

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, September 4, 2019

7:00 p.m. – Rye Town Hall

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Charles Hoyt, and Rob Patten

Others Present: Planning/Zoning Administrator Kimberly Reed and Alternate Gregg Mikolaities (sitting as a member of the public for the first part of the meeting)

I. CALL TO ORDER

Chair Weathersby called the meeting to order at 7:03 p.m. and led the Pledge of Allegiance.

Continuances:

Motion by Shawn Crapo to continue the applications of Sally Sheehan, 824 Ocean Blvd, and Leonard and Mary Tierney, 1 Cable Road. Seconded by Burt Dibble. All in favor.

II. BUSINESS

Approval of meeting minutes

- July 10th

Motion by Burt Dibble to approve the minutes of July 10, 2019 as presented. Seconded by Shawn Crapo. All in favor.

- August 7th

Motion by Rob Patten to approve the minutes of August 7, 2019 as amended. Seconded by Shawn Crapo. All in favor.

- Request by the Law Office of Scott E. Hogan for rehearing of the ZBA decision of July 10, 2019, granting requests of John Samonas for property at 1215 Ocean Blvd, Tax Map 17.3, Lot 6. ***Public hearing closed during Board discussion on the request.***

Chair Weathersby noted the standard in granting a rehearing is if the Board feels they did something that was unreasonable or unlawful, or if something comes to light that was not available at the time of the hearing. As she reads the rehearing request, it seems to lean more towards the unlawful argument.

Referring to page 3 of Attorney Hogan's letter, Vice-Chair Crapo pointed out that it states; "*the fact that the Board decided that it would be an injustice to deny the current variance request, because the Board already approved the project. This sentiment was expressed*". Vice-Chair Crapo stated the Board did not make any vote that it would be an injustice because the Board already approved the project. To say there

was a vote is not even remotely accurate. That opinion may have been expressed but the Board did not make that vote as to why it was an injustice.

Chair Weathersby noted that it says the Board's fundamental error is that it was decided it would be an injustice to deny the variances for the septic tanks because the Board had already approved the other variances for the project and it would be a hardship to the applicant to deny it. She stated that she reviewed the minutes and remembers the meeting. There was a lot of discussion about the merits of the application, the tanks, how they are constructed and how the wetland would be protected, etc. She continued there were some comments about how it would be an injustice or a hardship. However, she does not think the Board based its decision on the fact that the other variances had been approved and it would be an injustice. She stated that the Board has to decide in the criteria if "Literal enforcement of the ordinance would result in unnecessary hardship" and whether "substantial justice is done by granting the variance". The hardship and injustice pieces have to be considered. She commented that what she remembers, and what the minutes show, the decision was based much more on the septic tanks themselves, the location, impacts to the wetland, and the safeguards with the conditions that were imposed.

Member Hoyt commented that he did say it would be a hardship to not grant it after all the past deliberation and it was voted on 5 to 0. However, he did a lot of homework on that particular tank and system. He was convinced by the experts, and from what he read online, that it was not going to cause a problem. He pointed out that he did due diligence and did some research. He is familiar with that particular system. He was convinced that where it was going to be located would not be a problem. He voted yes based on the fact that he did his homework and research. He pointed out that he also asked a lot of questions at the hearing about his concern of it coming out of the ground or leaking. He reiterated that he was convinced. What was put in front of the Board that night was that particular variance. Whether or not he was for the project in general did not influence his decision.

Vice-Chair Crapo stated it was a unique situation where it was an individual application on the one variance that had been left out of a package of variances. It has been discussed before about whether the project is looked at as a whole or if each variance is carved out in complete isolation. He thinks the Board evaluated this on its own; however, they can't lose sight of the fact that it is part of a project. He does not think it is an error and that the courts would say that it has to absolutely be taken on its own and not part of the project.

Member Dibble stated that he recognizes the appearance of a hardship, but he spoke with a trusting attitude about the quality of the technology.

Member Patten stated his decision was originally based upon the improvement of the septic system being installed versus what is there currently. He remembers that comment but it would not have been a reason for him to decide one way or the other. He was deciding on the basis of what was presented. He noted that he still feels the same way. The septic design is a vast improvement over what is there now.

Referring to Attorney Hogan's letter, Vice-Chair Crapo commented that Mr. Farwell's (NH engineer) letter issue was addressed. In regard to the Conservation Commission, the Board values their input, but the presence, or non-presence, of their input is not necessarily a legal stoppage to the Board's decision. It is used as guidance.

Chair Weathersby noted that the letter states the Board never addressed or resolved the technical issues raised by New Hampshire Engineer Tobin Farwell. She stated the Board asked Eric Weinrieb to address

it and that shows on page 15 of the meeting minutes. She does not feel that argument holds any water. The other area Attorney Hogan states in which the Board erred is that they didn't have a written recommendation from the Conservation Commission, which is usually required for anything that has to do with wetlands. Attorney Hogan wants it to be reconsidered with that information. Chair Weathersby pointed out that the Board had the Conservation Commission's site walk minutes from June. The commission just did not give the Board their recommendation. The Board also had the commission's written decision from their 2018 site walk of the entire project. That was discussed by the Board during the July meeting. She continued it would have been nice to have the letter but it is not a requirement. It is part of the Board's general procedure, but it is not in the Board's procedural rules that they have to get one. She does not think it is a reason to rehear. She reiterated that the Board had the minutes from the commission's site walk meeting.

Vice-Chair Crapo noted the commission is an advisory board. They make a recommendation to the ZBA that can be followed, or not, based on the Board's own decision. To say it was a legal error to rehear is quite a stretch, in his opinion.

The Board had no further comments or discussion.

