



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 virtually VIA Zoom at 7:00 pm on Wednesday July 15, 2020.

Members Present:

- Richard Jurczak, Chair
- Robert Cagnetta, Vice-Chair
- John Bernardo, Member
- Thomas Daniels, Member
- William Mark, Member
- William Rosen, Alt. #1

Also present were, Amy Goins, Special Legal Counsel, Wayne Pimental, Building Official and Clerk and Jessica Spence, Administrative Support Associate.

Mr. Jurczak opened the meeting at 7:00 pm

The standards of relief were explained as well as some technological aspects of Zoom.

Members voting tonight will be Mr. Jurczak, Mr. Cagnetta, Mr. Bernardo, Mr. Daniels, and Mr. Mark

Mr. Bernardo will be leaving the meeting after the petition of Charles Walsh has been decided and at that point Mr. Rosen will become the fifth voting member.

Election of Officers occurred.

Mr. Mark nominated Mr. Cagnetta as Chairman and a roll call vote occurred.
Cagnetta-Aye, Bernardo-Aye, Jurczak-Aye, Daniels-Aye, Mark-Aye, Rosen-Aye

Mr. Bernardo nominated Mr. Daniels as Vice Chair and a roll call vote occurred.
Cagnetta-Aye, Bernardo-Aye, Daniels-Aye, Mark-Aye, Rosen-Aye, Jurczak-Aye

Mr. Jurczak continued to run this meeting.

Members voting on the Charles Walsh petition will be Mr. Jurczak, Mr. Cagnetta, Mr. Bernardo, Mr. Daniels, and Mr. Mark

Mr. Jurczak read the first petition.

- **Continuation of the Petition of Charles Walsh, 3 Stone Post Way, Greenville, RI 02828** for a **Special Use Permit & Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to construct a new single family dwelling. A special use permit is required because the proposed OWTS is proposed to be located within 150' of a wetland. A favorable advisory opinion was obtained by the South Kingstown Conservation Commission on March 3, 2020. The dwelling will be located 25' from the front property line. The required front yard setback is 40'. Relief of 15' is requested. Lot size is .57 acres. **A Dimensional Variance is required per Zoning Ordinance Section 401 (Dimensional Regulations) and the Special Use Permit is required per Zoning Ordinance Section 504.1 (Special Use Permit-Location of OWTS) and Section 907 (Standards of Relief).** Owner of the property is Louise Marie Walsh Living Trust for premises located on Rosebriar Avenue, Assessor's Map 90-4, Lot 215 and zoned R 30. Mr. Kenyon asked the project Engineer to address the concerns in the letter submitted by Friends of Green Hill Pond (FGHP)

Attorney John Kenyon was present for the Applicant. Mr. Kenyon reviewed the previous testimony given at the June 24, 2020 Zoning Board of Review. Mr. Kenyon stated that he has not been contacted by the objector's attorney and that he would like to address some conditions that the objector's had submitted through written correspondence.

Ms. Goins suggested that the objector's be asked if they have an attorney present and that we hear from anyone on the other side and then give Attorney Kenyon the chance to respond.

There was not an objector's attorney present.

Bert Hess was sworn in and stated his concerns regarding OWTS, the leach field location, and addressed some of the conditions that the objector's were seeking, including no re-sale for three years, retention walls due to water conditions, construction of the bottomless OWTS system and condition that the permit should be contingent upon the Town repairing the existing storm water drainage and ground water issues are resolved.

Mr. Bernardo asked about the objector's hiring an attorney.

Mr. Hess stated an attorney was hired and reviewed the latest Town regulations regarding 150' distance from wetlands and consequently they did not go any further with the attorney because they felt the engineering proposed would be substantial enough.

Board questions ensued in regards to DEM requirements versus Town requirements and the leach field location.

Josh Rosen, P.E., testified that the proposed leach field is located on the subject property.

Mr. Hess clarified his statement regarding the leach field location of the subject property.

Mr. Daniels asked Mr. Rosen to clarify the distance of the bottomless sand filter and the edge of the roadway in regards to storm water runoff and the location of wetlands.

Mr. Rosen stated that the distances have been met per DEM requirements and that the storm water runoff is not standing at the location of the sand filter. The standing water is about 50' away from the sand filter and any water ponding happens at the two drywells.

Mr. Cagnetta asked if the use of this site would contribute to more standing rain water.

Mr. Rosen stated that the runoff currently flows from the front back to the wetlands and that there is an effective berm on this property so that water from this property does not contribute to the water runoff in the street. They had to design the plans to keep the same historical run-off pattern which is running towards the wetlands. The water runoff in the street will not be exasperated due to the development of this property. The application will also still need to be reviewed by CRMC prior to approval and their requirements will also need to be met.

William Riley was sworn in and testified that he had written a letter with four inconsistency's and offered an opinion that the Town is taxing the lot as a buildable lot and yet preventing it from being allowed to be built. Mr. Riley than offered what he feels would be possible solutions.

Board questions ensued in regards to the proposed building location.

