

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 Town Hall, 180 High Street, Wakefield on March 17, 2010.

Members Present: Ernest D. George, Jr.
Robert Toth
Stephanie A. Osborn
Igor Runge
Douglas W. Bates
Robert J. Cagnetta, Alt. #2

Also present were Nancy Letendre, Special Legal Counsel and Jeffrey T. O'Hara, Building Inspector and Clerk.

Mr. George explained the burden of proof of an applicant seeking a Special Use Permit or Variance.

Mr. George read the first petition.

Continuation of the Petition of Donald and Mary Rathbun (Closed Public Hearing), 57 Lafayette Street, West Warwick, RI for a **Special Use Permit & Variance** to install an OWTS closer to a wetland than permitted (150' required – 53' requested) and to construct a single family dwelling closer to a front line than permitted (40' required – 25' requested) and closer to a side line than permitted (40' required – 10' requested) in an R-80 Zone. Premises located at Indian Trail South, South Kingstown, RI, Assessor's Map 34-4, Lot 20, Sections 504, 401 and 907. (George, Osborn, Runge, Bates, Cagnetta)

The Board received in the mail a draft decision prepared by Special Legal Counsel, Nancy Letendre. As all members were in agreement, Mrs. Osborn made a motion to accept the draft decision as written. The Decision of the Board follows:

This application is made by Donald C. and Mary E. Rathbun for a special use permit to locate an Onsite Wastewater Treatment System (OWTS) closer to a wetland (150' required - 53' requested). This application also requests a dimensional variance to construct a single-family residence closer to a side line than permitted (40' required - 10' requested) and closer to a front line than

permitted (40' required - 25' requested). The Premises is located at Indian Trail South, South Kingstown, Rhode Island. Town of South Kingstown Tax Assessors Map 34-4, Lot 20 in an R-80 Zone.

At a public hearing held before the Zoning Board of Review on February 17, 2010, the Board heard testimony in support of the application, including testimony by Joseph Frisella, a professional engineer, land surveyor and licensed OWTS designer and received a letter from Rebecca McCue, a wetland biologist. Attorney James Donnelly was present on behalf of James and Ann Hazelwood, owners of the property to the east, Lot 19. Neighbors, Roger Spachman and Robin Jackim presented testimony in opposition to the application.

After consideration of all the evidence presented at the public hearing, the Zoning Board deliberated on March 17, 2010 and **granted** the special use permit and **granted** the dimensional variance. The following motions were approved by the Zoning Board.

MOTION 1: "To **grant** approval of a special use permit to locate an Onsite Wastewater Treatment System (OWTS) closer to a wetland (150' required - 53' requested) at Tax Assessors Map 43-4, Lot 20, in accordance with the following findings of fact, conclusions of law and conditions of approval.

A. Findings of Fact

1. The Board finds the unrefuted testimony of the applicants' expert Joseph Frisella and the report of the wetlands biologist to be credible.
2. From the testimony of Mr. Frisella, the Zoning Board finds that the proposed OWTS, if constructed in accordance with the approved plans and specifications, will sufficiently pre-treat wastewater before it reaches the wetland and that the OWTS cannot be located anywhere on the lot and be further away from the wetland feature.
3. In accordance with the Zoning Ordinance the Conservation Commission reviewed this application and in a letter dated November 6, 2009 (contained in Exhibit 7) recommended approval with certain conditions.
4. From the testimony of Joseph Frisella, the Zoning Board finds that RIDEM Wetlands Division granted a construction permit for the proposed location of the OWTS on May 26, 2009, (contained in Exhibit 5). The granting of this permit followed the granting of an insignificant alteration permit on December 24, 2008 (Exhibit 4).

B. Legal Conclusions

1. The Board finds that the special use permit is specifically authorized in Section 504 of the South Kingstown Zoning Ordinance. Section 504 establishes a process by which homeowners receive local review and approval of the placement of OWTS in areas within the coastal zone to ensure that wastewater is properly treated.
2. The Board finds that the applicant has satisfied all the criteria set forth in Section 504 of the Zoning Ordinance by making proper application to the Conservation Commission, obtaining RIDEM approval for the proposed OWTS, and through the testimony of experts regarding both the design and location of the OWTS and the lack of impact on both the natural and built environment.
3. The Board finds that the 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. The Comprehensive Plan of the Town of South Kingstown and the official zoning map of the Town zones this parcel R-80 allowing for the proposed single family development. Based upon the expert testimony, the Zoning Board concludes that the approval of this location for the OWTS would have no significant impact on the residential area or on Indian Lake.