Motion by Shawn Crapo to deny the request for rehearing. Seconded by Burt Dibble.

Vote: 5-0 All in favor.

III. APPLICATIONS

1. **Jackie & Jay Rushforth for property owned and located at 199 Locke Road, Tax Map 12, Lot 86, request variances from Section 203.3C for a garage 22.08' from the front boundary where 40' is required and from Section 203.3B 203.3 A for a garage 10' from the side rear boundary where 20' 30' is required. Property is in the Single Residence District. Case #32-2019.**

(Note: Application request was for variance 204.3 C, which was taken from the denial letter. The Board discussed, and the Applicant verbally agreed, that the variance should be for 203.3 C, as shown on the meeting agenda. Further in the meeting, there was discussion regarding 203.3 B versus 203.3 A. It was determined that 203.3 A was the correct variance needed. Please see minutes below.)

Jay Rushforth, Applicant, explained that his property is a corner lot located off Locke Road and Recreation Road. It is a tight corner lot with the house located to the front and the septic off to the right. There are some old beautiful maple trees located in the yard. The proposed location for the garage would allow for a little bit of a swing to have a beautiful drive without the maple trees interfering. He continued that the position of the garage also allows for limited site work. It would not be in conflict with the existing barn, which is currently being used. The idea is to demolish the barn after the garage is built. The existing barn, which is sort of in the middle of the property, is falling apart and has some water damage. He noted they have held off on putting any money into the existing barn because they have been thinking about a different location for a variety of reasons.

Member Dibble asked if the garage entry will be facing the maple tree or Recreation Road.

Mr. Rushforth replied it would be facing the maple tree. He pointed out there are probably five other trees between the new garage and Recreation Road. They are trying to salvage as many trees as they can. He explained there is no road (drive), so it would be sort of a traditional barn with access over the grass.

Chair Weathersby clarified that vehicles are not going to be parked in there with a driveway to the garage.

Mr. Rushforth commented the plan is to not use it for vehicles.

Chair Weathersby noted that if this is done down the road, a new driveway cut with permission from DPW would be needed.

Speaking to the applicant, Member Hoyt asked if other areas were considered.

Mr. Rushforth commented it is the only area, unless it goes in the exact spot where the existing barn is now.

Member Hoyt commented it is 30' from the Recreation Road setback.

It was noted that Recreation Road is considered a front setback, as a corner lot has two fronts.

Member Hoyt stated the applicant has to prove a hardship. He can understand the decision for where it is proposed because they want to have a backyard. He does not have a problem with the 10' because he understands why the applicant wants to target that corner; however, it is so close to that side and it could've just been twisted a little or moved forward. He commented he does not have a lot of angst about it. He was just asking if they explored trying to get it a little more conforming.

Mr. Rushforth replied that he could slide it over a little bit, but it starts impeding on the existing barn. From a construction standpoint, it might get a little bit tricky to build that one first and demo the barn after.

Member Patten stated the distance from the road gives a little more breathing room than the dimensions would suggest.

Vice-Chair Crapo stated that he thought corner lots had two fronts and two rears. The variance needed would be for 203.3 A, not 203.3 B.

Chair Weathersby commented that she believes the Board received clarification in that regard from Attorney Donovan.

The Board reviewed the ordinance regarding corner lots.

Chair Weathersby stated that either way it is going to be a rear setback because "the open space extending across the width of the lot in the rear of the principal building". She continued the principal building is the existing single family home. The rear of the lot abuts the lot with the home owned by the Zivics.

Note: Planning Administrator Reed went to her office to find clarification from Attorney Donovan regarding corner lots.

Speaking to Mr. Rushforth, Vice-Chair Crapo commented there is a pin on the drawing. He asked what the pin is for and why it does not tie to the sideline.

Mr. Rushforth replied it is an iron stake and is mentioned on the deed that way. All of the survey information he gave is straight from the deed. As he understands, the iron rods were staked out as part of a lawsuit between the Zivics and the neighbors.

Vice-Chair Crapo asked how the setback was established.

There was discussion about the survey presented.

Referring to the survey, Member Dibble stated it looks to him the lot line is designated by latitude and longitude measurements. That is pretty clear where the lot line is. It clearly does not go to the iron rod and that is why there is a 7' offset. The lot line is clearly established and the applicant has drawn the lot lines from that. He continued that 30' is needed and it is a half foot short in one corner. If the building was twisted a bit, the variance wouldn't be needed.

Member Hoyt stated it depends on how it is interpreted. He interpreted it as a side yard setback, using Recreation Road as a front.

Chair Weathersby read clarification on Zoning Ordinance 202.6, for a corner lot, *frontage depth requirements shall be met for both streets. The yard behind the principal building shall meet the rear setback. The side yard shall meet the side yard requirement.* She thinks this lot has two fronts, one rear and one side. The applicant would need a variance to 203.3 C and 203.3 A.

Member Dibble stated that if the building was twisted a bit, it was said that there might be some difficulty getting it constructed with the existing building. He wonders if there might be more difficulty getting in and out of the building, over the grass, if the front were angled further away from the road.

Mr. Rushforth replied that he would agree it would be difficult to get to.

Chair Weathersby noted the Board has received two letters of support, both dated July 8th, from **Edith Femia, 194 Locke Road**, and **John and Nancy Pappas, 207 Locke Road**.

Mr. Rushforth stated the Pappas Family abuts Recreation Road to the west side and Mrs. Femia is in front of his property.

Chair Weathersby asked if there was any discussion with the Zivic Family to the rear of the property, who are most effected.

Mr. Rushforth replied that he did not have a chance to talk to the Zivic Family.

Chair Weathersby pointed out they would have received notice and could have written a letter to the Board if they had any concerns or support.

