



Town of South Kingstown, Rhode Island

BUILDING AND ZONING DEPARTMENT

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A meeting of the Zoning Board of Review of the Town of South Kingstown, County of Washington, in the State of Rhode Island was held at the South Kingstown Town Hall, 180 High Street, Wakefield, RI at 7:00 p.m. on Wednesday, July 20, 2022

A. CALL TO ORDER:

Mr. Cagnetta called the meeting to order at 7:02 pm

B. CHAIRMAN INTRODUCTIONS AND INSTRUCTIONS:

Members Present: Robert Cagnetta, Chairman; Thomas Daniels, Vice-Chair; William Rosen, Member; Russell Brown, Member; and Kevin Diamond, Alt. #1

Member(s) Absent: Susan Walsh, Member

Staff Present: Amy Goins, Special Legal Counsel; Jamie Gorman, Building Official and Zoning Clerk; Jessica Spence, Administrative Support Assistant

Members voting tonight will be Mr. Cagnetta, Mr. Daniels, Mr. Rosen, Mr. Brown, and Mr. Diamond

The standards of relief were explained.

C. AGENDA ITEMS:

- I. **Continuation of the Petition of Earle S. & Brenna E. Sharpe**, 74 Parkwood Drive, Kingston, RI 02881 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking a Special Use Permit to locate an Onsite Wastewater Treatment System (OWTS) closer to a wetland than allowed. 150' setback is required, 58' is proposed. Relief of 92' is requested. The applicant also seeks to locate a single-family dwelling 23' from the front property line. The required front yard setback is 35'. Relief of 12' is requested. Lot size is .48 acres. **A Special Use Permit is required per Zoning Ordinance Section 504.1 (Special Use Permits-Location of OWTS) and Section 907 (Standards of Relief). A Dimensional Variance is required per Zoning Ordinance Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief).** Property is owned by Earle S. Sharpe and Brenna E. Rheinberger for premises located at Assessor's Map 31-2, Lot 93, South Kingstown, and zoned R20.

The petition was withdrawn.

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- II. **Petition of Erin Thorkilsen**, 54 Metaterraine Avenue, Wakefield, RI 02879 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to demolish the existing single-family dwelling and cabana and construct a 1,047 square foot dwelling and 192 square foot cabana. The parcel of land that this dwelling is located on is non-conforming due to the number of residential structures on the same parcel. A Special Use Permit is required for any addition, enlargement, expansion, or intensification of non-conforming use. Lot size is 70 acres. **A Special use permit is required per Zoning Ordinance Section 203 (Special Use Permit for Addition, Enlargement, Expansion, or Intensification) and 907 (Standards of Relief).** Owner of land is Jerry Brown Farm Association, Inc., and the owner of the dwelling is Eric G & Amy K. Thorkilsen for premises located at 19 Fire Lane Seven, South Kingstown, Assessor's Map 82-1, Lot 1-16 and is zoned R80.

The petition was continued until August 17, 2022 due to error with the original legal notice.

There was no further discussion.

Whereas a motion was made.

July 20, 2022 Zoning Board of Review Minutes

The Motion is as Follows:

The following motion to continue the petition until August 17, 2022 was made by Mr. Rosen and duly seconded by Mr. Daniels Motion passed unanimously: Vote 5-0

Whereas a voice vote was taken, and all members were in favor.

III. Petition of David W. Fish, 222 Chickadee Lane, Wakefield, RI 02879 for a **Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to construct a 12' x 16' deck attached to the existing single-family dwelling. The proposed deck will be located 10'2" from the south side property line. The required side yard setback is 15'. Relief of 4'10" is requested. Lot size is .47 acres. **A Dimensional Variance is required per Zoning Ordinance Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief)**. Owners of the property are Brett W. & Jody Cicchese for premises located at 59 Cove Street, South Kingstown, Assessor's Map 87-4, Lot 40 and is zoned R20.**

All the documents were entered into record.

David Fish was present and sworn in.

Mr. Fish testified that the owner was not able to attend tonight and stated that they would like to build a deck on the southerly side of their existing home. Due to the unique lot configuration, location of the OWTS and proximity to wetlands and CRMC restrictions there is limited space where the deck can be located. This location will also allow for sunset views and views of Saget Cove. The relief being requested is enough to allow for deck furniture to be located on the deck and allow safe passage onto the deck. The existing home is located on a corner lot. The proposed deck will not have any impact on neighboring property.