Jim Lyness was sworn in and asked about the proposed square footage of the dwelling and the location of the proposed OWTS within the 50' wetland boundary.

Mr. Kenyon stated that the house is a proposed two bedroom house with a 738 square foot footprint and attached 10 x 12 deck. The OWTS is within the 50' of the wetlands but DEM granted the necessary relief.

Mr. Hess questioned the size of the house, if there are additional floors, and if there are any bump-out which would bring the structure closer to the street.

Mr. Kenyon stated that he knows there is a second floor but is not sure how the Building Official addresses bump-out in regards to relief granted.

Mr. Pimental stated that any bump-outs would also need to be within the perimeter of the relief granted.

There was no one else who wished to speak.

Mr. Kenyon stated that they appreciate the neighbor's comments and requests and that they have done everything that they could to reduce the impact of this application. The applicant also went before the Conservation Commission and met their conditions to receive a positive recommendation which prompted the need for a front yard dimensional variance.

Mr. Kenyon stated that in regards to the neighbors requested conditions about the re-sale of the property that this would be an invalid condition, the Board deals with use and not ownership of property. Also the suggested condition that the applicant not be able to obtain a building permit until the Town fixes the road is a condition the applicant does not have the ability to address and should not be part of the granting of this request.

There was no further testimony.

Board discussion ensued.

The Motion is as follows:

Special Use Permit:

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

At a meeting held on July 15, 2020 the regarding the Petition of Charles Walsh, 3 Stone Post Way, Greenville, RI 02828 for a Special Use Permit under the Zoning Ordinance as follows: The applicant is seeking to construct a new single family dwelling. A special use permit is required because the proposed OWTS is proposed to be located within 150' of a wetland. A favorable advisory opinion was obtained by the South Kingstown Conservation Commission on March 3, 2020. A Special Use Permit is required per Zoning Ordinance Section 504.1 (Special Use Permit-Location of OWTS) and Section 907 (Standards of Relief). Owner of the property is Louise Marie Walsh Living Trust for premises located on Rosebriar Avenue, Assessor's Map 90-4, Lot 215 and zoned R 30.

The following individuals spoke as representatives of the applicant:

- Attorney John Kenyon, Applicant Charles Walsh, Joshua Rosen P.E., Edward Pimentel

The following individuals spoke at the hearing in opposition to the request:

- Bert Hess, William Riley, Christopher Fountain, Jim Lyness

The following materials were entered into the record:

- Application dated March 18, 2020; Owner Authorization Form from Louise Marie Walsh Living Trust dated March 18, 2020; 200' Radius Map and Abutter's list; OWTS Advisory Opinion from the Conservation Commission dated March 4, 2020; Legal Notice dated March 23, 2020, Certified Mail Receipts and Notarized Affidavit of Mailing; Legal Notice Change of Hearing;
- Continuation Requests from Attorney John Kenyon
 - Dated April 22, 2020
 - Dated May 19, 2020
- Applicant's Exhibits
 - 1. Original OWTS application dated 6/26/2019 and Plan originally dated November 17, 2017
 - 2. Revised OWTS application dated 1/28/2020
 - 3. Site plan, Revised OWTS, prepared by Joshua Rosen P.E. dated January 15, 2020
 - 4. Engineer's Narrative, prepared by Joshua Rosen, P.E. dated December 12, 2019
 - 5. Conservation Commission Advisory Opinion dated March 4, 2020
 - 6. Neighborhood Analysis report, prepared by Edward Pimentel
- Objectors' Correspondence
 - Jeanne B. Riley Trust dated April 9, 2020 with two photos of proposed site from Jeanne B. Riley Trust
 - Bert Hess dated April 15, 2020
 - Concerned Residents of Rosebriar Avenue received April 21, 2020
 - Correspondence received April 22, 2020
 - Bert Hess received May 19, 2020
 - Concerned Residents of Rosebriar Avenue received May 19, 2020

- Jeff & Helena Roberts received May 21, 2020
- Jeanne B. Riley Trust dated June 19, 2020 with two additional photos of proposed site from Jeanne B. Riley Trust
- Concerned Residents of Rosebriar Avenue dated June 23, 2020
- William Riley to Jon Schock, Director of Public Services, dated June 25, 2020
- Christopher & Lisanne Fontaine received July 7, 2020
- Concerned Residents of 0 Rosebriar Avenue received July 9, 2020
- from Jeanne B. Riley Trust received July 13, 2020

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 504.1 (Special Use Permit-Location of OWTS) 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 the placement of this system does not harm the wetlands and the applicant has gone through all required steps to meet DEM and Conservation Commission requirements.
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; there is no change within the property to affect any of these conditions.
 - (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; not relevant
 - (iii) Trash, storage and delivery areas with a particular reference to the items in (i) and (ii) above; not relevant
 - (iv) Utilities, with reference to locations, availability and compatibility; it is found that the septic system is located at the best location on the subject property as recommended by DEM and The Conservation Commission requirements.
 - (v) Screening and buffering with reference to type, dimensions and character; has been identified on the plans but is not required.
 - (vi) Signs, if any, and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with lots in the zoning district; not relevant.
 - (vii) Required yards and other open space; not relevant.
 - (viii) General compatibility with lots in the same or abutting zoning districts, because it will be a single family home like all other homes in the area.