Member Dibble noted the request is for 203.3 C for a garage 22.08' from the front boundary. In looking at the plan, it is 22.04'.

Mr. Rushforth confirmed 22.04' is correct.

Member Hoyt asked if this is to the corner or the drip edge.

After looking at the plan, Chair Weathersby suggested it be 22' from the boundary.

The Board agreed in order to give some leeway for the drip edge.

Member Patten noted there is no elevation shown in the packet. He asked if an elevation has been specified.

Mr. Rushforth replied that it is going to be about 24' with a loft. He pointed out the building is going to be used for storage. He commented that electrical will be run out to the garage for lights. It is not going to be living space. He may run some water to the garage so it can be used as a workshop.

Chair Weathersby opened to the public for comments or questions.

Gregg Mikolaities, 1 Willow Lane, (*speaker disclosed that he is an alternate to the ZBA*), cautioned that metes and bounds on a plan, without a stamped survey, does not mean anything. He would not base a decision on metes and bounds on a plan.

Building Inspector Chuck Marsden confirmed that an as-built will be needed, as indicated in the denial letter. He continued that the plan also shows exterior walls. It does not indicate the drip edge. He would caution the owner to be careful if the variance is granted. He would be concerned about how big the trees are and the tree roots in the area of the foundation.

There was some discussion in regards to the lean-to, which was referred to in the permit application. Mr. Rushforth confirmed that he is not requesting the lean-to at this time, but asked if it could be done on the easterly side in the future. The Building Inspector noted that if the lean-to is the same depth as the garage, it would need relief also.

Speaking to the applicant, Chair Weathersby stated the Board does not like to do things piecemeal. She suggested doing the lean-to as a package if it is wanted.

Member Hoyt stated that instead of an as-built drawing, he would highly recommend it be made part of the stipulation that a site plan is provided to the building department, prior to building, to prove that the variances will be adhered to. He commented that Mr. Mikolaities is correct. The Board does not have a document that could be used legally.

Chair Weathersby explained this is what the applicant has submitted. If the Board feels that more information is needed, the application can be continued. It is up to the applicant. If the Board gives 22', he has to provide a certified plan that it is 22'.

In regards to his question on the iron pipe, Vice-Chair stated it seems that one neighbor had a survey and another neighbor had a survey. He suggested the applicant double check.

Mr. Rushforth commented he can have a survey done. He reiterated that he drew up the plan based on deed.

She asked Mr. Rushforth if he would like to have the Board rule on the application tonight or wait to get the survey.

Mr. Rushforth replied that he pulled the lean-to out of the design at this point. He is pretty confident with the plan. He would like the Board to put it to a vote this evening.

Member Dibble asked if they are at 9' to grant leeway because they are not dealing with totally precise measurements.

Member Patten noted it would be just as simple to move the building forward into the lot, versus granting more relief.

Chair Weathersby stated she does not like less than 10'. Hearing no further comments from the public, she closed the public hearing at 8:02 p.m. and opened deliberation to the Board for the request of a front yard setback of 22' and a rear yard setback of 10'.

Member Hoyt stated he is on board.

Member Crapo stated he is on board with the changes discussed in the meeting and the amendment to the building inspector's letter. **(203.3 B to 203.3 A)**

The Board determined the correct relief needed is to 203.3 C and 203.3 A, as the building inspector's letter cited the wrong sections for the corner lot.

Chair Weathersby called for a vote on variances to Sections 203.3 C and 203.3 A:

1) Granting the variances would not be contrary to the public interest?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Jackie and Jay Rushforth for property owned and located at 199 Locke Road for variances to Section 203.3 C for a garage 22' from the front boundary, where

30' is required and from Section 203.3 A for a garage 10' from the rear boundary, where 20' is required, with the condition that a construction plan be provided to the building department prior to the initiation of construction. Seconded by Charles Hoyt. *(Withdrawn – See below)*

Chair Weathersby noted that the motion was misquoted. The requirement for the rear is 30' and the front is 40'. She asked Member Dibble if he is asking for a condition that the applicant to provide a site plan prior to construction.

Member Dibble confirmed.

Member Hoyt agreed.

Vice-Chair Crapo thinks they can recommend a site plan. The building department is going to require an as-built. The site plan is a "cautionary tale". He does not think they can require a site plan.

Chair Weathersby pointed out the applicant is going to have to do an as-built.

Member Dibble explained he perceived it was the sense of the Board that there was no engineering plan for this that is stamped. There is some "loosey goosey" quality about this and it would serve the applicant well to make sure everything is right before ground is broken.

Speaking to Mr. Marsden, Chair Weathersby asked what would be required before a building permit is issued.

Mr. Marsden explained they have to provide an as-built to prove that it meets the requirements. If the applicant chooses to do a certified plot plan ahead of time, the survey can do offsets to where the proposed building is going to go and use those as take offs to pin the foundation to be sure it meets the requirements. Either way, it accomplishes the same thing. It would be a smarter move to do it ahead of time. He pointed out it is not required ahead of time.

Chair Weathersby commented that she does not feel the condition is necessary. She would probably vote against that motion.

The motion on the table was withdrawn by Member Dibble after Member Hoyt withdrew his second.

Motion by Burt Dibble to approve the application of Jackie and Jay Rushforth for property owned and located at 199 Locke Road for variances to Section 203.3 C for a garage 22' from the front boundary, where 40' is required, and from Section 203.3 A for a garage 10' from the rear boundary, where 30' is required, with the recommendation that a construction plan be provided to the building department prior to the initiation of construction. Seconded by Robert Patten.

Chair Weathersby noted that she is voting in favor because it has been represented that the other garage (barn) is obsolete and will be coming down. She does not think a condition is needed for that; however, the variances are being granted upon that representation.