Board questions ensued.

Mr. Fish explained that the deck cannot be moved to the west side of the house because the owners are looking for southerly exposure. There is also a construction setback restriction from CRMC. Also, there is a rain garden for enhanced drainage located on the west side. Mr. Fish explained that although there are two (2) existing decks they are looking for a space to primarily enhance their sun exposure. The first floor is uninhabitable due to flood zones. The existing decks receive quite a bit of shade due to the shadow the house casts upon them. Mr. Fish clarified the CRMC buffer zone and CRMC construction setback delineation. They will not be building within any CRMC setbacks. The existing stairs are 15' from the property line and the relief that they are requesting is within that same area.

There was no one present in the audience who wished to speak.

Board discussion ensued.

Whereas a motion was made.

The Motion is as Follows:

The following motion, made by Mr. Daniels and duly seconded by Mr. Brown Motion passed unanimously: Vote 5-0 (T. Daniels-Aye, R. Brown-Aye, W. Rosen-Aye, K. Diamond-Aye, R. Cagnetta-Aye)

At a meeting held on July 20, 2022 regarding the Petition of David W. Fish, 222 Chickadee Lane, Wakefield, RI 02879 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to construct a 12' x 16' deck attached to the existing single-family dwelling. The proposed deck will be located 10'2" from the south side property line. The required side yard setback is 15'. Relief of 4'10" is requested. Lot size is .47 acres. A Dimensional Variance is required per Zoning Ordinance Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief). Owners of the property are Brett W. & Jody Cicchese for premises located at 59 Cove Street, South Kingstown, Assessor's Map 87-4, Lot 40 and is zoned R20.

The following individuals spoke as representatives of the applicant:

- David Fish, Applicant

There was no one present who spoke either in favor of or opposition to the petition.

The following materials were entered into the record:

- Application with cover letter signed and dated April 25, 2022; Owner Authorization Form signed and notarized April 29, 2022; Deck Addition Plans (2 pages) prepared and stamped by Davis W. Fish Jr. PLS and dated March 28, 2022; CRMC Assent Drainage Plan (1 page) prepared by Environmental Planning & Surveying, Inc. and dated September 2015 with revisions on September 9, 2017, September 30, 2017 and November 20, 2017
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings, Notarized Affidavit of Mailing and Memorandum to Neighbors dated May 5, 2022

Findings of Fact:

1. The Board finds that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(16), because as the applicant testified it is a small lot and to locate the deck with southerly exposure 4' of relief is needed.
2. The Board finds that that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain, because the owners of the subject property are simply looking to enjoy their property to its fullest extent.
3. The Board finds that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based, because similarly constructed decks are commonplace in this neighborhood.
4. The Board finds that the relief to be granted is the least relief necessary, because the owners are simply looking for a slightly larger deck to accommodate furniture, furthermore a 12' deck is not overly large in this neighborhood.
5. The Board finds that that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, because if the variance were not granted the homeowners would not be able to utilize their property to its fullest extent by creating a larger deck area for outdoor furniture and allow for an outdoor living space with direct southern exposure as desired.

Approval is conditional subject to the following conditions:

- The decision is a Conditional Zoning Approval and is conditioned upon any, if necessary, CRMC or RIDEM approvals and will have a two-year expiration from the recorded date per Section 908 of the Zoning Ordinance with the right to extend if necessary.

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- IV. Petition of Harlan and Beverly Waldman Rich, 86 Taber Avenue, Providence, RI 02906 for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to demolish a 10' x 13' deck and reconstruct a 12'4" x 17' deck attached to the existing single-family dwelling. The proposed deck will be located 10'6" from the front property line and 9'4" from the side property line. The required front and side yard setbacks are 35' and 11', respectively. Relief of 24'6" and 1'8" is requested. Lot size is .39 acres. **A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming lots of record-Building setback requirements) and Section 907 (Standards of Relief)**. Owner of the property is Rich Beverly Waldman Trust 2016 for premises located at 22 Tomahawk Trail South, South Kingstown, Assessor's Map 34-2, Lot 113 and is zoned R20.**

All the documents were entered into record.

Harlan Rich was present and sworn in.