Approval is subject to the following conditions:

- The applicant meet all conditions previously set forth by The Conservation Commission.
- The decision is a Conditional Zoning Approval and is conditioned upon CRMC approval and will have a two year expiration from recorded date per Section 908 with right the right to extend if necessary.

Dimensional Variance

The following motion, made by Mr. Cagnetta and duly seconded by Mr. Bernardo

Motion passed unanimously: Vote: 5-0

(R. Cagnetta-Aye, J. Bernardo-Aye, T. Daniels-Aye, W. Rosen-Aye, R. Jurczak-Aye)

At a meeting held on July 15, 2020 regarding Continuation of the Petition of Charles Walsh, 3 Stone Post Way, Greenville, RI 02828 for a Dimensional Variance under the Zoning Ordinance as follows: The applicant is seeking to construct a new single family dwelling. A favorable advisory opinion was obtained by the South Kingstown Conservation Commission on March 3, 2020. The dwelling will be located 25' from the front property line. The required front yard setback is 40'. Relief of 15' is requested. Lot size is .57 acres. A Dimensional Variance is required per Zoning Ordinance Section 401 (Dimensional Regulations). Owner of the property is Louise Marie Walsh Living Trust for premises located on Rosebriar Avenue, Assessor's Map 90-4, Lot 215 and zoned R 30.

The following individuals spoke as representatives of the applicant:

- Attorney John Kenyon, Applicant Charles Walsh, Joshua Rosen P.E., Edward Pimentel

The following individuals spoke at the hearing in opposition to the request:

- Bert Hess, William Riley, Christopher Fountain, Jim Lyness

The following materials were entered into the record:

- Application dated March 18, 2020; Owner Authorization Form from Louise Marie Walsh Living Trust dated March 18, 2020; 200' Radius Map and Abutter's list; OWTS Advisory Opinion from the Conservation Commission dated March 4, 2020; Legal Notice dated March 23, 2020, Certified Mail Receipts and Notarized Affidavit of Mailing; Legal Notice Change of Hearing;
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 - Christopher & Lisanne Fontaine received July 7, 2020
 - Concerned Residents of 0 Rosebriar Avenue received July 9, 2020
 - from Jeanne B. Riley Trust received July 13, 2020

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 this lot and area is very unique, there is only a certain amount of area on this lot that can be built upon safely to the environment as was proposed on the submitted site plans and this is the best placement of the house.

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 applicant is not asking for anything larger than allowed and is only requesting to place the dwelling in the best location for the environment.

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 dwelling setback is unique to the property itself but will not change the area.

4. The Board finds that the relief to be granted is the least relief necessary, because the applicant has located the dwelling per DEM requirements.

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 it is feasible to build on a property like this but design, preparation and execution must be thoughtful and well considered and the applicants have diligently worked to satisfy all necessary requirements.

Approval is subject to the following conditions:

- The applicant shall meet all conditions previously set forth by The Conservation Commission.
- The decision is a Conditional Zoning Approval and is conditioned upon CRMC approval and will have a two year expiration from recorded date per Section 908 with right the right to extend if necessary.

At this point John Bernardo left the meeting.

Voting members will now be Mr. Jurczak, Mr. Cagnetta, Mr. Daniels, Mr. Mark and Mr. Rosen

Mr. Jurczak advised everyone that no new petitions will start after 10:00 pm. He then asked if based on the agenda order any petitioner would like to continue to next week's July 22nd hearing.

Attorney John Kenyon stated that his client John Savastano, who is last on the agenda, would like to continue his petition to July 22nd.

Mr. Parmentier indicated that he would like to formally withdraw the below petition so he could speak with the neighboring objectors and address any concerns prior to proceeding with the Zoning application.

- **Petition of Arthur H. Parmentier, 15 Tomahawk Trail South, South Kingstown, RI 02879** for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking is seeking to relocate an existing shed from the rear yard to the front yard. The proposed location of the shed is within the front yard setback, which requires relief as accessory structures are not allowed in the front yard setback. The shed will be located 23.8' from the front property line. The front yard setback is 35'. Relief of 11.2' is requested. The lot is a non-conforming lot of record, and setbacks are reduced for the side yard from 10' to 6'. No relief is requested for the side yard. Lot size is .21 acres. **A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming Lots of Record-Building Setback Requirements), Section 503.1 (Accessory Structures) and Section 907 (Standards of Relief).** Owner of the property is Arthur H. Parmentier for premises located at 15 Tomahawk Trail South, Assessor's Map 34-2, Lot 178 and is zoned R 20.

No vote was necessary petition withdrawn.

The following petition of John Savastano was continued until July 22, 2020 with a motion made by Mr. Daniels and seconded by Mr. Rosen, followed by a voice vote where all members were in favor.