Vote: 5-0 All in favor

Note: Charles Hoyt recused himself from the following application. Gregg Mikolaities was seated.

- 2. Paul R. Bacon for property owned and located at 200 Parsons Road, Tax Map 19, Lot 115,** requests variances from Section 301.8(B) (1) & 301.8(B)(7) for fill, regrading, and improvements including a pervious boardwalk 16.21', grading and gravel patio 30.47', a greenhouse 34.50' and a retaining wall 33' from the wetlands where 100' is required. **Property is in the General Residence, Coastal Overlay and Wetlands Conservation Overlay Districts. Case #33-2019.**

Chair Weathersby noted that wetlands relief has been requested; however, setback relief has not been requested. It seems that both the patio and storage building will need setback relief. They may also need relief for parking outside the paved areas.

There was discussion with Attorney Tim Phoenix, representing the applicant, on the variances needed. It was agreed that side setback relief is needed. Attorney Phoenix requested a continuance on the application.

Member Mikolaities noted that a 1' setback on the front is being requested for a retaining wall. He asked how confident they are in that 1' setback.

Alex Ross, Ross Engineering, stated that he has been working on this parcel for years with the owner. Years ago, the owner had a new septic system put in. Surveying was done at that time. Originally, it was just for the septic. He noted that the plan can be certified. He is confident that it is 1'. He continued that the retaining wall was shown on the septic plan and discussed with the building inspector at the time, who said to put in on as part of the work. As the project evolved, the building inspector realized that anything out there is within the high-tide setback. This plan is outlining everything that is out there; such as, typical backyard sheds and planting areas.

Member Mikolaities was satisfied with the answer from Mr. Ross.

Motion by Gregg Mikolaities to grant the continuance as requested. Seconded by Shawn Crapo. All in favor.

Note: Gregg Mikolaities was unseated and Charles Hoyt was reseated.

- 3. James Holland for property owned and located at 2250 Ocean Blvd, Tax Map 5.3, Lot 70,** requests variances from section 203.3A for a patio 6' and 10.1' stairs 15.9' from the rear boundary where 18.28' was approved and 30' is required; from Section 203.3B for a rinsing station with a fence 14.6' from the left side boundary where 20' is required and for a patio 5.9' from the right side boundary where 0.9' exists and 20' is required and from Section 304.5 for impervious coverage of 17.4% where 17.2% is approved and 15% is required. **Property is in the Single Residence, Coastal Overlay and SFHA, Zone AO+1. Case #34-2019.**

The Board took a few minutes to review the minutes of the meeting from 2016.

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He noted the lot is 12,294sf with a single family home on it. It received relief back in 2016 for most of the work that was in violation of the zoning ordinance at the time. The application is before the Board because a patio was put in with an extended walkway that was not approved. There was an impermeable walkway that did not go in (he pointed out the location on the plan). He continued there is also a rinsing station that has been enclosed by a fence. There was question whether a variance is needed, since fences are not subject; however, that has been requested since the shower enclosure is closer to the lot line.

Alex Ross, Ross Engineering, stated he worked on the parcel for a couple of years. Originally, there was a site plan done by Ambit Engineering, which was approved by the town. The new house was built and there were some minor alterations compared to the original Ambit approved plan. He commented that they had a meeting with the Conservation Commission and a site walk. The commission had a couple of concerns that they voiced in their letter. Overall, the site is coming along well and should work well with drainage.

Attorney Phoenix stated that originally there was a retaining wall that was removed, which is in the building inspector's denial letter. He noted that Exhibit D (of his submissions), shows existing conditions before the old house was taken down and the new house was put up. There was a patio there, but it did not go quite as close to the lot line. It was probably 12 or 15'. The current patio is right up against the lot line. He noted that Dr. Holland has already agreed, and is willing, to cut 5' off the patio which would bring it 5.9' from the lot line, rather than 0.9'. He pointed out that the neighbor's property (Fort) has something relatively similar that is also very close to the lot line. He stated that the Conservation Commission's letter recommends plantings that Dr. Holland is okay with. They also recommended that the entire structure be removed, as they think grass would be better. Attorney Phoenix stated he challenges that because it is engineered so water is going to go right through and below it is sand. It is going to infiltrate water pretty significantly. If it is grass, there will potentially be fertilizer on it and that is not necessarily better than the patio. He stated that he has spoken with Jeff Fort about his concerns and position. While he respects Mr. Fort's position, he does not see it as being any different from someone setting out there in lawn chairs on the patio versus sitting on the grass. Mr. Holland would be willing to put in a privacy fence or shrubbery in the area that is going to be cut back. Attorney Phoenix continued he does not think there should be any real issue with the rinsing station out back. Those are pretty common and it is not uncommon for them to be enclosed. These features, patios and rinsing stations, are classic beachfront home items. It is reasonable for them to be permitted.

Attorney Phoenix stated the rear yard setback is approved at 18.28'. It is now at 6' because of the way the permeable patio connects to some stairs that were already there. The requirement for the side yard is 20'. The enclosure for the rinsing station is 14.6', which is reasonable. In regards to the dwelling coverage, the original approval was for 17.2%. The reason it has gone up to 17.4% is primarily because the rear deck and steps were insufficient and needed to be expanded. As he understands it, the building inspector okayed the expansion, as long as it did not get closer to the rear lot line. If needed, adding that area back in takes it up 2/10ths of a percent. The house itself has not changed. It is just the entry. He reviewed the requirements for granting the variances:

- *Granting the variance is not contrary to the public interest and the spirit of the ordinance is observed.*

Under the Malachy Glen Case; "Will granting the variance alter the essential character of the locality? Will it threaten public health, safety or welfare?" There is a 6' fence along the area where the rinsing station is located, which can't be seen through. Adding an enclosure for the rinsing station is not going to change anything that anyone can see. It does not alter the essential character of the locality nor threaten the public health, safety or welfare. The character of the locality is maintained because there are many homes in the area that have rinsing stations. The patio, while it is close, the applicant is willing to cut it back to 5' and plant something in the space. The neighbor's concern is that they have a deck that is a little elevated and people utilizing the patio interfere with it. The neighbors have a patio, as well, that could be used the same way. If the patio is taken out, it would be the same chairs and grill on grass. Arguably, since driveways are not subject to the setback, if the drive was extended up it might not be subject to it. Allowing the patio does not alter the essential character of the locality because many people

have decks like this. The Forts have something relatively similar nearby. The patio is certainly not going to threaten the public health, safety or welfare.

