that the first order of business is to decide whether variances are needed from Section 2.2.J(1) and (2).

Vice-Chair Crapo stated that he thinks (2)b makes it so the buffer is not needed within the property. It then becomes the measurement between the dumpster and the corner, which is more than 50'. He thinks they satisfy J(1), predicated on whether the Board allows the line to move.

Chair Weathersby agreed.

Vice-Chair Crapo explained that if the line is not moved, then they have an issue with at least the northern most unit.

There were no further comments in regards to this variance request from the Board, at this time.

In regards to moving the line, Vice-Chair Crapo stated that one of the lines that stuck out in the Master Plan was that the "powers to be" did not want to add more residential and wanted to keep commercial. In this case, he does not think they are tipping the scales much. He thinks the spirit of what's being done here, is a gain to the commercial going forward and part of the driving factor of why the Master Plan had said it was more for gaining tax dollars. Here, it's taking a parcel that is probably undervalued and the proposal will definitely increase it.

Chair Weathersby stated the proposed line change is rather modest. Also, it keeps the uses separate. The line could be left as it is with a residential use in the commercial zone. However, there could also be a commercial use if the line wasn't moved. The first house could be used for a commercial use under the ordinance. It would tighten things up to have residential in residential and commercial in commercial, so there are not any issues.

Member Piela agreed. It keeps it clean and keeps the Board from dealing with a bunch of other potential variances. Moving the line makes it a clean and straightforward process.

Vice-Chair Crapo stated that under 2.11.A(1) it says; *“any use permitted in any residential district, including accessory uses subject to all limitations there applicable, except that residential uses, including single-family dwellings and two-family dwellings are not permitted.”* That section seems to undo the theory that there could be residential in commercial.

Chair Weathersby pointed out there could be a multi-family dwelling.

Vice-Chair Crapo commented that to achieve what they need to do; the line should be moved.

Chair Weathersby stated they need to consider the four single family homes in the single residence district, along with the impervious coverage of 16.5% where 15% is allowed in the district. That’s probably the more contentious of the issues.

Member Piela stated that this ties in with 6.3.B because they are increasing the bulk, as it’s almost double the residential bulk. It’s going from about 4000sq.ft. of existing residential to 8800sq.ft. of proposed non-conforming.

Vice-Chair Crapo pointed out this is living space, not the footprint.

Member Piela stated that in looking at the footprint, 1656sq.ft times four is the proposed.

Chair Weathersby commented that it’s going from roughly 3000sq.ft. to 7000sq.ft. of footprint. She continued that she struggles with it a little. It’s an unusual single residence district. It’s behind the commercial and is not a typical house in a subdivision.

Member Piela stated that compared to the homes that are there today, this is a vast improvement.

Chair Weathersby stated that she loves that they are being connected to sewer. When looking at the impervious coverage request, they are asking to increase by a percentage and a half. There could be one 6000sq.ft. house or these four and it would end up in the same place. It’s nice that each house has its own space and its own yard.

Vice-Chair Crapo commented the driveways cut out onto the commercial part. The commercial part is actually under where it could be. If they had asked for the commercial line to be another few feet the other way, there would be less driveway coverage in this zone and it would be in the other zone.

Member Chororos commented the top northern house could go away and there would be less density and less congestion. Maybe the stormwater issues could be rectified. The houses would be further away from the abutting fish market. She continued it’s way too dense. There’s a lot of congestion. There’s so much going on that one piece of property. Taking one house out of the equation, seems to better control the congestion and all the things that are going to happen that definitely don’t exist there today.

Member Mikolaities agreed. In a residential zone, 66,000sq.ft. is needed for one home. This is trying to put four houses where one is permitted on a lot that is half at 35,000sq.ft. He loves the commercial. He would agree with three houses and keeping the zone line exactly where it is to provide protection for any existing business that has been operating. He is fine with leaving the zone where it is and three for three. He likes keeping the buffer for the existing businesses that have been there. He supports not moving the zone line and leaving it exactly where it is.