C. Conditions of Approval

Approval of the special use permit is granted with the following conditions.

1. The location of the OWTS shall be as represented in the site plan revised as of February 17, 2010 and marked as Exhibit 2.
2. The applicant and its successors in title shall adhere to the conditions recommended by the Conservation Commission as contained in their letter of November 6, 2009 (contained in Exhibit 7) with the exception of conditions 4, 5, 8, 16 and 18.”

Motion made by Stephanie Osborn; Seconded by Igor Runge.

VOTE: Osborn, Aye; Runge, Aye; Bates, Aye; Cagnetta, Aye; George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION FOR A SPECIAL USE PERMIT.

MOTION 2: “To **grant** approval of a dimensional variance to construct a single-

family residence closer to a side line than permitted (40' required - 10' requested) and closer to a front line than permitted (40' required - 25' requested) at Tax Assessors Map 43-4, Lot 20, in accordance with the following findings of fact, conclusions of law and conditions of approval.

A. Findings of Fact

1. The Board finds that the subject property is a legal lot of record that was created prior to the zoning of the parcel as R-80, and at 20,038 square feet is undersized for the zoning district. The Zoning Board also finds that a single-family residence is a permitted use of the property.
2. Applying the zoning ordinance setbacks to this legal nonconforming lot of record provides a triangular building envelope completely within the wooded swamp or perimeter wetland. From the testimony of Mr. Frisella, the Board finds that the size and shape of the building lot, the location of the OWTS and the need to locate the dwelling away from the wetland effects the possible locations of the single-family home.
3. The applicant has placed the OWTS and the residence in the southeasterly most corner of the Lot in order to provide the maximum distance from Indian Lake and the wooded swamp as required by the RIDEM.
4. The Board finds that the applicant has shown that the proposed structure is a reasonable size two-bedroom house and that any construction on the lot could not meet all of the Town's setback requirements.

B. Legal Conclusions

1. The Board finds that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land because of the prevalent wetlands and that said 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. As stated previously this is a legal nonconforming lot of record and a single-family dwelling unit limited to two bedrooms is the most modest use of the property possible.
2. The Board finds that the granting of the requested variance will not alter the general characteristics of the surrounding area or impair the intent or purpose of this Zoning Ordinance or the Comprehensive Plan of the Town. The Board recognizes that this

is exclusively a residential area around Indian Lake and that many of the lots in the area contain wetlands. The Comprehensive Plan of the Town as implemented through the zoning ordinance, accommodates residential development in environmentally sensitive areas through the careful regulation of the OWTS associated with each residence.

3. Based upon the several findings of fact listed above, the Board finds that the relief to be granted is the least relief necessary and the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted will amount to more than a mere inconvenience.

C. Conditions of Approval

Approval of the dimensional variance is granted on the condition that the single-family dwelling be constructed in substantial conformance with the revised site plan dated February 17, 2010 and marked as Exhibit 2.”

Motion made by Stephanie Osborn; Seconded by Igor Runge.

VOTE: Osborn, Aye; Runge, Aye; Bates, Aye; Cagnetta, Aye; George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION FOR A VARIANCE.

Mr. George read the second petition.

Continuation of the Petition of Tri-Level Construction Co., Inc., PO Box 297, Wakefield, RI for a **Variance** to construct a single family dwelling closer to a corner side line than permitted (25’ required – 15’ requested) and a **Special Use Permit** to install an onsite wastewater treatment system closer to a wetland than permitted (150’ required – 64.5’ requested) in a GPOD/R-20 Zone. Premises located at Biscuit City and Ledgewood Roads, South Kingstown, RI, Assessor’s Map 31-2, Lot 123, Section 401 Dimensional Regulations, Section 504 and 907. (George, Toth, Osborn, Runge, Cagnetta)

The Board received a Motion to Vacate from Attorney Margaret Hogan. The applicant, Tri-Level Construction moves the qualified members of this Honorable Board for an order vacating the decision made at the January 27, 2010 meeting, which ordered the applicant to file a transcript of the proceedings on December 16, 2009.