- **Petition of John E. Savastano, 191 Lake Avenue, South Kingstown, RI, 02879** for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to construct a new attached garage and new covered deck closer to the front property line than allowed. The garage will be located 16.7' from the front property line. The required front yard setback is 35'. Relief of 18.3' is requested. The proposed covered deck will be located 9.9' from the front property line. The required front yard setback is 35'. Relief of 25.1 is requested. Lot size is .93 acres. **A Dimensional Variance is required per Zoning Ordinance**

Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief). Owner of the property is John E. & Michelle Savastano for premises located at 191 Lake Avenue, Assessor's Map 87-4, Lot 39 and is zoned R 20.

Mr. Jurczak then read the second petition

- **Continuation of the Petition of Daniel J. Cunningham,** 3986B Tower Hill Road, South Kingstown, RI for a for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to demolish the existing single family dwelling and construct a new 1,600 square foot dwelling with a detached 24' x 24' garage. This property is located within the Jerry Brown Farm Association property. The parcel of land that this property 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 land. Lot size is 70 Acres. Although there are no property lines between dwellings, the distance from the proposed dwelling to the closest adjacent dwelling is 83'. **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 Daniel J. Cunningham for premises located at 35 Fire Lane Two, South Kingstown, RI, Assessor's Map 82-1, Lot 1-1 and is zoned R-80.

Attorney John Kenyon was present for the applicant. Mr. Kenyon explained the unique ownership of the lot; the 70 acre lot is owned by Jerry Brown Farm Association Inc. with 36 individual houses located on the one lot which is owned by the shareholders of the Association. Each homeowner is given a campsite agreement to use a certain area, a bill of sale and a share of stock in the Association. All proposed improvements must go before the Jerry Brown Farm Association for prior approval and must obtain a Special Use Permit per Zoning Ordinance regulations.

Mr. Kenyon then explained the existing home and the proposed demolition and size of new structure. The campsite agreement gives the applicant control over approximately 1.3 acres. The current dwelling is pretty much uninhabitable and needs to be demolished. The existing septic will be replaced with a new Adventex OWTS. The proposed construction meets all of the setback requirements and no dimensional relief is necessary.

Mr. Kenyon stated the lot meets the density requirements for the Zoning district but is non-conforming because there is more than one house on the lot. Mr. Kenyon then spoke about Section 203 of the Zoning Ordinance and how of the intensification the property and fifty percent expansion rule has been brought into question.

Mr. Kenyon submitted Applicant's Exhibits 1-5

- Site and Soil Erosion Plan prepared by Jeffrey J. Campopiano P.E. dated May 5, 2020
- (2) Elevations and Plan Details prepared by Jeffrey J. Campopiano P.E dated May 5, 2020
- (3) Project Narrative prepared by prepared by Jeffrey J. Campopiano P.E dated May 6, 2020
- (4) Letter supporting proposed project from the Secretary of the Jerry Brown Farm Association dated May 8, 2020
- (5) Narrative from Attorney John Kenyon dated July 7, 2020

Mr. Jurczak then asked Ms. Goins to comment on the fifty percent rule.

Ms. Goins stated that Section 203 applies in regards to expansions of non-conforming uses due to multi-household uses in an R-80 zone. The property is considered legally non-conforming under the current Zoning Ordinance, Section 203. The purpose of Section 203 is to allow non-conforming uses to continue to exist an even allow a modest expansion but to put a cap on that. Ms. Goins then referenced the Zoning Ordinance Section 203 and spoke about the cumulative fifty percent expansion. She advised the Board to put aside what had been done in the past, she agreed with Mr. Kenyon that a fifty percent expansion should be permitted using 1999 baseline numbers, and baseline is the floor area, and that is what the expansion should be limited to. There needs to be a review of all of the previous expansions by the Building Official over the years to determine that they have not hit the cumulative fifty percent number for floor area.

Ms. Goins stated that she believes it is cumulative to the entire property but is also individual to each dwelling. The intent is to allow non-conforming uses to continue to exist and be allowed to expand in a modest way, with modest being defined as permitting a fifty percent expansion. The Board needs to take into account the fifty percent expansion both individually and cumulatively and what can be determined tonight is a fifty percent expansion of this dwelling alone.

Mr. Mark asked about cumulative equity for the entire property.

Ms. Goins stated that unfortunately equity is not a consideration for the Zoning Board to determine, The Board has limited and defined jurisdiction and ultimately in this scenario it could be a first come first serve based cumulative expansion and that is a unique characteristics of the multi-household properties in Town.

Mr. Daniels asked if application fails on its face value based on the fact that they are requesting more than a fifty percent increase.

Ms. Goins advised the Board to hear from Mr. Kenyon and any expert testimony he may present; the Board may be willing to grant relief to a lesser degree than asked for and the petitioner should be given the option to revise the application or determine if they have legal argument that could be pursued at a higher level.

Mr. Kenyon asked for clarification on the expansion and what quantifies the expansion.

Ms. Goins clarified that the Ordinance states floor area and that is what should be considered.