- *Granting the variance will not diminish surrounding property values.*
With the effect of the shared driveway and the permeable pavers on both lots, one does not diminish the value any more than the other, especially where Dr. Holland is willing to cut it back and add fence or shrubbery as a buffer. Similarly, the shower enclosure cannot be seen anyways because of the fence, and it is a very small increase in dwelling coverage, which was okayed by the building inspector.
- *Special conditions exist that distinguish the property from others in the area.*
The lot is relatively small at 12,294sf. A building that was closer to the rear lot line was replaced. The building has been approved. Dr. Holland said he came home one day and the patio had been built. Dr. Holland did not know it was going to be built that far out but that is how it was built. The location of the house and the location of the rear deck and stairs, with access to the beach and enjoyment of the views, justifies the location of the patio. All of this creates special conditions because there is not really a place it could be put that would not be less non-conforming.
- *There is no fair and substantial relationship between the public purposes of the ordinance and the application of it in this instance.*
Yard setbacks are for adequate air, light, separation from neighbors, views, and stormwater treatment, etc. In this particular case, there are very similar situations going on with both properties. It is reasonable to have a patio at ground level to put chairs on, instead of putting them in the grass. So, there is no reason to apply that setback in this particular instance. Similarly, with the building coverage, which is only increased slightly from what was originally approved and the rinsing station enclosure.
- *The proposed use is reasonable.*
It is a residential use, which is reasonable.
- *Substantial justice will be done by granting the variance.*
If there is no benefit to the public, that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to the applicant not outweighed by a gain to the general public is an injustice. Given the proximity to the homes, the shared driveway and patios, it would be an injustice to require the Hollands to take it out entirely, where they are willing to cut it back and put something in as a buffer. It would be harmful to them to have to take it out, but it would not cause any harm to the general public to leave it in.

Chair Weathersby asked if he is equating the patio to the driveway turnout area on the Fort's property.

Attorney Phoenix relied "yes". The driveway area for putting cars has just as much effect on the Holland's property, as someone sitting on their property. He noted that it is a pretty large turnout area.

Chair Weathersby asked why the plantings that were a condition for granting the variances for the new house were never put in.

James Holland, applicant, explained that the project has been delayed and they have just barely gotten the grass put in. The next step is to put the plantings in. The plantings just not have been done because everything else has been taking so long.

Chair Weathersby commented that when she went by the property, she noticed there were pallets of more paving stones in the yard. She asked if there are more improvements intended.

Dr. Holland explained that those pavers are old pavers that were replaced and they are being taken away.

Chair Weathersby opened to the public in favor of the application. Hearing no comments, she opened to opposition.

Derek Durbin, representing Jeff Fort at 2310 Ocean Blvd (also 2256 & 2254 Ocean Blvd, which Mr. Fort is an owner member), spoke to the Board. He stated that both the properties (2254 & 2256 Ocean Blvd) abut Dr. Holland's property. He is before the Board in opposition to the application that has been filed. In particular, the opposition is related to the issues regarding the right yard setback relief that is sought by the applicant. Concerns are less related to some of the other relief that is being sought. He continued that the application that is before the Board is not the result of some good faith mistake made by the applicant. These plans were clearly put forward to the Board in 2016 and were available to anybody, including people who were constructing features on the property. They would've had access to the plans and moving forward with construction it would be assumed that they did. The application is now before the Board because there was a notice of violation issued on the property owner, which necessitated the need for relief from the Board or removal of the structures. The stone patio is currently located 9", more or less, from his client's boundary (home closest to the Ocean). The patio structure, as it sits now, has patio furniture on it and grilling equipment. The noise generated from the use of the patio is what has driven a lot of Mr. Fort's concerns and problems. It does affect the Forts. The structure is very close to their home, as are all homes in that particular area. It is a very densely settled area where everything is very close together. This just brings people closer to his client's properties and effects their use and enjoyment, which is really important to their family. Also, 2256 Ocean Blvd, had a very direct viewshed that is now impeded, to some degree, by the patio equipment and everything else that is out there.