The Chair summarized the Motion to Vacate and then polled Board members. All members were in agreement with the applicant.

Mr. Toth suggested giving the abutters' time to get familiar with the case and continue the hearing for that purpose.

Jude Nuzum, resident on 46 Crestwood Drive, was notified that a transcript would not be available. He would withdraw his request for the transcript and thought the Board should proceed this evening.

Mr. Toth made a motion to reconsider the decision made at the January 27, 2010 meeting, which ordered the applicant, Tri-Level Construction, to file a transcript of the proceedings on December 16, 2009.

Mr. Runge seconded the motion.

WHEREUPON A VOICE VOTE WAS TAKEN/MOTION PASSES TO GRANT THE MOTION TO VACATE.

Now the Board would continue with the Petition of Tri-Level Construction.

The Chair noted that at the December 16, 2009 meeting the Board left off with the testimony of Craig Carrigan.

Attorney Margaret Hogan was present on behalf of the applicant.

Ms. Hogan called her 3rd witness.

Ned Caswell, Real Estate Appraiser, was sworn.

Mr. Caswell is familiar with and visited the subject property.

He prepared a report regarding this application for a special use permit and dimensional variance. He then explained what he did to prepare his report. He did a study in relationship to the square footage of the proposed dwelling. It is in character with the neighborhood. A house of this size would not impact the neighborhood or the Comprehensive Plan.

Attorney James Aukerman objected to the testimony regarding the Comprehensive Plan.

Mr. Caswell is familiar with the land use element of the Comprehensive Plan. Ms. Hogan felt it was appropriate for the witness to tell us his opinion in regards to the land use in the Town's Comprehensive Plan.

Mr. Caswell reviewed the wetlands map in the Comprehensive Plan.

Attorney Matt Mannix objected to the testimony regarding the Comprehensive Plan.

Ms. Hogan noted that the maps they are referring to were submitted with Mr. Caswell's report.

Mr. Caswell has reviewed the Town's Zoning Ordinance in regards to the allowable uses for the subject property that do not require a septic system. A crop farm, agricultural use and cellular use may not require a septic system.

Mr. Caswell testified that a single family dwelling is the best use of this property and that the dimensional variance would not have an adverse impact on the surrounding properties.

Applicant's Exhibit #5, Report Prepared by Edward (Ned) Caswell RE: Application for a Special Use Permit and Dimensional Variance for Plat 31-2, Lot 123 at Ledgewood Road, Kingston, was submitted.

The Board would now hear from those who had questions for this witness.

Marjorie Hunt was sworn. She noted that her house was built in 1975 and it is older than 30 years old.

Jude Nuzum was sworn. He noted that since 1978 there is a requirement by the State that they have to be advised of the wetlands. Mr. Caswell was not aware of that requirement.

Doug Perkins took objection to Mr. Caswell's testimony on the best use of the property. Almost everything in the subject area has been built with exception to the wetland. Mr. Perkins then continued to express his concerns regarding the wetlands in the area.

David Cox questioned how cutting down the setback would not affect the property values in the neighborhood. Mr. Caswell felt that it wouldn't necessarily affect the property values.

Dennis Vinhateiro, resident on 180 Biscuit City Road, noted that Mr. Caswell failed to mention that this property is in a Groundwater Protection Overlay District (GPOD).

Jude Nuzum questioned if Mr. Caswell knew what the angle from Biscuit City Road to Ledgewood Road was. Mr. Nuzum noted that the angle is 66 degrees not 90 degrees and then expressed his concerns regarding this corner. Mr. Caswell was not aware of that. He did not do an angle.

Mr. Perkins questioned the parking between the house and the street.

Ms. Hogan felt this question was in regards to the site plan which Mr. Carrigan could answer.

Mr. Runge questioned if this was a desirable home site. In response, Mr. Caswell answered yes it is. They will enjoy the neighborhood.

John Hadley asked if Mr. Caswell walked that lot and examined the limits of the wetlands. Mr. Caswell stated that he did walk it and doesn't know where the wetlands are.

Craig Carrigan was sworn. Mr. Carrigan is the engineer of record for the project and he designed the septic system.