Mr. Rich testified that they have lived in this house for about 5 years. The house was renovated prior to their purchasing it but the deck was not. The deck is currently in disrepair and beginning to rot. The existing deck is 10x13 and very tight so the expansion will allow them to enjoy the use of the deck. They are hoping to extend 2' in the westerly direction and 4' in the northerly direction which would allow for more space to better utilize the deck. These are old plats that are in non-compliance and therefore relief is requested. The lot itself is unique in shape, being L shaped. Most of the lot area is to the east which is wooded. Additionally, there are old stone walls and a small stream running behind the lot. The existing house is slightly offset on the lot.

Board questions ensued.

Mr. Rich testified that they are going to remove the existing deck and then rebuild a slightly larger deck 2 ‘west and 4’ north which will be incorporated into the footprint of the house. This is a second-floor deck with a garage underneath. The backyard is slightly raised and there are wetlands on two (2) sides.

There was no one in the audience who wished to speak.

Board discussion ensued.

Whereas a motion was made.

The Motion is as Follows:

**The following motion, made by Mr. Rosen and duly seconded by Mr. Brown
Motion passed unanimously: Vote 5-0
(W. Rosen-Aye, R. Brown-Aye, T. Daniels-Aye, K. Diamond-Aye, R. Cagnetta-Aye)**

At a meeting held on July 20, 2022 regarding the Petition of Harlan and Beverly Waldman Rich, 86 Taber Avenue, Providence, RI 02906 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to demolish a 10’ x 13’ deck and reconstruct a 12’4” x 17’ deck attached to the existing single-family dwelling. The proposed deck will be located 10’6” from the front property line and 9’4” from the side property line. The required front and side yard setbacks are 35’ and 11’, respectively. Relief of 24’6” and 1’8” is requested. Lot size is .39 acres. A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming lots of record-Building setback requirements) and Section 907 (Standards of Relief). Owner of the property is Rich Beverly Waldman Trust 2016 for premises located at 22 Tomahawk Trail South, South Kingstown, Assessor’s Map 34-2, Lot 113 and is zoned R20.

The following individuals spoke as representatives of the applicant:

- Harlan Rich, applicant

There was no one present who spoke either in favor of or opposition to the petition.

The following materials were entered into the record:

- Application with cover letter signed and dated June 1, 2022; Owner Authorization Form signed and notarized June 1, 2022; Proposed Site Plan (1 page) prepared by Christopher Glenn Palmer, PLS and dated May 24, 2022; Construction documents (A-1.0 & A-2.0) prepared by Fluent Home Designs and dated May 4, 2022 with revisions on May 29, 2022
- 200’ Radius Map and Abutter’s List; Legal Notice; Proof of Certified Mailings, Notarized Affidavit of Mailing

Findings of Fact:

1. The Board finds that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant, excepting those physical disabilities addressed in § 45-24-30(16), because the applicant is looking to replace an existing deck with a slightly larger deck to better accommodate their needs. Additionally, the lot is unique in shape and character which limits other potential deck locations.
2. The Board finds that that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain, because the applicants are simply looking to replace a deteriorating outdated deck and use the outside deck space as originally intended.
3. The Board finds that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based, because the applicants are proposing only a minor deck expansion and the proposed deck will fit in well within the surrounding neighborhood.
4. The Board finds that the relief to be granted is the least relief necessary, because the applicants are requesting minimal relief to replace and slightly expand an existing deck on a lot that has many restrictions due to its unique characteristics.
5. The Board finds that that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, because the existing deck is in poor condition and needs to be replaced due to safety concerns as well as better utilization of the space for practical purposes.

Approval is conditional subject to the following conditions:

- There are no conditions upon this approval.
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- V. **Petition of JSC Management Group**, 615 Fisher Road, Victor NY 14564 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to construct a second drive through aisle for an existing restaurant. The Planning Board granted Development Plan Review approval for the project on May 24, 2022. Lot size is 2.75 acres. **A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table), and Section 907 (Standards of Relief)**. Owner of the property is Ellie & Rob Realty for premises located at 104 Old Tower Hill Road, South Kingstown, Assessor's Map 57-2, Lot 67 and is zoned CH (Commercial Highway).

All the documents were entered into record.

Todd Markevicz, PE was present and sworn in.