Mr. Kenyon asked for clarification on what is considered base line floor area, is it first floor only or per floor.

Mr. Pimental stated that he would need to review the Ordinance in regards to the definition of gross livable floor area and that the definition in the Coastal Community Overlay District best meets the relief being sought even though the property is not within that district.

Mr. Jurczak asked Mr. Kenyon how he would like to proceed.

Daniel Cunningham, petitioner, was sworn in and stated that the actual interior space was not as large as perceived, most of the expansion is related to outside decks.

Mr. Kenyon stated that now that they have an interpretation on what is allowed he and his client can sit down and figure out what can be done within that interpretation and come back next week.

Mr. Mark asked if cumulative lot coverage is in effect, is the application's expansion request is too much of a stretch to consider.

Ms. Goins stated that because the application proposed more than a fifty percent expansion of the floor area of this individual dwelling it is her advice to the Board that both the property as a whole and each individual dwelling on the property are considered non-conforming uses, a fifty percent cumulative limit applies as well as a fifty percent expansion of each individual dwelling. Due to this what the current application is proposing to expand is beyond the fifty percent, the petitioner would need to assess and modify the proposed plans.

Mr. Kenyon agreed to continue the petition to July 22, 2020.

Mr. Daniels made the motion to move the petition to be carried over to July 22, 2020.

Mr. Mark seconded.

Whereas a Voice Vote was Taken: All in Favor – Aye (5-0) – Petition continued to July 22, 2020.

Mr. Jurczak read the third petition.

- **Continuation of the Petition of David Levesque**, 1395 Atwood Avenue, Johnston, RI 02919 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to establish a restaurant with alcohol, accessory drive-up window and accessory entertainment to a restaurant. All uses require a special use permit. The applicant received a favorable advisory opinion for the Development Plan from the Planning Board on January 29, 2020. Lot size is .91 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 Gerald Richmond for premises located at 151 Old Tower Hill Road, Assessor's Map 57-2, Lot 51 and zoned CH (Commercial Highway). Use Code 56.1 (Restaurant with Alcohol) Use Code 56.3 (Accessory Entertainment to Restaurant) and Use Code 58 (Drive Thru Accessory Window).

Attorney James Callaghan was present for the applicant. Mr. Callaghan stated that he was present with his client, David Levesque owner of Brewed Awakenings and explained the proposed plan and development as well as the

necessary use codes of the special use permit required under the Zoning Ordinance to re-locate his current restaurant to 151 Old Tower Hill Road.

Mr. Callaghan also stated that there has been an amended design plan submitted to show a change in the drive thru exit that was originally proposed to exit onto Narragansett Avenue. Mr. Levesque took the neighbors' concerns into consideration and modified the drive thru plans to now circle around the building and all entering and exiting traffic will flow directly in and out of Old Tower Hill Road. The Planning Department submitted a letter that the amended plan would not need to go back to either the Planning Board or TRC for additional approvals.

Mr. Callaghan then explained the history of Brewed Awakenings and its multiple locations. Mr. Levesque is under a purchase and sales agreement with the owners of the subject property and is anxious to move forward on the project.

Ms. Goins stated that she is in agreement with Mr. Callaghan in that the project would not need to go back before the Planning Board.

David J. Levesque was sworn in and testified that they have had a store in South County Commons for the past 17 years and recently due to Covid-19 the store closed earlier than expected. The plan is to move to 151 Old Tower Hill Road. He believes that this is a great location and addition to the community. The original proposal for the drive thru to exit onto Narragansett Avenue was proposed because it was felt at the time that this would be the easiest and least expensive way to complete the project, however, after listening to the neighbor's concerns, Mr. Levesque made the decision last week to re-route the drive thru exit around the building. This will allow all cars to be stacked around the building, it will increase the outside patio area and increase the proposed landscaping. The store was slightly downsized.

Mr. Levesque then explained the business operation. The Brewed Awakenings product has evolved from just coffee and pastries to expanded food service, entertainment & liquor service in some locations. The liquor service accounts for approximately 7-12% of the individual store revenue. Not all of the locations offer all of these services, but in order to get more revenue out of the property certain locations have added the above components. Per R.I. State Law an entertainment license is required to have any type of live entertainment present. In regards to the liquor services they have taken a very responsible approach and in the two stores that have liquor licenses during the Covid-19 period they did not allow takeout liquor service even though the State was allowing it.

Board questions ensued in regards to hours of operation and any stipulations that the entertainment license may have in regards to sound and what type of liquor license is being sought.

Ms. Goins stated that she doesn't believe the Town Council would have any direct control over the entertainment license but the Board can place any restriction that they believe would be advisable.

Mr. Levesque reviewed the anticipated hours of operation. In regards to the issue of noise; any type of entertainment would be medium to low volume, such as a guitar player or light jazz. They would be seeking a full liquor license. There is no plan to have entertainment outside, this would only be used as a location for outside seating.