Ms. Hogan asked Mr. Carrigan if he sited Mr. Hadley's house. In response, Mr. Carrigan stated that house is 35' from the property line. Ms. Hogan noted that Mr. Hadley's property had a greater setback requirement.

In response to Mrs. Osborn question on water runoff, Mr. Carrigan explained that the driveway would be crushed stone and the gutters would be directed to control the runoff.

Applicant's Exhibit #6, Crushed Stone Driveway Cross-Section Detail Prepared by Carrigan Engineering Inc., was submitted.

It was noted that this design is what Mr. Carrigan also designed for Mr. Hadley's home.

Jude Nuzum asked what annual percentage rate Mr. Carrigan used for Kingston. Mr. Carrigan explained that he calculated for an annual precipitation rate. He used the numbers that DEM requires.

Dennis Vinhateiro asked Mr. Carrigan to clarify the distance from the leach field to the wetland area. Mr. Carrigan stated 64.5 feet. Mr. Vinhateiro had 63 feet. It was determined that Mr. Vinhateiro was looking at an older septic system plan.

Questions continued to ensue from the neighbors to Mr. Carrigan.

Ms. Hogan called her 5th witness.

Scott Rabideau, Wetland Biologist employed with Natural Resource Services, Inc., was sworn.

Mr. Rabideau is familiar with the subject property, he visited the site and prepared a report which was submitted with the application.

He went over his findings as it relates to this lot.

They did a habitant assessment which was put into his report.

Mr. Rabideau explained the wetlands on the property. It is a jurisdictional wetland according to DEM. He identified on the site plan the wetland area.

The storm water management proposed is consistent with the Best Management Practices.

The Board would now hear from those who had questions for this witness.

Questions ensued from Board members.

Larry Englander had questions regarding dimensional compliances.

Jude Nuzum had concerns regarding the typography. In response, Mr. Rabideau stated that the sloping of the property does not have a significant impact on the wetlands.

Mr. Hadley asked Mr. Rabideau if Tri-Level was a client. Mr. Rabideau responded yes, Tri-Level pays him.

Ira Gross asked what trees would remain. In response, Mr. Rabideau stated that this was not assessed.

The Chair noted that only the trees to the road would be removed.

Attorney Hogan stated that this concludes her presentation.

The Board would now hear opposition testimony.

Both Matt Mannix and James Aukerman from J. V. Aukerman & Associates were present on behalf of John Hadley. Only Matt Mannix would represent John Hadley this evening.

Attorney Matt Mannix was present on behalf of John Hadley a direct abutter.

Mr. Mannix called his 1st witness.

Mr. Mannix began to pass out a report prepared by his witness to Board members.

Ms. Hogan objected to the submission of this report as 10 days is required by the Zoning Board for submission of reports.

The Chair accepted the report.

Opponent's Exhibit #2, Planning Report Prepared for John F. Hadley, 18 Ledgewood Road, South Kingstown, RI 02881, Proposed Special Use Permit Request before the South Kingstown Zoning Board of Review by Shamoon Planning, LLC, Samuel J. Shamoon, AICP, Dated March 17, 2010, was submitted.

Opponent's Exhibit #3, Resume of Samuel J. Shamoon, AICP, President Shamoon Planning LLC, was submitted.

Samuel Shamoon was sworn.

He explained his educational background to Board members.

Mr. Shamoon is a community planner with Shamoon Planning, LLC.

He acted as a consultant with Tony Lachowicz working with the Zoning Ordinance.

Mr. Shamoon explained his report to Board members.

He reviewed the applicant's material and reviewed the Zoning Ordinance is some length.

The applicant fails to note that his property is in a Groundwater Protection Overlay District (GPOD).

He went over the Comprehensive Plan and how it relates to this application.

Attorney Hogan objects to this line of questioning.

Mr. Shamoon testified that this application is not in compliance with the Comprehensive Plan and began explaining why.

It was his opinion that this project impairs the intent of the Zoning Ordinance.

This application will alter the character of the general area.

He felt that the proposed special use permit should be denied as it is not consistent with the Comprehensive Plan.

The Chair asked Mr. Shamoon how many Onsite Waste Water Treatment Systems (OWTS) have been installed in this Groundwater Protection Overlay District (GPOD). Mr. Shamoon did not know. He felt cumulative impacts had to be considered.