Attorney Durbin stated that he saw a reference in the Conservation Commission's letter regarding a 12' wide easement that crosses through the patio area, which is not shown on the plans. He noted it is actually a 28.9' wide easement that straddles the boundary between his client's and Mr. Holland's properties. It is about 14' +/- on each side of the boundary. It is a reciprocal easement. Mr. Holland has access on his client's property, for a little more than 14' of the width from Ocean Boulevard to the Atlantic Ocean. His client, likewise, has access over Mr. Holland's portion. The patio structure is directly within that easement and impedes access across that area. He noted this is a sensitive area as well, from a conservation standpoint. The Conservation Commission has pointed that out. Plantings are certainly better than pervious pavers or anything else that would be pervious in that area. An ecologically sensitive area like this is obviously benefited from plantings. Moving the patio back 5' does not settle any of these issues. The town setback requirements are designed to protect light and air between structures on abutting properties. Here, that is essentially eroded by allowing a patio structure within 5.9' of his client's property. Allowing the applicant to obtain the proposed variance relief for the patio would violate the basic objectives of the zoning ordinance and would be injurious to the public interest; particularly, as it relates to the fact that the applicant is here after-the-fact because they were called out on a mistake for building (whether negligent or intentional) a patio that wasn't approved by the Board as part of a prior zoning application brought forward in 2016. He noted that there were certain tradeoffs made, as the applicant and Attorney Phoenix has eluded to. In looking back at the old plans, there is a much larger structure than what previously existed. What previously existed was non-conforming and what exists now is non-conforming. However, there were tradeoffs made with impervious and pervious surface. Also, there is the fact that there would be a compliant right yard setback. He noted that his client actually supported the application, at that time, based on the fact that there was going to be a compliant right yard setback and certain non-conformities were being removed from the property that previously existed. There is no real hardship on this property that distinguishes it from other surrounding properties that would justify the relief being sought before the Board.

tonight. He would submit to the Board that this does diminish his client's properties' values. Granting relief would not do substantial justice in this particular instance. He would argue that the application fails all five variance criteria for the reasons he has outlined.

Referring to the easement, Vice-Chair Crapo asked how it differentiates between driveway versus pedestrian use. He noted that at one time there were public access ways to the beach that were taken over by owners of abutting properties.

Attorney Durbin explained the easement is very generally referenced. It is a paper street, basically. The presumption is the owners own to the center line. It is shown on a plan recorded at the registry of deeds as being a reciprocal area between the two properties. It does not describe the rights and obligations of the parties with respect to each side of the boundary. It is a very open-ended access easement.

Vice-Chair Crapo noted it used to be the public right-of-way to the beach. Someone must've drawn an easement between the property owners once the court determined it belonged to these three parcels. Everyone drives on part of it and now someone wants to stand or walk on a patio on part of it. He wonders if the language of the easement differentiates the type of use.

Jeff Fort noted that he has ownership interest in the two properties that directly abut Dr. Holland's property. This issue had been developing over the past year, since it was constructed, and the patio has been in use over that time. He has been in contact with the building inspector several times on how to proceed and get to this stage tonight. During the process, he has learned that a patio is considered a structure within the town ordinance. This is a structure within an easement. Clearly, an easement is not intended to allow for a reduction or the impediment of the flow of traffic or use. He noted that the turnaround on his property was never intended to be used as a patio. He pointed out that the turnaround ends at the point the patio begins. The patio extends further towards the beach than his stone structure. The patio, over the course of the summer, has proven to be a point of congregation. There is patio furniture, a grill and beach accessories stored on the patio. The point of congregation as delineated by the fact that the patio encourages more frequent use than if this was just grass. It also encourages the storage site of the furniture. He noted that he has the visual impact of looking at the patio with the furniture placed upon it. He has a deck that is elevated to recent flood code construction, which looks down directly on this edge of the property line. A fence of reasonable height would not mitigate the impact of the view onto the patio. The other area of impact is with noise. As a point of congregation, there is more noise and activity that happens on a regular basis. Having a grill in this location means there is someone grilling right on the property line. If this variance should be granted, there would be a long-term reduction in his property value. It is a non-conforming structure. If it is allowed to remain, it will result in the potential degradation of the value of his adjoining properties.

Mr. Fort stated that he supported the original plans that were submitted in 2016. The support was directly based on the plans that were submitted at that time. If the patio had been submitted as part of those plans, he would have strongly objected at that time and maybe objected to the overall siting of the building or design features because compromises would've needed to be made to allow for the patio. In 2016, Mr. Holland had the opportunity to design the house the way he wanted it and submit it to the Board for approval. To come back at this juncture, is a little unreasonable, in his opinion.

Attorney Phoenix stated that cutting the patio back and adding shrubs will be better and alleviate the concerns they have. That is the area where the Hollands are going to do their gathering, whether it be grass

or permeable pavers, so the effect is going to be the same. The question becomes, although it was built after-the-fact, would it have been something that would have been approved to be built.

Member Hoyt asked why it was put in after-the-fact.

Attorney Phoenix stated that Dr. Holland hired someone to build a patio but he did not expect it would go out that far.

Dr. Holland stated that at the time of the approval, he did not realize the patio had to be exactly demarcated. The engineer put in a concrete walkway that he didn't want to do. He did not think it was of that much importance, and did not realize, that it had to all be put in at that time for the approval for that particular spot. He continued that he wasn't made aware of the situation until recently. The building inspector did not say anything, until notices of violations were submitted to him. It was not something that he was aware of.

Referring to the plan, Member Hoyt asked for clarification on what was approved.

Vice-Chair Crapo pointed out that it was a walkway. There was no real patio at all on the approved plan.

Member Hoyt asked why a patio was not requested.

Dr. Holland explained that he has plans with a patio that came after, but the town had already approved the first set.

Vice-Chair Crapo pointed out the original approved plan had a patio behind the house, which was smaller.

Planning Administrator Reed noted that the access to the beach was Street A, which was created in the Myrica Subdivision in 1964, as a Class VI road for access to the beaches. It was used to allow public access to the beach. In 1973, there was a town warrant article to say that as a beach access it was lost because of two court cases. It was discontinued in 2003, when the property owners took possession of the road that was once access to the beach. The dotted lines are still visible on the tax map but the access is no longer there.

Chair Weathersby noted that the Board did not receive any letters from abutters, other than Attorney Durbin's submittal. The Board has received a letter from the Rye Conservation Commission, dated September 1st. They believe the size of the patio is too large. They are recommending the edge of the lot, along the seawall, be planted to a depth of 3' with native, salt tolerant plants, as originally required. They recommend the patio be reduced in size to meet the 20' setback and the remaining area be replanted to lawn. Planting a line of plants along the property line would create a buffer between the two properties.