Ms. Goins clarified that in the granting of this Special Use Permit allowing for entertainment and liquor licenses, the SUP could not be expanded upon by a potential future businesses. In the granting of a SUP, the liquor and entertainment portion of this request could only be carried over as an accessory level use and not become a primary use for the property location. Ms. Goins also advised that the Board could place restrictions on hours of operation if they so wished.

Board questions ensued in regards to drive up window and rear parking and back gate.

Mr. Levesque clarified who will be allowed to park in the back; this would be staff only and there would be virtually no traffic exiting onto Narragansett Avenue. There is no proposed gate on the back of the lot but it will be clearly marked that this is not a drive thru exit.

There were no further questions.

Joshua Rosen P.E. was sworn in and recognized as an expert witness in Civil Engineering. Mr. Rosen explained what the revised site plan represented in regards to this application, focusing on parking, traffic flow and circulation and building structure. Mr. Rosen explained the current state of the building, the lot conditions and the current ingress and egress. Out of the current 11,000 sf approximately 5,000 sf will be removed to create the new shape of the proposed structure and allow drive-thru access to flow around the back of the building and out onto Old Tower Hill Road. There are 34 spaces in the front of the building and in the rear there are 5 parking spaces for employee parking only as well as the loading zone. This new plan will allow for the stacking of 16 vehicles around the back of the building without

effecting the traffic flow and parking in the front of the building. Mr. Levesque compromised with this new plan by making the building smaller to create the necessary area for traffic flow. This in effect makes the site more modestly used and allows for more landscaping and better aesthetics and storm water management due to site enhancements.

Board questions ensued in regards to parking and loading zone.

Mr. Rosen explained that based on the Zoning Ordinance and maximum occupancy for all of the proposed uses on site 38 parking spots would be required. The current design has 39 parking spaces on site. In addition, the designated parking spaces are larger than required by the Zoning Ordinance. RI DOT has a regulation that from where the menu board is located there must be at least the ability for 10 vehicle to be stacked on your property so as to not affect traffic flow into the main flow of traffic. This current design is well within and exceeds the RI DOT regulatory standards.

Mr. Rosen explained where the loading is located and ingress and egress for delivery vehicles.

Mr. Levesque explained when his deliveries normally take place, size of delivery vehicles and how they access the building.

Mr. Callaghan had Mr. Rosen review utilities hookups, public services and storm water improvements. Mr. Rosen also explained that there will be no exterior pole lighting and that the building will have wall packed lighting for security purposes.

Mr. Levesque stated that any lighting around the outside of the building will be a warm yellow toned subdued lighting. The menu was also reviewed.

Mr. Callaghan called his next witness.

Robert Clinton P.E. was sworn in and recognized as an expert witness in traffic engineering. Mr. Clinton testified that many of the changes that were made to the revised plan have improved traffic flow and traffic stacking. The 16 vehicle stacking exceed RI DOT standards and traffic exiting to the rear should be almost non-existing. They have met with RI DOT and are in the process of meeting RI DOT requirements and should soon be receiving the necessary physical alteration permit. Mr. Clinton then address ingress and egress to the lot. The RI DOT has a corridor improvement project along Old Tower Hill Road, this will improve the nearest traffic signal and allow for median and bike accommodations. These improvements will all help to reduce congestion at the intersection coming into and out of the site. He then explained the traffic pattern within the site regarding parking and drive thru. It is his belief that this plan goes above and beyond all requirements.

Board questions ensued about a left turn exit from the parking lot, center medians and traffic study time frame and signage.

Mr. Clinton spoke about the RI DOT corridor improvements which will include an improved traffic signal and will allow for vehicles to exit the lot in sync with the traffic signal located at the Wakefield Mall. There is no proposed median directly in front of this project. The traffic volumes were taken from the RI DOT traffic study taken in July of 2018 and then adjusted a quarter percent growth per year to reflect 2020 volumes. The lot will have signage directing which way traffic will flow on site.

Mr. Levesque spoke about any sign frontage on the building. They will not be using the existing sign which is grandfathered in. Instead they are proposing a small stone wall with a built in sign which would only be noticeable as you approach the property.

Mr. Clinton spoke about his company being a peer review company for RI DOT projects. Mr. Callaghan called his next witness. Mark Butler, Landscape Architect was sworn in and recognized as an expert witness. Mr. Butler explained the type of proposed plantings that are going to be used on the revised site plan. The revised plan allows certain areas to have increased landscaping and can incorporate larger trees and buffering which will enhance the Old Tower Hill Road corridor's aesthetics. He also explained the major differences and additional benefits from the original plan to the revised site plan.

There were no questions for this witness.

Mr. Callaghan had no further testimony.

Petition of David Levesque was paused to vote on the continuation of the petitions that will not be heard tonight.

Mr. Jurczak advised that there would be no new petitions heard tonight and that the following petitions would be continued until July 22, 2020.

Mr. Daniels made the motion and Mr. Mark seconded the motion, followed by a voice vote where all members were in favor

The following petitions were continued until the July 22, 2020 meeting.