Questions ensued from Board members.

The Board would now hear from those who had questions for this witness.

Attorney Margaret Hogan cross-examined the witness extensively.

Ms. Hogan asked what in her client's proposal violates the Comprehensive Plan. Mr. Shamoon responded it is in a GPOD.

Ms. Hogan asked if he was aware that this application was reviewed by the Town's Conservation Commission. Mr. Shamoon responded that he was not aware of it. He hasn't seen any conditions. Next Mr. Shamoon briefly looked at the 17 conditions in the Conservation Commission's letter dated October 8, 2009.

Mr. Shamoon noted that he did not make a legal conclusion, he made an opinion as a planner. There are cumulative affects.

Ms. Hogan asked if it was his opinion that no septic systems should be installed in the GPOD due to the Comprehensive Plan. Mr. Shamoon responded that yes it is.

Ira Gross questioned if Mr. Shamoon was aware of the history of Mr. Hadley's lot. Mr. Shamoon responded no.

Mr. Mannix called his 2nd witness.

John Hadley put up a picture board for Board members.

He also submitted a portfolio of photographs.

Opponent's Exhibit #4, Portfolio of Photographs submitted by John Hadley, was submitted.

Ms. Hogan objected to the submission of this report as 10 days is required by the Zoning Board for submission of reports.

Mr. Hadley noted that his picture board represents the subject property and his property.

John F. Hadley, resident on 18 Ledgewood Road, the immediate abutter, was sworn.

Mr. Hadley explained his picture board to Board members.

He pointed to his picture board explaining that 2 streams flow through there.

His main objection to Mr. Lind's proposal is that it is too close to his property.

Mr. Hadley then explained his concerns regarding parking and cars going around the corner of Biscuit City Road and Ledgewood Road.

He contends that the engineering and delineation of the wetlands is wrong.

He has concerns regarding the construction process.

He is worried about drainage onto his property.

Questions ensued from Board members.

In response to the Board's questions, Mr. Hadley noted that he has lived at his property for 4 to 5 years. He presumed that Mr. Carrigan designed his septic. He was not aware there were wetlands on the property until he moved in. He hasn't had any adverse affects to his property.

Larry Englander had questions for Mr. Hadley regarding the blind curve on the road. He asked if there were sidewalks. Mr. Hadley responded not on Ledgewood Road and no street lights.

Now the Board would hear any additional opposition testimony.

Carl Storm, resident on 160 Biscuit City Road, was sworn.

Mr. Storm submitted some photographs.

Opponent's Exhibit #5, Photographs taken on March 7, 2007, were submitted.

Mr. Storm explained the five photographs as follows:

1. Wetland adjacent to his property.
2. Standing on Biscuit City Road looking east.
3. Biscuit City Road looking north.
4. Looking west across the wetland.
5. After the water has begun to go down.

Mr. Strom testified there is a lot of water that goes through that property from time to time.

Larry Englander was sworn.

Mr. Englander had 3 points to make. He read a prepared statement expressing his concerns.

Opponent's Exhibit #6, Statement from Larry Englander, was submitted.

Jude Nuzum, resident on 46 Crestwood Drive, was sworn.

Mr. Nuzum stated that he is a very concerned property owner and felt this was a definite threat.

Mr. Nuzum submitted a report to Board members.

Ms. Hogan objected to the submission of this report as 10 days is required by the Zoning Board for submission of reports.

Opponent's Exhibit #7, Report submitted by Jude Nuzum, was submitted.

Ms. Hogan objected to this report as it is by a hydrogeologist who is not here this evening.

Mrs. Letendre noted that Mr. Nuzum can only testify on what he knows about. She advised the Board that they can accept the report and give it the weight it deserves.

Mr. Nuzum stated that this report is dated 2002.

Ms. Hogan noted that this report speaks to 44 Crestwood Road and is inadmissible.

Mrs. Letendre noted that there is no admissibility standard in the zoning hearing.

Mr. Nuzum stated that Lot 16 was granted an exception and he opposed it. In 2002 Lot 122 came up and in his opinion should not have been built on. Lot 124 was granted an exception 4 years ago. The lots are getting wetter. He has lived on his property for 30 years. In 2007 he replaced his septic system. He is concerned regarding the additional water that will be generated by developing this lot.