Member Dibble asked if there is a clear representation of how much of the patio would go away if the recommendation of the Conservation Commission was followed.

Attorney Donovan replied all of it. (He pointed out the 20' setback line on the plan.)

Hearing no further comments, Chair Weathersby closed the public hearing at 9:07 p.m.

Regarding the stairs for the rear deck, Chair Weathersby stated they were allowed by the building inspector, but they are 15.9' from the rear setback. The Board is trying to clean this up and might want to grant a variance if they feel it is appropriate.

Member Hoyt stated that he does not have a problem with that. It is more code compliant. In looking at what was approved in 2016, it seems it was just missed. He continued that he is struggling with the pervious paver patio.

Focusing on the stairs, Chair Weathersby asked if anyone wants to discuss those further.

It was the sense of the Board that they were generally okay with the stairs.

Referring to the rinsing station off the back, Chair Weathersby stated her feeling is that it does need a variance, since it is this type of enclosure and not just a fence. She thinks that is how the Board has treated them in the past. In either case, she thinks it should be dealt with to be safe. Her feeling is it does need relief, but she has no problem granting the relief.

Vice-Chair Crapo agreed it is not just a fence. It falls more under structure.

It was the sense of the Board that they were okay with the rinsing enclosure.

Referring to the increase with the dwelling coverage, Chair Weathersby noted it is basically increased because of the stairs. The coverage is at 17.4% and it was approved at 17.2% before, where 15% is allowed. She would have allowed the 17.4%.

Vice-Chair Crapo pointed out that it is under the 30%.

Chair Weathersby stated they are down to the patio. It has been represented that the patio will be 5.9' from the Fort boundary, which is on the right side, and 6' at the curve (walkway). She stated that there has to be a really strong argument for why someone would have a patio so close to someone else's boundary. It is a place where people congregate, cook and talk. There ought to be some separation between the properties. She can't support this. She continued that the fence is a good idea but people can still look over it. Also, from the street and the front property on the right side, that is going to interfere with their view. There is also the issue of fences in an easement area where it is unclear what the rights of passage are. She is not in favor of the patio in that location. She continued that when the Holland Family designed this home, they could've done anything. She remembers at the meeting; they had talked about the location at the beach and there was so little outside area. It struck her at that time, in 2016, they were maximizing the building envelope with building. Because of that, there is nowhere to put a patio out of the setback now that they want one. They could've designed something that would've allowed them to have an outdoor sitting/eating area but they did not.

Vice-Chair Crapo commented that they did get approved for a patio in the rear. He noted that the plan before the Board does not represent the 5' back from the property line. He explained the recommendation of the Conservation Commission eliminates the patio. The concession given by Dr. Holland brings it back almost 6' off the property line. He continued he is having a hard time believing there wasn't a conscience decision to change that from a walkway. He just can't support it. The patio was proposed in the rear, but that wasn't advisable because that isn't the best place to enjoy the beach; however, that is not what was brought to the Board.

Member Dibble stated that it seems the only hardship is that it was a construction error. People are not necessarily entitled to a view. He is troubled that this got looked over in the first place. It is a very congested spot. If people are taking recreational activities in this location, it is even more congested. He thinks it just tortures the land.

Speaking to the building inspector, Chuck Marsden, Chair Weathersby asked for clarification on the building code for a stair landing.

Mr. Marsden explained that a landing for stairs is only required if there is a door that opens over the stairs. If the steps go down to the ground, a landing is not needed.

Member Dibble stated that following the 20' setback line up to the beach, it falls right in the middle of the two steps and walkway.

Member Patten stated if it was "peeled" back maybe 18', it would be a compromise and get a majority of the walkway out of the setback.

Chair Weathersby clarified the distance from the end of the granite steps to the property line.

Member Patten confirmed.

Chair Weathersby commented it would allow them to use the steps and the walkway to get over to the beach. She further commented this is a good compromise.

Member Patten stated he is struggling with it being there and having to remove it.

Vice-Chair Crapo noted that the new deck pushed everything out further towards the setback line than what had been approved.

Chair Weathersby asked the applicant's representatives the distance from the granite steps to the property line.

Mr. Ross replied about 16.5'. The granite steps are about 5' wide.

The Board reviewed the plan.

Member Dibble stated that it seems the width of the step is not what the objection is about. The objection is about the activity that is taking place on the patio. The patio goes back to the edge of the granite steps.

Chair Weathersby commented it would be a 5' patio. It would still accommodate a couple of stairs.

Vice-Chair Crapo noted that on the original approval, it was just stairs, which has become a deck and now there are stairs off that deck. The deck is there without approval. The deck needs to be part of the variance relief because it is in violation.

Member Patten commented he would not be in favor of the removal of the rear deck.

Chair Weathersby stated the Board could grant a variance for the rear deck and the stairs being 15.9' from the rear setback. She continued that they have a request for the back of the patio to be 5.9' from the right-side setback. Generally, this is voted up or down, unless they would like to amend their variance request. She opened up to the applicant and his representatives.

Attorney Phoenix stated that at some point the patio becomes a walkway. He thinks the pavers could be approved in that area, as long as they are not closer than a certain foot from the common property line with the Forts.

Chair Weathersby commented they could approve a pervious walkway 16.5' to the property line.

Member Patten asked how they are so confident it is 16.5'.

Mr. Ross replied that he is confident, as he scaled it out on the plan.

Chair Weathersby suggested the outer edge of the stairs, which is estimated to be 16.5'.