- **Petition of Kevin and Kathleen Moore, 112 Homeward Lane, North Attleboro, MA, 02760** for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to construct an addition on the left side of the second floor and extend the second floor deck on the left side. This parcel is non-conforming by dimension, so reduced setbacks are allowed. The deck extension on the left side will be located 4.1' from the left side property line. The side yard setback requirement is 10'. Relief of 5.9' is requested. The second floor addition on the left side will be located 7.6' from the left side property line. The side yard setback is 10'. Relief of 2.4' is requested. Lot size is .19 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 Kevin & Kathleen Moore for premises located at 30 Ocean Avenue, Assessor's Map 93-1, Lot 68 and is zoned R 20.
- **Petition of The Compass School, c/o Michael Commendatore, 537 Old North Road, South Kingstown, RI, 02879** for a **Special Use Permit Modification** under the Zoning Ordinance as follows: The Compass School is seeking to construct an outdoor 25' X 45' pavilion for use in outdoor school activities and as a covered bus waiting area. Because this property is zoned for residential use and there is a current Special Use Permit in place for the educational use, any modification or expansion requires approval from the Zoning Board. Lot size is 5 Acres. **A Special Use Permit is required per Zoning Ordinance Section 202 (Building, Structure or Land Nonconforming by Use), Section 203 (Special Use Permit for Addition, Enlargement, Expansion or Intensification) and Section 907 (Standards of Relief).** Property is owned by the Compass School for premises located at 537 Old North Road, South Kingstown, RI, Assessor's Map 16-4, Lot 16, and zoned R40. Use code is 20 (Education Institution, Primary through Secondary).
- **Petition of Heidi Henderson & Stephen Rogers, 16 Elm Street, South Kingstown, RI, 02879** for a **Dimensional Variance** under the Zoning Ordinance as follows: The applicant is seeking to construct an attached deck and outdoor shower closer to the rear property line. Although this parcel is non-conforming by dimension, there are no further reductions in setbacks allowed. The deck will be located 6' from the rear property line. The required setback is 30'. Relief of 24' is requested. The accessory outdoor shower will be located 4' from the rear property line. The required rear yard setback for accessory structures is 6'. Relief of 2' is requested. The lot coverage maximum is 25%. The deck, shed and outdoor shower will increase the overall lot coverage to 1,723 square feet or 30%. Relief of 5% or 270 square feet is requested. Lot size is 5,814 square feet. **A Dimensional Variance is required per Zoning Ordinance Section 207 (Nonconforming Lots of Record-Building Setback Requirements), Section 401 (Schedule of Dimensional Regulations) and Section 907 (Standards of Relief).** Owner of the property is Heidi Henderson & Stephen Rogers for premises located at 16 Elm Street, Assessor's Map 57-4, Lot 187 and is zoned R 10.
- **Petition of Manny M. Vieira, 80 Brookridge Drive, Exeter, RI, 02822** for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking the approval of a Special Use Permit to locate an Onsite Wastewater Treatment System (OWTS) closer to a wetland than allowed. 150' is required, 110' is proposed. Relief of 40' is requested. This parcel was granted a Special Use Permit for the same relief sought on this application on October 22, 2014, but the approval period expired. The project also had received approval from the Conservation Commission on July 16, 2014. There is no change to the original location of the OWTS system. Lot size is .47 Acres. **A Special Use Permit is required per Zoning Ordinance Section 504 (Special Use Permits-Location of OWTS) and Section 907 (Standards of Relief).** Property is owned by Manny M. & Maria R. Vieira for premises located on Parkwood Drive, South Kingstown, RI, Assessor's Map 31-2, Lot 82, and zoned R20

The petition of David Levesque's resumed.

Mr. Jurczak asked if anyone in the audience wished to speak.

Virginia Kenny was present and sworn in. Ms. Kenney stated that they are very happy about the change in drive thru and that it would no longer be exiting onto Narragansett Avenue West. Ms. Kenny asked (1) what the hours of

operation would be for the drive thru, (2) if there was a possibility of adding a gate to the rear of the property onto Narragansett Avenue West that would be closed at night due to suspicious night time activity in the area and (3) is there ever any intention of being open 24 hours.

Mr. Levesque commented that the restaurant will never be open 24 hours. He also stated that he had no issues with installing a gate and having it closed at night. In regards to the drive thru hours they will probably have some sort of self-imposed restriction limiting the drive thru hours of operation.

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

Mr. Callaghan stated that he believes they have met the requisite conditions for the granting of a special use permit.

Mr. Daniels asked about alcohol service and if it would be table service only or would they also have a bar and if so, number of bar seats available.

Mr. Levesque stated that they intend to offer both and reviewed the number possible bar seats, 17 to 18 seats maximum. This is not the type of setting where patrons would go in to have multiple drinks, there model is to offer the patrons a chance to have a drink while having a sandwich and this currently accounts for 7-12 percent of business in other locations that offer alcohol. They don't anticipate any of their stores to have more than 15 percent of their business be from alcohol sales.

Ms. Goins advised that the Town Council in the granting of the liquor license will require a floor plan so that number of seats will be determined exactly upon the issuance of a liquor license at the next step.

There was no further testimony.