Mr. Nuzum referred to Page 13 in his report, the trees that would be cut down. It was his opinion that the trees below the developed area will be impacted. The land to be developed will be fertilized and limed to grow grass.

Mr. Nuzum explained some of the photographs contained in his report on Page 9 and Page 11.

He referred to the last page in his report regarding the turn on Ledgewood Road. He is concerned on this traffic hazard.

In conclusion, Mr. Nuzum summed up all of his concerns.

The Board would take a short break.

The Board continued with the petition of Tri-Level Construction.

Ira Gross was sworn and expressed his concerns as did David Cox.

Next Attorney Matt Mannix summed up the testimony presented. In conclusion, he urged the Board to reject this application.

Next Attorney Margaret Hogan summed up the testimony presented. In conclusion, she stated that the applicant has more than enough met his burden.

The Chair made a motion to close the public hearing.

WHEREUPON A VOICE VOTE WAS TAKEN/MOTION PASSES.

Mr. Toth made a motion to take it under advisement.

Mr. George seconded the motion.

WHEREUPON A VOICE VOTE WAS TAKEN/MOTION PASSES.

Mr. George read the third petition.

Petition of Live Theatre, LLC, 7 Central Street, Easton, MA for a ***Special Use Permit*** to continue the expansion of a nonconforming use that expired on October 31, 2009 (date of operation) for an indefinite time. Also, to expand service area of the restaurant with alcohol to a proposed 32' x 50' patio area in an R-200 Zone. Premises located at 358 Cards Pond Road, South Kingstown, RI, Assessor's Map 92-1, Lot 2, Sections 202G, 203 and 907.

Attorney James Aukerman was present on behalf of the applicant.

The applicant was here 2 years ago. The Board granted the special use permit for a 2 year period. The applicant would like two things: 1. Seasonal approval indefinitely. 2. Additional seating on the patio.

Mr. Aukerman submitted some photographs.

Applicant's Exhibit #1, Photographs taken at Live Theatre LLC, was submitted.

The Board questioned if the theatre was heated.

Tom Center was sworn and responded to the Board's question. It has the potential to be heated but it is not currently heated.

There was no one in opposition present.

Mr. Runge made the motion to approve the petition of Live Theater, LLC, 7 Central Street, Easton, Massachusetts for a special use permit to continue the expansion of a nonconforming use that expired on October 31, 2009 for an indefinite time. Also, to expand service area of the restaurant with alcohol to proposed 32 by 50 foot patio in an R-200 Zone. Premises are located at 358 Cards Pond Road, also known as the Theatre By The Sea, in South Kingstown, Rhode Island. Assessor's Map 92-1, Lot 2. Mr. Aukerman is here this evening representing the applicant regarding Theater By The Sea, an operation. We granted tentative, and there was a time line attached to it, the operation of this facility; and during the last couple of years, I think things have been going well. There have been no complaints. Nobody in the audience is against it. We have deliberated here as a Board, and I think he's met the burden of proof to meet the special use permit for an indefinite period of time. Basically, to not have to come back here year after year, and specifically, it is to expand the area 32 by 50 foot patio area, and that includes also for a liquor service in that facility and outside in the patio area.

Mrs. Osborn seconded the motion.

VOTE: Runge, Aye; Osborn, Aye; Bates, Aye; Toth, Aye; George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION.

Mr. George read the fourth petition.

Petition of Michael Gamache, 143 Bluff Cap Road, Tolland, CT for a **Variance** to construct a 2nd floor addition (dormer), enclose existing 1st floor deck with an 11' x 25' open deck over and construct a 4' x 30' covered porch closer to two side lines than permitted in an R-80 Zone (10' required – 3.8' requested and 10' required – 5.3' requested). Also, closer to a rear line than permitted (30' required – 14.8' requested). Premises located at 6 Fifth Avenue, South Kingstown, RI, Assessor's Map 95-1, Lot 54, Sections 207 and 907.

Attorney Donald Packer was present on behalf of the applicant.

Ursula Haerter and Michael Gamache were sworn.

The applicants are expanding the footprint by adding a front porch.