Member Piela asked if a buffer variance is needed if the zone line is not moved, but the house is still removed.

Chair Weathersby confirmed.

Member Mikolaities commented he is okay granting that variance.

Chair Weathersby stated that she came in thinking it's too dense. She could be convinced that the four houses would probably be okay given the lot coverage in the single residence district. However, in balancing it out with the almost 72% lot coverage in the commercial, it's tricky.

Member Mikolaities stated they can't ignore the drainage problems that are in that area. He's a little disappointed that they came in for lot coverage, but didn't talk about drainage. It's clearly wet and that whole area is low. He feels there was some shuffling going on here with lot lines and numbers.

Chair Weathersby stated that if the lot line didn't move, there would be a bigger buffer to Seaport Fish and the coffee roasting. There would still be three houses of good size. The downside is they could push the commercial back to where the first house is located, if the lot line is not moved.

Member Piela stated that if the line is not moved and the Board stands by the protection of commercial space in town, they could resubmit with three structures. There would then be a requirement to have a buffer on that northern corner.

Vice-Chair Crapo replied no, not on their lot. The only buffer up on that end of the map is the lot behind this lot and Seaport.

Chair Weathersby commented there's a 50' setback presently to the first house. She continued that if the Board is to approve it, there could be a condition that the northern buffer be a vegetative buffer with tall enough plants to screen. There should be a deed notice about this being a commercial area. She asked if there should be other conditions, if this were to be approved.

Vice-Chair Crapo stated the 50' buffer is for the commercial adjacent to residential. It's not for the residential adjacent to commercial. Section J(1) is in the commercial regulations.

Chair Weathersby commented it's not required, but it's a proposed condition, if it should be approved. If the Board denies, she would like to hear specific reasons.

Vice-Chair Crapo stated he is in favor of granting. He hears Member Mikolaities' point and he hears the density point. In looking at the hybrid of the two numbers, the commercial by right could have buildings up to 70%. Here, there is 50% because it's being combined with residential. He thinks one drives the other. The fourth house and the request to be at 16.5% where 15% is allowed, is parceled with the other part being 50%. Someone else coming in could have a more commercial proposal. It may be more commercial and more of a stress on the runoff and residential. He is in favor of this the way it is combined because of the way it drives off one another. It could be conditioned on the proposed plans. As its proposed with the lot line moving, the island gives protections. He does not see that the proposal before the Board is too egregious with a few percentage points over here and there, as far as what someone could do in developing this land.

Hearing no further comments from the Board, Chair Weathersby called for a vote on 7.1.D regarding the change in the boundary line:

**1.) Does the Board wish to permit the applicant to change the zoning boundary line?**

Gregg Mikolaities – No  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – Yes

Applicant is permitted to change the boundary line.

Chair Weathersby called for a vote on the variance to 2.2.D based on this set of plans, subject to the Planning Board and conditioned upon the buffer getting vegetative plantings and the language in the deed regarding the commercial area:

**1.) Granting the variance is not contrary to the public interest?**

Gregg Mikolaities – No  
Chris Piela – No  
Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – Yes

**2.) The spirit of the ordinance is observed?**

Gregg Mikolaities – No  
Chris Piela – No

Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – Yes

**3.) Substantial justice is done?**

Gregg Mikolaities – No  
Chris Piela – No  
Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – Yes

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

Gregg Mikolaities – No  
Chris Piela – No  
Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – No

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

Gregg Mikolaities -No  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**6.) There's no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Gregg Mikolaities – No  
Chris Piela – No  
Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – Yes

**7.) The proposed use is a reasonable one?**

Gregg Mikolaities – No  
Chris Piela – No  
Shawn Crapo – Yes



Sandra Chororos – No  
Patricia Weathersby – Yes

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

Gregg Mikolaities – No  
Chris Piela – No  
Shawn Crapo – Yes  
Sandra Chororos – No  
Patricia Weathersby – No

Chair Weathersby allowed Mike Garrepy's request to speak to the Board.