Mr. Markevicz testified that a special use permit is required to add an additional drive through. He stated that they have gone before TRC and the Planning Board and have been working with the Town for the past 8 months or so. They are looking to expand from a single drive-thru to a double lane drive-thru. He then explained the existing conditions and the proposed conditions which would eliminate some parking. Both lanes would have new equipment and menu boards. 85% of Burger King sales are made through the drive thru. They are trying to increase the customer efficiency and decrease wait time. He then explained the stacking of cars in the proposed drive thru. The proposal will create new landscaping and add an area with picnic tables. There are currently 55 existing parking spots. The proposal allows for 37 parking spots which exceeds the Zoning Ordinance requirement of 35 parking spots. The creation of more green space will result in less stormwater runoff. Prior to JSC taking control of the property the required landscaping was removed and as part of the discussion with the Planning Board they will be replanting. Additionally, the store will be undergoing extensive interior and exterior cosmetic renovations.

Board questions ensued.

Mr. Markevicz stated that they are decreasing the impervious surface by approximately 9-10%. He stated that from a Planning perspective they are hoping to revitalize the area. Mr. Markevicz explained the operation and circulation of the proposed double drive thru window. The flow of the parking lot will now be a one-way traffic pattern to relieve traffic congestion. The parking will run in front and side of the building and along the right-side property line. They are looking to maintain the existing lighting and would not be adding any additional lighting. Regarding deliveries and unloading they would be similar to existing conditions. Deliveries are generally off hours and should not impact customer parking. Garbage would remain the same as the existing conditions. Any new plantings will not impede ingress and egress and will revert to what was previously on site.

There was no further testimony.

There was no one in the audience who wished to speak.

Board discussion ensued.

Whereas a motion was made.

The Motion is as Follows:

The following motion, made by Mr. Daniels and duly seconded by Mr. Rosen Motion passed unanimously: Vote 5-0 (T. Daniels-Aye, W. Rosen-Aye, R. Brown-Aye, K. Diamond-Aye, R. Cagnetta-Aye)

At a meeting held on July 20, 2022 regarding the Petition of JSC Management Group, 615 Fisher Road, Victor NY 14564 for a Special Use Permit under the Zoning Ordinance as follows: The applicant is seeking to construct a second drive through aisle for an existing restaurant. The Planning Board granted Development Plan Review approval for the project on May 24, 2022. Lot size is 2.75 acres. A Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table), and Section 907 (Standards of Relief). Owner of the property is Ellie & Rob Realty for premises located at 104 Old Tower Hill Road, South Kingstown, Assessor's Map 57-2, Lot 67 and is zoned CH (Commercial Highway).

The following individuals spoke as representatives of the applicant:

- Todd Markevicz, PE

There was no one present who spoke either in support of or opposition to the petition.

The following materials were entered into the record:

- Application with cover letter signed and dated September 22, 2021; Owner Authorization Form (2 pages) signed and notarized September 28, 2021; Development Plan Review advisory to Zoning (2 pages) dated June 16, 2022 recorded into South Kingstown Land Evidence Book 1833 and Pages 356 & 357; Site Development Plans (A-201, A-202, CS, C1, C2, C3, C6, C7, C8) prepared by APD Engineering & Architecture, Todd G. Markevycz PE and dated August 12, 2021 with revisions on November 22, 2021, December 29, 2021, February 3, 2022, March 30, 2022 & May 17, 2022; Landscape Design Plans (L-100, L-102, L-103, L-104) prepared by APD Engineering & Architecture and Rebecca M. Nolan, RLA dated March 30, 2022; Final Boundary and Topographic Survey (1 page) prepared and stamped by Charles E. Lent PLS and dated February 9, 2022
- 200' Radius Map and Abutter's List; Legal Notice; Proof of Certified Mailings, Notarized Affidavit of Mailing

Findings of Fact:

1. The Board finds that the special use is specifically authorized by this Ordinance, because a Special Use Permit is required per Zoning Ordinance Section 301 (Schedule of Use Regulations Table), and Section 907 (Standards of Relief).
2. The Board finds that the special use meets all of the criteria set forth in the subsection of this Ordinance authorizing such special use, because through testimony and supplied documentation the applicants have met all of the criteria as set forth in the South Kingstown Zoning Ordinance.
3. The Board finds that granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this Ordinance or the Comprehensive Plan of the Town. In so doing, the Board has considered whether or not satisfactory provisions and arrangements have been or will be made concerning, but not limited to the following matters, where applicable:
 - (i) Ingress and egress to the lot and to existing or proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire, emergency or catastrophe; because the ingress and egress from Old Tower Hill Road will remain unchanged. To better accommodate the second drive through window the applicant has testified that there will now be a one-way traffic flow pattern which will ease traffic congestion on the site and improve the overall on-site ingress and egress.
 - (ii) Off-street parking and loading areas where required, with particular attention to the items in subsection A.1., above, and the noise, glare or odor effects of the special use permit on adjoining lots; the applicant has reduced the number of parking space to 37-spaces which is still in compliance with the Ordinance. This reduction will create better traffic flow throughout the site. There was no testimony that indicated that the loading area will change.
 - (iii) Trash, storage and delivery areas with a particular reference to the items in (i) and (ii) above; Utilities, with reference to locations, availability and compatibility; the applicant testimony indicated that the trash, storage and delivery areas will remain the same and there are existing utilities already in place which will not be changing.
 - (iv) Screening and buffering with reference to type, dimensions, and character; the Development Plan Review Advisory to Zoning dated June 16, 2022 dealt with screening and buffering and will be incorporated into this decision.
 - (v) Signs, if any, and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with lots in the zoning district; no new exterior signs will be added, and lighting was discussed. There will not be any additional lighting that will impair the abutting properties also located within Commercial Highway District.
 - (vi) Required yards and other open space; not applicable
 - (vii) General compatibility with lots in the same or abutting zoning districts because this is a commercial business that is surrounded by other commercial properties located within the Commercial Highway District. Additionally, the proposed interior and exterior renovations will be an improvement to the site and fit in well with the other businesses located within this district.

Approval is conditional and subject to the following:

- This is a conditional approval and subject to meeting all nine (9) of the conditions stipulated in the Development Plan Review Advisory to Zoning dated June 16, 2022, recorded into South Kingstown Land Evidence Book 1833 and Pages 356 & 357.

D. OTHER BUSINESS:**I. Minutes:**

- i. Approval of June 15, 2022 Zoning Board of Review minutes.
 - Mr. Rosen made a motion to approve the minutes and all members were in favor.

II. Attendance:

- i. August 17, 2022 Zoning Board of Review
 - All members present will be in attendance.

III. Discussion:

- i. Ms. Goins reviewed the recently enacted laws affecting land use.
 - The Zoning Board now can have three (3) alternate members, The Town Council needs to amend the Zoning Ordinance and the Town Charter. This will then go before the constituents for a vote during the November election.
 - The quorum requirements for Zoning Board will change. Four (4) members will constitute a quorum and there will only need to be a majority vote of three (3) to grant a decision. This will go into effect starting January 1, 2023.
 - Accessory Dwelling Units have been totally overhauled. This law is effective now. Ms. Goins will be drafting a memo going over the specific changes.
 - In 2015 the General Assembly passed a law that allowed RI DEM and CRMC to govern setback requirements regarding wetlands and that once the law becomes effective municipal setback requirements can no longer be enforced. This law went into effect as of July 1, 2022. The Board will no longer have the authority to rule on any wetland setback regulations, this will default back to the State regulatory agency. Furthermore, the Zoning Board cannot state environmental concerns as a reason for denial.
 - Treatment of uses not specifically listed in the Zoning Ordinance now allows but does not require municipalities to amend the Zoning Ordinance to provide a process where uses that are not specifically mentioned in the Table of Uses can be permitted as of right upon review or permitted by SUP. It will be recommended to the Town Council that the Planning Board should study and review the Table of Uses. This allows for the option of a use that is not specifically listed to be reviewed and not prohibited outright. If the Town Council decides to amend the Zoning Ordinance either the Zoning Enforcement Officer of the Zoning Board of Review can decide that although the use may not be specifically mentioned the ZEO or the ZBR can determine if the use is similar enough and allow the use.
 - It is now a Statewide requirement that Zoning Board Members are required to take continuing education credits. The CE program is currently under development by the State. They have 2-years from January 1st to get the necessary CE credits.
 - The Town Council authorized a referendum to put recreational marijuana on the November ballot. If voters veto the referendum no recreational marijuana will be allowed. If the referendum is passed the Zoning Ordinance will need to be amended.

IV. Adjournment:

- i. Mr. Daniels made the motion to adjourn and was seconded by Mr. Cagnetta, whereas a voice vote was taken, and all members were in favor.
 - Meeting adjourned at 8:44 pm.