Mr. Packer submitted the following exhibits:

Applicant's Exhibit #1, Plan of Proposed Building Additions Located on Lot 69 of the "Sea Lea Colony Plat" owned by Michael E. Gamache & Ursula L. Haerter Dated March 2004, Revised 1-06-10, was submitted.

Applicant's Exhibit #2, Elevations, Building Section, Existing Plans & Elevations and Floors Plans for the Haerter/Gamache Residence, was submitted.

Applicant's Exhibit #3, Finding of No Significant Impact Dated May 2, 2005 from CRMC Site 6 Fifth Avenue, South Kingstown, Plat 95-1, Lot 54, was submitted.

Ms. Haerter explained the proposed changes to the existing structure, a cape.

None of the additions encroach any further into the setbacks than the existing house. Going no closer to the side and rear lines.

There was no one in opposition present.

Mr. Toth made the motion in the petition of Michael Gamache for a variance to construct the second floor addition, which is a dormer, enclose existing first floor deck with an 11 foot by 25 foot open deck over and construct a 4 foot by 30 foot covered porch closer to two side lines and a rear line than permitted in an R-80 Zone be granted. Premises, 6 Fifth Avenue, South Kingstown, Rhode Island. The applicant's testified before the Board and stated their needs for the said addition. The proposed construction is going to be significantly, substantially within the existing footprint of the home with the exception of a small covered porch on the front of the house, which the Board finds will add to the attractiveness of the home in this case. I would also move that we grant it in strict conformance to the site plan drawn by Joseph Frisella dated March 2004, revised January 6, 2010. Under Section 907, Standards of Relief, the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure. In this case, it would be the subject land. It's a 5,000 square foot lot in an R-80 Zone, and that certainly is the unique characteristic of the land. And naturally, the general characteristics of the surrounding area and not due to a fiscal economic disability of the applicant. The said hardship is not the result of any prior action of the applicant and it is not a result primarily from the desire of the applicant to realize greater financial gain. The granting of the requested variance will not alter the general characteristic of the surrounding area or impair the intent or purpose of the Zoning Ordinance or Comprehensive Plan of the Town. It's the least relief necessary. The hardship that will be suffered by the owner of the subject property, if the dimensional variance is not granted, shall amount to more than a mere inconvenience for the applicant.

Mr. Runge seconded the motion.

Mr. Runge added that CRMC has basically approved this.

VOTE: Toth, Aye; Runge, Aye; Osborn, Aye; Bates, Aye, George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION.

Mr. George read the fifth petition.

Petition of John Campopiano, 94 Whitford Street, Warwick, RI for a **Special Use Permit** to enclose an open deck for a screen room in an R-200 Zone. Premises located at Row 3 East, Cottage #4, Roy Carpenters Beach, 240 Cards Pond Road, South Kingstown, RI, Assessor's Map 92-1, Lot 09-032, Section 203 & 907.

John Campopiano was sworn.

Mr. Campopiano is screening in an existing porch and not increasing the footprint.

There was no one in opposition present.

Mr. Runge made the motion to approve the petition of John Campopiano of 94 Whitford Street in Warwick, Rhode Island, for a special use permit to enclose an open deck for a screen room in an R-200 Zone. Premises located at Row 3 East, Cottage #4, Roy Carpenters Beach, 240 Cards Pond Road in South Kingstown. The applicant is here. He described what he would like to do. A special use permit is needed because this is a case where we have a number of dwellings on one piece of property. Criteria that primarily we go by is any access to surrounding properties does that change. In that case, there's no change. He merely wants to enclose the area. So, this is a special use permit. I move that we approve this.

Mrs. Osborn seconded the motion.

VOTE: Runge, Aye; Osborn, Aye; Bates, Aye; Toth, Aye; George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION.

Mr. George read the sixth petition.

Petition of George & Jeri Levesque, 42 Lake Forest Lane, St. Charles, MO for a **Variance** to construct a 10' x 12' 2nd floor addition with a 5' x 10' open deck closer to a front line and a side line than permitted in an R-20 Zone (25' required in front – 20' requested and 10' required on the side – 9' requested). Premises

located at 39 River Avenue, South Kingstown, RI, Assessor's Map 35-4, Lot 72, Section 401 Dimensional Regulations & Section 907.