Mr. Garrepy stated that if the Board did not vote on the first variance, he would like to respectfully request to withdraw the variance. As the second request did not pass, he thinks it would make more sense to keep the zoning line the way it is, remove the existing three single-family homes and relocate them in the existing residential zone. They could just look to replace the existing three non-conforming homes that are there now to a conforming area of the lot. The commercial area can be repurposed for a commercial building or commercial parking.

Vice-Chair Crapo stated that he doesn't think that can happen. The three buildings that are there are where they are at. \

Mr. Garrepy stated that's why they are asking for the variances to move them to a conforming area on the site.

Chair Weathersby clarified the variance request for four residential buildings (2.2.D) is being withdrawn before it's voted down.

Mr. Garrepy explained they won't need the first four variances being requested. It will meet the impervious and the building coverage. The only variance that is needed is 6.3.B for destruction and relocation, which is only making everything more conforming to the zoning.

Attorney Baum stated he wants to confirm that they can rebuild in the sizes and location proposed.

Chair Weathersby called for a recess at 9:01 p.m.

The meeting reconvened at 9:09 p.m.

Attorney Baum requested to withdraw all variances requested, except for the request to demolish and relocate the existing structures to the residential zone in the approximate dimensions as

presented. The intent is to develop three residential buildings as represented in the plan before the Board, subject to the Planning Board approval.

Chair Weathersby clarified that the proposal is for three residential buildings, as presented at this meeting, in the locations of the southern three and the commercial buildings in the configuration that they are presently.

Attorney Baum confirmed.

Chair Weathersby asked if the area of the northern most house will be vacant.

Mr. Garrepy replied that it will be some other commercial use or landscaping that will be compliant with zoning. The plan will be to remove that fourth unit and replace it with something that's zoning compliant.

Chair Weathersby stated that she doesn't think this gets around some of the concerns that have been raised about having a building in that location and it being congested. She thinks if that's going to be done, the Board needs to see what's being presented. She's not even sure it's a continuance at this point. It's probably a withdrawal and a new application with a new plan.

Vice-Chair Crapo stated that if that area of the lot is going to stay empty, it's a modification of this plan and it can move forward tonight. If anything else is going to end up in that area, the plans will have to be redrawn with a new application.

Chair Weathersby commented that they need to see the total project.

Member Chororos stated that in her opinion, another building doesn't satisfy the concern of density.

Mr. Garrepy commented that the idea is to leave it open for parking or landscaping. It's not going to be another building.

Member Chororos asked if it can be conditioned upon that.

Chair Weathersby confirmed.

Attorney Baum stated that a cleaner condition would be that it not be replaced with another building, instead of listing all the potential things it could be.

Vice-Chair Crapo noted that leaving the district line changes the numbers that go into the 16.5%. This is taking out a building, so the square footage is being changed.

Member Mikolaities stated they are going to have to reduce the footprints a bit. In looking at the plan, they move 2200sq.ft. from commercial to residential. They may have to reduce the square

footage a bit to reduce the lot coverage. What they are saying is that they'll find the 1.5%. They'll figure out the lot coverage.

Chair Weathersby suggested a condition that says; "impervious coverage in the single residence district must comply with zoning ordinance." She also suggested; "northern house to be removed and not replaced with a building."

Chair Weathersby clarified there is a variance request for 6.3.B to remove the one commercial building and three residential buildings, replace the 2/3 commercial buildings, as presented, and three residential buildings that are larger in size than what is existing. Conditions of approval:

- The northern most house on the plan is to be removed and not replaced with a building;
  - Impervious coverage in the single residence district must comply with zoning ordinance; and
  - Deed language to be crafted (similar to Saunders) about the working commercial district.
- She called for a vote to 6.3.B:

**1.) Granting the variance is not contrary to the public interest?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**2.) The spirit of the ordinance is observed?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**3.) Substantial justice is done?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes  
Chris Piela – Yes

Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

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

Gregg Mikolaities -Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**6.) There's no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**7.) The proposed use is a reasonable one?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**Motion by Shawn Crapo to grant the relief requested by The Sagamore Group for property located at 15 Sagamore Road, Tax Map 24, Lot 22 for a variance to §190-6.3.B to remove the one commercial building and three residential buildings, replace the 2/3**

commercial buildings, as presented, and three residential buildings that are larger in size than what is existing, with the following conditions:

- The northern most house on the plan is to be removed and not replaced with a building;
- Impervious coverage in the single residence district must comply with zoning ordinance; and
- Deed language to be crafted (similar to Saunders) about the working commercial district.