Board discussion ensued.

The motion is as follows:

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

At a meeting held on July 15, 2020 regarding **Continuation of the Petition of David Levesque**, 1395 Atwood Avenue, Johnston, RI 02919 for a **Special Use Permit** under the Zoning Ordinance as follows: The applicant is seeking to establish a restaurant with alcohol, accessory drive-up window and accessory entertainment to a restaurant. The principal use as well as the accessory uses require a special use permit. The applicant received a favorable advisory opinion for the Development Plan from the Planning Board on January 29, 2020. Lot size is .91 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 Gerald Richmond for premises located at 151 Old Tower Hill Road, Assessor's Map 57-2, Lot 51 and zoned CH (Commercial Highway). Use Code 56.1 (Restaurant with Alcohol) Use Code 56.3 (Accessory Entertainment to Restaurant) and Use Code 58 (Drive Thru Accessory Window).

The following individuals spoke as representatives of the applicant:

- Attorney James Callaghan, Applicant David Levesque, Joshua Rosen, P.E., Robert Clinton P.E., Mark Butler, R.L.A.

The following individuals spoke at the hearing:

- Virginia Kenny

The following materials were entered into the record:

- Application signed and dated February 14, 2020; Letter from Attorney James Callaghan dated February 14, 2020; 200' Radius Map and Abutter's list; Owner authorization form from signed by Gerald Richmond and notarized January 30, 2020; Legal Notice, Affidavit of Mailing and Certified Mailing Receipts; Planning Department Development Plan Review Advisory Opinion dated January 28, 2020; VHB Memorandum regarding Traffic Assessment dated November 21, 2019; Floor plan & Exterior renderings of proposed project; Development Plan Review prepared by Principe Company and dated September 27, 2019

and revised on November 15, 2019; Boundary Survey prepared by Norbert A. Therien P.L.S. dated August 22, 2019.

- Continuation Requests from Attorney James Callaghan
 - Dated April 22, 2020
 - Dated June 8, 2020
- Objectors' Correspondence:
 - Virginia and Paul Kenny received March 11, 2020
 - Eric Palm received March 16, 2020
 - Melissa Towle received April 20, 2020 along with 2 photos of property line
 - Melissa Towle received April 20, 2020 along with signed neighborhood petition
 - Robert Thompson & Veronika Kot dated April 22, 2020
- Supplemental Documentation
 - Supplemental Narrative dated July 13, 2020 from Attorney James Callaghan
 - Revised Site Plan Set, dated July 10, 2020 and stamped by Thomas J. Principe III, P.E., Principe Company Inc.

Findings of Fact:

1. The Board finds that the special use is specifically authorized by this Ordinance, because a Special Use Permit is allowed per Zoning Ordinance Section 301 (Schedule of Use Regulations Table) and Section 907 (Standards of Relief); Use Code 56.1 (Restaurant with Alcohol); Use Code 56.3 (Accessory Entertainment to Restaurant); and Use Code 58 (Drive Thru Accessory Window).

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 the application does meet the criteria for the use(s) of this property and the revised plan set that was submitted is comprehensive in detail and adapted to meet the concerns of the surrounding neighborhood.

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; The traffic flow and control is now accessible through Old Tower Hill Road; the parking spaces are designed larger to allow more ease of access; no emergency access will be encumbered.
- (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; off-street parking exceeds the Zoning Ordinance requirements; the loading area is sufficient and located at the rear of the property; proposed landscaping will buffer any effects of the business on adjoining lots.
- (iii) Trash, storage and delivery areas with a particular reference to the items in (i) and (ii) above; the proposed area is adequate and is located at the rear of the property.
- (iv) Utilities, with reference to locations, availability and compatibility; lighting will have no new poles and will consist of mostly wall packed units.
- (v) Screening and buffering with reference to type, dimensions and character; proposed landscaping will enhance the Old Tower Hill Road corridor as well as buffer between the neighboring properties.
- (vi) Signs, if any, and exterior lighting with reference to glare, traffic safety, and compatibility and harmony with lots in the zoning district; there was nothing on the plans that would indicate any issue.

- (vii) Required yards and other open space; none required.
- (viii) General compatibility with lots in the same or abutting zoning districts, because the proposed development is very compatible with other businesses located in the Commercial Highway District.

Approval is subject to the following conditions:

- All conditions of the Planning Department Development Plan Review Advisory Opinion dated January 28, 2020 must be met.
 - Business to close at 11:00 p.m. Sunday through Thursday and 12:00 a.m. on Friday and Saturday
 - The gate at the Narragansett Avenue West exit is to be locked nightly.
-

Minutes:

June 17, 2020 and June 24, 2020 minutes

Mr. Rosen made the motion to approve the minutes, Mr. Mark seconded

Voice vote all in favor (5-0) minutes approved.

Attendance:

All members present are available for the July 22nd, 2020 meeting.

Adjournment:

Mr. Mark made the motion to Adjourn.

Mr. Cagnetta seconded.

All in Favor - Aye

Meeting adjourned at 10:20 p.m.