Attorney Randall Levesque submitted a letter of authorization from his parents to represent them regarding their petition for a variance.

Applicant's Exhibit #1, Letter of Authorization Dated March 17, 2010 from George and Jeri Levesque, was submitted.

They are adding an additional bedroom. It will not change the footprint of the home. It is currently a two bedroom home. Randall Levesque, his wife and daughter live there. There are two floors with a sunroom and deck on the back. The proposal is to enclose the deck for a bedroom.

There was no one in opposition present.

Mr. Runge made the motion to approve the petition of George and Jeri Levesque, 42 Lake Forest Lane, St. Charles, Missouri, for a variance to construct a 10 by 12 foot second floor addition with a 5 by 10 foot open deck closer to a front line and a side line than permitted in an R-20 Zone, 25 feet is required in front, 20 feet requested and 10 feet is required on the side and 9 feet is requested. Premises located at 39 River Avenue in South Kingstown, Rhode Island. The applicant's attorney is here. And in this case, they are not adding any addition to the footprint of the structure. They are merely enclosing an area on the second floor that's already there, half of an existing deck, and it's the minimum amount necessary for them. I guess they looked at several different strategies. He's asking for a variance. In this case, the hardship from which the applicant seeks relief is due to the unique characteristics of the subject structure. In this case, not being big enough. They are enclosing a second floor. Granting this requested variance will not alter the general characteristics of the surrounding area. With that, I would like to make a motion again that we approve this.

Mrs. Osborn seconded the motion.

VOTE: Runge, Aye; Osborn, Aye; Bates, Aye; Toth, Aye; George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION.

Mr. George read the seventh petition.

Petition of Marcia & Richard Ryter, 102 Dean Ridge Court, Cranston, RI for a ***Variance*** to construct a 12' x 13' addition to a single family dwelling closer to a side line than permitted in an R-30 Zone (20' required – 17.3' requested), construction of a porch closer to a side line (20' required – 17.6' requested) and

rebuild an existing 12' x 12' shed that is to be connected to the existing dwelling with an addition closer to a rear line than permitted (30' required – 23.2' requested). Premises located at 44 Middle Road, South Kingstown, RI, Assessor's Map 90-4, Lot 203, Section 207 and 907.

Marcia and Richard Ryter were sworn.

Mr. Ryter explained the proposed additions to Board members.

Without a variance they would not be able to use the shed as an attached structure.

They would be going no closer to the property line than the existing structures.

There was no one in opposition present.

Mr. Runge made the motion to approve the petition of Marcia and Richard Ryter of 102 Dean Ridge Court, Cranston, Rhode Island for a variance to construct a 12 by 13 foot addition to a single family dwelling closer to a side line than permitted, and this is in an R-30 Zone. Twenty feet is required. They are asking for 17.3 feet, and also, construction of a porch closer to a side line. Twenty feet is required. They are asking for 17.6 feet, and also, to rebuild an existing 12 by 12 foot shed that is to be connected to the existing dwelling, in this case, with an addition closer to a rear line than permitted. Thirty feet is required and 23.2 feet is what's requested. The structure is located at 44 Middle Road in South Kingstown. The applicant, both applicants, I guess, both owners are here this evening. They have testified on what their intentions are, and it appears like it's basically filling in some surrounding areas of an existing residence; and in no way did they get any closer to any side line than currently the residence is. It's merely just because of the residence; they are already out of conformance that they are already asking for this variance. What's reasonable, the applicant stated this is the minimum relief necessary to be able to satisfy their needs and desires. With that, I would like, again, move that we approve this. And granting this variance, it will not alter the general characteristics of the surrounding area; and in this case, the hardship from which the applicant seeks relief is due to the unique characteristics of the subject structure.

Mrs. Osborn seconded the motion.

VOTE: Runge, Aye; Osborn, Aye; Bates, Aye; Toth, Aye; George, Aye.

IT WAS THE UNANIMOUS DECISION OF THE BOARD TO GRANT THE PETITION.

Pre-Roll

Mr. George may not be present at the next meeting. All other members stated they would be in attendance at the next meeting on April 21, 2010.

Minutes

The minutes of the January 27, 2010 and February 17, 2010 meetings were approved as written.

Adjournment

As there was no further business the meeting adjourned at 10:55 p.m.