Seconded by Chris Piela. Vote: 5-0. All in favor.

Mr. Garrepy stated that to be clear, the variance request to #1, #3 and #4 have been withdrawn. The variance to J(1) and (2) does not apply.

Chair Weathersby confirmed.

2. **BSL Rye Investors, LLC d/b/a Benchmark Senior Living for property owned and located at 295 Lafayette Road, Tax Map 10, Lot 3** requests an administrative appeal from the building inspector's September 7, 2021 decision that a bioretention pond is a structure requiring relief from §190-2.11.C(3); and from the building inspector's measurement of grade. **Property is in the Commercial District and the Aquifer Wellhead District. Case #46a-2021.**
3. **BSL Rye Investors, LLC d/b/a Benchmark Senior Living for property owned and located at 295 Lafayette Road, Tax Map 10, Lot 3** request variances from §190-2.11.C(3) for a bioretention pond, where the center of the berm is 10' from the existing front boundary where 60' required, from §190-2.11.C(7) for a building height of <37.03' – 42.03' where 35' is required. **Property is in the Commercial District and the Aquifer Wellhead District. Case #46b-2021.**

**Attorney Kevin Baum, representing the applicant,** stated that with the permission of the Board, he would like to present the variances first, as it may be cleaner that way. If the variances are approved, he would continue the administrative appeal for 30 days for any abutter appeal and then withdraw.

The Board agreed.

Attorney Baum explained that the project was before the Board for a special exception. Benchmark is the current owner of the former Evolve Memory Care. Since the project was before the Board, Benchmark has received approval for a lot line adjustment. Half of the old Hector's lot has been combined with the Evolve lot. The proposal is to create an addition that's going to be semi-attached to the existing facility creating an additional 70 units, 91 additional beds. Part of the Planning Board review, in consultation with Attorney Donovan and Mr. Marsden, determined that zoning relief is needed to accommodate the height of the two-story addition. It was also determined that relief was needed for the detention pond along Lafayette

Road, which was determined to be a structure; thus, setback relief is required. He noted that the addition will be approximately 34' from finished grade. However, that is not how the ordinance reads. The ordinance determines height from existing grade. The height will be under 34', but some fill had to be added.

**Mark Moeller, Architect from JSA Design**, explained that the proposed addition is connected in two locations to the existing memory care facility. The addition being built is one hundred percent for assisted living. While the population for the addition may have some similar needs, they are not the same needs as the existing facility. With that said, there are some connectivity issues that are intended to be maintained for the staff, visitors and residents. The first-floor elevation is being maintained to keep it the same as the first-floor elevation of the existing building. There will be quite a bit of traffic between the two facilities from a staffing standpoint. It's important to keep the finished floor elevation the same. This is the premise that sets the building height. (He gave a brief overview of the proposed floor plan.) He noted that architectural hues are being taken from the peak roof with the double gable expression. Given the fact that this is a two-story building, as opposed to one, the pitch of the gable has been reduced considerably, while trying to keep the architectural character as consistent as possible. Because the two buildings are now connected and are essentially one, the frontage closest to Route 1 to the far corner of the existing building represents a total lineal footage of 636'; the midpoint of which, happens approximately near the new proposed front door. At that point, the existing grade is 120', which is roughly 3' lower than the finished floor elevation. From the ridge to the existing grade is the 37', which is 2' over the height limit. The actual physical distance is 34'4". He noted that they are trying to not create a flat roof building. The intent is to keep in character with what's there. Although it's been modified to some degree, they would rather not modify it further to make it more foreign to the character that's already been built.

