

## ZONING BOARD OF APPEALS

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IN THE MATTER OF THE APPLICATION  
OF

PROPERTY OWNER: Gary Ederer  
LOCATION: Hen Island – Site 27  
Rye, New York 10580  
TAM 159.5-1-1

APPLICATION: 07-61  
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The applicant(s), the property owner(s), applied for a building permit. That application was denied by a determination of Rye's Building Inspector, (the administrative official charged with the enforcement of Rye City Code Chapter 197, Zoning) that the application did not strictly comply with the Code's requirements. The applicant(s) filed the appropriate appeal to this Board requesting to reestablish a non-conforming use and renovate/reconstruct a house. The applicant requested either a use variance or, in the alternative, an area variance to reestablish such non-conforming use.

Proper notice of the hearing was publicized pursuant to General City Law §81-a(7). Members of the Board visited the property. Hearings were held on November 15, 2007, December 13, 2007, and February 21, 2008. The applicant(s) appeared before the Board through counsel. Residents appeared (both individually and through counsel) in opposition and in favor.

The Board reviewed the Short Environmental Assessment Form submitted by the applicant(s), declared itself the lead agency within the meaning of the New York State Environmental Quality Review Act, Environmental Conservation Law, Article 8, §§8-0101 *et seq.*, and the regulations thereunder, 6 N.Y.C.R.R. Part 617, and determined that no environmental impact study was required. The Board reviewed all the testimony and documents submitted and considered:

- (A) the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. *See, e.g., Sasso v. Osgood*, 86 N.Y.2d 374, 633 N.Y.S.2d 259 (1995);
- (B) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance. *See, e.g., Munnelly v. Town of East Hampton*, 173 A.D.2d 472, 570 N.Y.S.2d 93 (2d Dep't 1991) and *Townwide Properties Inc. v. Zoning Bd. Of Appeals*, 143 A.D.2d 757, 533 N.Y.S.2d 466 (2d Dep't 1988);

- (C) whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. *See, e.g., Moundroukas v. Foley*, 184 A.D.2d 642, 584 N.Y.S.2d 913 (2d Dep't 1992) and *Nammack v. Krucklin*, 149 A.D.2d 59, 540 N.Y.S.2d 277 (2d Dep't 1989);
- (D) whether the requested variance is substantial. *See, e.g., Friendly Ice Cream Corp. v. Barrett*, 106 A.D.2d 748, 483 N.Y.S.2d 782 (3<sup>rd</sup> Dep't 1984); and *Four M. Constr. Corp. v. Fritts*, 151 A.D.2d 938, 543 N.Y.S.2d 213 (3<sup>rd</sup> Dep't 1989);
- (E) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. *See, e.g., Bauer v. Zoning Bd. of Appeals*, 121 A.D.2d 627, 503 N.Y.S.2d 652 (2d Dep't 1986) and *Holy Trinity Greek Orthodox Church, Inc. v. Casey*, 150 A.D.2d 448, 541 N.Y.S.2d 56 (2d Dep't 1989); and
- (F) whether the alleged difficulty was self-created. *See, e.g., Slakoff v. Hitchcock*, 194 A.D.2d 613, 599 N.Y.S.2d 63 (2d Dep't 1993) and *Townwide Properties Inc. supra*.

After due deliberation, the Board, based upon the testimony and documents submitted and its site visit, found, pursuant to General City Law §81-b and Rye City Code §197-81, it has jurisdiction to grant the requested variance and that the variance sought was the minimum variance necessary and adequate and at the same time preserved and protected the character of the neighborhood and the health, safety and welfare of the community.

As the Board has recognized in its prior decisions concerning area variance applications for construction on Hen Island, Hen Island is a pre-existing non-conforming use located in the R-2 Zoning District. The use of Hen Island is non-conforming because it consists of multiple single-family summer cottages on a single parcel of property. Hen Island is owned by a single property owner, Kuder Island Colony, Inc. which permits its shareholders to use specific sites located on Hen Island pursuant to license agreements for the use of seasonal (summer only) housing in summer cottages located on the island. Hen Island is a water dependent use and relies solely upon access from the mainland via water transportation.

For background, it is useful to quote from the Board's decision In Re Santangelo, (89-37, Decision dated November 9, 1989) regarding the character of Hen Island:

Hen Island is an anomalous part of Rye, so much so that it is difficult to know how, or even whether, various provisions of the City Code should be applied...Hen Island is owned by Kuder Island Colony Inc. (hereinafter called "Kuder Corporation"). The island comprises 34 camp cottages, with appurtenances such as docks and storage



sheds. The cottages are individually owned, each owner is a licensee of and a shareholder in Kuder Corporation. The board of directors of Kuder Corporation controls development and improvements on Hen Island by means of provisions in its by-laws, rules and regulations. Hen Island has no electricity or gas supply, no water supply, no sewer, no municipal trash removal or sanitation service, no effective protection services, and very little connection with the rest of Rye.

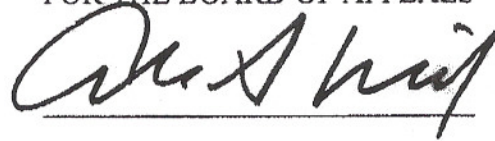
The applicant is seeking an area variance to restore the cottage located on site 27, which was damaged by a fallen tree in a storm several years ago. Site 27's pre-existing non-conforming structure was previously used for summer occupancy and storage for over fifty (50) years. The applicant became a shareholder and acquired site 27 in the summer of 2007. Upon becoming a shareholder, the applicant met with the Board of Directors of Kuder Island Colony Inc. and thereafter obtained permission to renovate the structure located on site 27. By letter to this Board dated February 13, 2008, the Kuder Island Colony Inc. expressed its support for this application.

Counsel for an opposing resident argued that this application requires a use variance because the use of the cottage on site 27 had been "converted" from its original use as housing for summer use and a "caretaker's cottage" to storage. It was alleged that the subject site 27 had only been used for storage since 1983. However, testimony from other residents/shareholders, including from a prior owner of site 27, contradicted the allegations of this opposing resident. Testimony supported the fact that site 27 had been occupied and slept in, albeit intermittently, up until the point that the cottage was damaged by the fallen tree. Based on the testimony, the Board found that, similar to the use of all other cottages on Hen Island, the cottage on site 27 has been used intermittently as seasonal summer housing as well as storage.

Accordingly, the Board agreed with counsel for the applicant that this matter requires an area variance, as opposed to a use variance, so as to permit the restoration of and improvement to the pre-existing non-conforming structure located on site 27. Applying the balancing test referred to above, the testimony presented clearly weighs in favor of granting the requested relief. The applicant will be required to reconstruct and improve the cottage in compliance with all applicable health and safety codes and there will be a clear benefit to both the applicant and to the Hen Island community if site 27 is restored so as to permit its continued use as seasonal summer housing.

Upon motion duly made and seconded, the Board voted to grant the relief requested. Accordingly, the variance is granted.

FOR THE BOARD OF APPEALS

A handwritten signature in black ink, appearing to read "Michael H. [unclear]", is written over a horizontal line.

Filed with the Rye City Clerk: February 21, 2008

**THIS IS NOT A BUILDING PERMIT.** A building permit must be obtained from the building department before any work is started. Other permits or approvals may also be required before work starts. If you have any questions, please call the building department at 914.967.7372.