Chair Weathersby asked why the midpoint was used and not the average elevation of the ground around the building.

Mr. Moeller stated they were using subparagraph A for lots with a yard depth of 100' or less; "The grade shall be the elevation of the existing ground at the center of the exterior wall on the street side."

Attorney Baum explained it's 100' or less at its closest point to Lafayette Road.

**Joe Coronati, Jones & Beach Engineers**, noted it's about 70' from the property line to the closest corner of the building. Referring to the detention pond, Mr. Coronati explained they have been in front of the Planning Board for months with a full drainage and grading design. They were unaware of the requirement that bioretention ponds could not be in the setback. There's even an existing bioretention pond on the site already in the setback. The site has been designed to have two main bioretention ponds. There are four smaller ones to break up the drainage around the site. There is excellent soil for infiltration. There are deep sands and gravels, so all the stormwater can infiltrate into the ground. A bioretention pond has been designed along Lafayette Road in front of the site. The bioretention pond is really just lawn and doesn't look

any different than a grassy lawn. There is a slight berm that will be seen from Route 1, which is approximately 2' high. It goes behind about a 1' and is a shallow wide area. Everything will infiltrate in. As part of the landscaping plan, there is a row of trees proposed along Route 1, every 30' along the street. There is also a vegetative buffer along the new side lot line with the 30-unit development. The bioretention pond will not look any different than someone having lawn in front of their house.

Mr. Coronati pointed out there is a depression in front of the existing Evolve building. This one is more of a deeper depression and has landscaping around it. The new bioretention pond will be located in front of the proposed addition. He also pointed out that the lot does slope off. It has some topography to it, which is very gradual. The high point of the property is in the rear. A small portion of the land pitches back towards the Greenland town line. The rest of the property slopes towards Route 1, so the ponds were located in the low spots.

Vice-Chair Crapo asked how this coordinates with the water coming off Route 1, which is significant in this area.

Mr. Coronati explained it's a pretty large grass area. There is a catch basin and drainage for Route 1 in this area. DOT requires a 12' easement when property is developed along Route 1 for future widening. With this particular property, instead of granting an easement, they granted DOT the 12'. So, DOT has a wider right-of-way and fee ownership along this section. The property line jogs back 12'. DOT has about 15' to 20' of grass area beyond the pavement that's within the right-of-way. There's plenty of room for their stormwater. Also, their stormwater doesn't flow into the property because the parcel goes uphill from Route 1. Right at the road in front of the pond it's at 112 and to the rear it's 120, so the site picks up about 8'.

Vice-Chair Crapo commented that the site has always collected water where the existing pavement is located. The water comes down off the hill and settles in that location. It seems to be right about where the bioretention pond is proposed.

Mr. Coronati explained that they maintain everything coming from the site. For the water coming down Route 1, there is an existing culvert and a catch basin. All the stormwater heads down Route 1 towards North Hampton. It would then make its way to the culvert under Route 1. This is actually being allowed to happen through some of the swales being built on the abutting property.

There were no members of the public present for comments.

**Note:** *Mike Garrepy noted for the record before he left the meeting that he supported the request for variances for this application.*

Attorney Baum asked if he should review the criteria for variances or rest on the memorandum that was submitted to the Board.

Chair Weathersby stated that he could rest on the memorandum.

Attorney Baum pointed out that the finished grade of the building is going to be almost entirely 34'. There are a few locations where it will be just a bit beyond the 35' height. Again, this really isn't relevant because the relief is needed anyways. He noted that they requested a range for the approval, but Exhibit B has the exact elevations. It may be easier to grant the height relief based on what is presented in Exhibit B.

Chair Weathersby stated that the maximum height, based on the Town's definition of grade, is 37.03'.

Attorney Baum replied it's 42'.

Vice-Chair Crapo stated his interpretation is at the point where the building inspector needs to measure, the tallest is going to be 42.03' from the existing, but the actual reveal is going to be less. What the Board has to be concerned with is something that the building inspector is going to be able to go out to measure and enforce.

Member Piela asked if they are debating where the point is measured from.

Attorney Baum stated that he believes the relief is given on the plan presented. It will cover the proposal because each elevation has been shown around the building.

Chair Weathersby stated that in looking at the definition, grade is the "elevation of the existing ground at the center of the exterior wall on the street side". She asked if this would be .03.

Attorney Baum commented that they don't agree with .03 but that is the highest point. If they get 42.03', as it appears to be where the building inspector is measuring, it would give the relief being sought. It will allow for the development according to the plan presented.

Chair Weathersby stated that if they granted a variance for the maximum ridge height of 42.03' with the building heights to be built per this set of plans dated August 1, 2021. She asked how many feet the bioretention pond is from the front boundary.

Mr. Coronati noted it's almost 20' from the edge of the filter media to the right-of-way.

Chair Weathersby asked the distance of the edge of the bioretention pond to the rear boundary.

Mr. Coronati replied that the closest point is 25'.

There were no further questions from the Board.

Chair Weathersby called for a variance for 2.11.C(3):

**1.) Granting the variance is not contrary to the public interest?**



Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**2.) The spirit of the ordinance is observed?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**3.) Substantial justice is done?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

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

Gregg Mikolaities -Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**6.) There's no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Gregg Mikolaities – Yes

Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

**7.) The proposed use is a reasonable one?**

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes  
Chris Piela – Yes  
Shawn Crapo – Yes  
Sandra Chororos – Yes  
Patricia Weathersby – Yes

Member Mikolaities stated he is in favor of the height. However, there should be something on the record as to why they are in favor for this location, as opposed to somewhere else. He noted that every property is unique. This property is on Route 1. There's no abutter. It's not blocking anyone's view.

Vice-Chair Crapo commented that it's in the commercial district, which tends to have taller buildings anyways.

Member Mikolaities also pointed out that it's matching the existing ridge line.

Vice-Chair Crapo stated that if they had 40' more of frontage, the height variance probably wouldn't be needed. It's a very large lot, but the way this is laid out, this finger of the building makes it fall into the A criteria.

**Motion by Gregg Mikolaities to grant BSL Rye Investors, LLC d/b/a Benchmark Senior Living for property owned and located at 295 Lafayette Road, Tax Map 10, Lot 3 for variances from §190-2.11.C(3) for a bioretention pond approximately 20' from the front boundary and from §190-2.11.C(7) for a building height of up to 42.03' where 35' is required, as per the plans submitted and presented on November 17, 2021.  
Seconded by Shawn Crapo. Vote: 5-0. All in favor.**

Attorney Baum requested a continuance for the administrative appeal.

**Motion by Patricia Weathersby to the January 5, 2022 ZBA meeting. Seconded by Shawn Crapo. Vote: 5-0 All in favor.**

**Adjournment**

**Motion by Member Piela to adjourn 10:01 p.m. Seconded by Shawn Crapo. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** BSL Rye Investors, LLC d/b/a Benchmark Senior Living

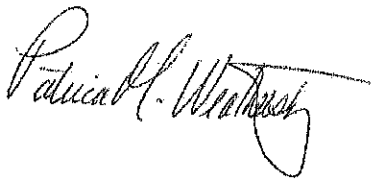
**Property:** 295 Lafayette Road, Tax Map 10, Lot 3  
Property is in the Single Commercial District and Aquifer, Wellhead District.

**Application case:** Case #46a 2021

**Date of decision:** November 17, 2021

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

- §190-2.11.C(3) for a bioretention pond approximately 20' from the front boundary;
- §190-2.11.C(7) for building heights as shown on the JSA Plan Set dated 8-1-2021 and presented to the Board, the maximum height being 42.03' as measured from existing grade.



**Patricia Weathersby, Chairman**

**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.