Attorney Phoenix confirmed that Dr. Holland has agreed to concede with the pavers coming out up to the edge of the steps.

Chair Weathersby noted they will treat this as an amendment to the request. The request is now for a pervious paver walkway 6' from the rear setback and on the right setback aligned with the granite steps, which is estimated to be 16.5'. (As depicted on the plan. Exhibit A to the application.)

Attorney Phoenix agreed.

Chair Weathersby noted a condition would be that the edge of the lawn along the seawall will be planted 3' in depth with native, salt tolerant plants, as originally required.

Chair Weathersby called for a vote on variances Section 203.3 (A) for the rear deck and stairs being 15.9' to the rear setback:

1) Granting the variance would not be contrary to the public interest?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of that provision to the property?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes

Patricia Weathersby – Yes

Chair Weathersby called for a vote on variances Section 203.3 (B) for a rinsing station enclosure being 14.6' from the left side setback:

1) Granting the variance would not be contrary to the public interest?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of that provision to the property?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on variance to Section 304.5 for dwelling coverage for 17.4%:

1) Granting the variance would not be contrary to the public interest?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes

Charles Hoyt – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of that provision to the property?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote for a variances to Sections 203.3 A and 203.3B for a walkway 6' from the property line and aligned with the edge of the granite steps, as depicted on Exhibit A, dated 7/1/19, being approximately 16.5' from the side property line and the walkway to be as configured on the plan:

1) Granting the variances would not be contrary to the public interest?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes

Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt - Yes

Patricia Weathersby - Yes

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

Shawn Crapo – Yes

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt - Yes

Patricia Weathersby – Yes

Motion by Burt Dibble to grant variances to James Holland for property owned and located at 2250 Ocean Boulevard to Section 203.3 (A) for a paver stone walkway, tapering from the rear setback from 10' to 6' in width and 16.5' +/- from the side setback, aligned with the edge of the granite steps, which presently exist and are demonstrated on Exhibit A, (dated 7/1/19), from Section 203.3 (B) for a rinsing station 14.6' from the left side boundary where 20' is required, and from Section 304.5 for impervious coverage of 17.4%, where 17.2% was approved and 15% is required; conditioned upon the completion of the Conservation Commission's recommendations regarding landscaping and planting in the approval of the 2016 project. Seconded by Rob Patten. Vote: 5-0 All in favor.

- 4. Sally Sheehan of 111 Cottage Street, Mansfield, MA for property owned and located at 824 Ocean Blvd, Tax Map 23.1, Lot 29-01, requests variances from Section 603.1 to raze an existing dwelling and replace with new and from Section 210.3C for dwelling 27.88' from the front boundary where 30' is required. Property is in the Business, Coastal and SFHA, Zone AO+1. Case #35-2019. Request a continuance to October 2, 2019. (See motion to continue above.)**

- 5. Matthew L. Siler Revocable Trust of 2007, Matthew L. Siler Trustee of 75 Odiorne Point Road, Portsmouth, NH, for property owned and located at 23 Harborview Road, Tax Map 26, Lot 4, requests variances from Section 603.2 to raze the existing dwelling and replace with new and from Section 301.8B (1), 301.8B (2) and 301.8B (7) for steps 78.9', a house 86.8' and a firepit 6.8' from the 100' wetlands buffer. Property is in the Single Residence District and SFHA, Zone AE (9). Case #36-2019.**

Corey Colwell, TF Moran, reviewed the existing conditions plan for the Board. The property consists of a one-story dwelling. It is a ranch style home with a stone driveway, which is pervious. There is a patio with stairs in the back. The grade drops off so there is a walkout basement in the back. There is a stone fireplace adjacent to Sagamore Creek. The existing septic straddles the 100' tidal buffer zone; approximately half is in the tidal buffer. The property is on town water and the edge of the home is 82' from Sagamore Creek.

The existing total impervious coverage is 14.6% of the property. (He pointed out the location of the new home on the proposed plan.) The footprint of the two-story home is 2510sf with a two-car garage. The proposed home has a screened in porch on the east side. It also has a deck, over the walkout basement, facing the water in the back. The old pervious driveway will be removed with a new impervious driveway constructed. The new septic system will be pulled back completely out of the 100' tidal buffer zone. He continued that the impervious coverage of the site, as a result of the construction, will actually be reduced from 14.6% to 11.5%. The impervious within the 100' tidal buffer zone is also going to be reduced slightly from 4.2 to 3.7%. (He pointed out the areas on the plan showing the stormwater management improvements.) He noted that a proposed raingarden is over 100' in length and averages about 12' in width, which is to improve the quality of the stormwater and reduce the quantity flowing offsite. All stormwater flowing to the west or south will be captured by the raingarden. The garden is essentially excavated. It is filled with engineering soils and water loving plants. The idea is to capture, treat and help eliminate the stormwater. The net effect is the raingarden reduces offsite stormwater. He noted that the new pervious driveway also captures stormwater. Today, the roof runoff is sheet flowing to the street but the new drive will allow for more infiltration and reduction in stormwater runoff off the property. Runoff to the north, towards Sagamore Creek, is not a concern because there is about 220' from the proposed building to Sagamore Creek. In that area is lawn, landscaping, and mature vegetation down closer to the creek.

Mr. Colwell reviewed Sheet C-3, which shows the overall improvements to the overall site. He noted that the proposed fire pit will be in the same location as the existing fireplace. The new fire pit will be larger, as it has a sitting area around it, which has been made pervious so any stormwater will infiltrate and not increase runoff into Sagamore Creek. He noted that the Conservation Commission has met on site and has written a letter regarding the proposal. They do not have any objections to the project, provided that a vegetative buffer is installed along the entire frontage of Sagamore Creek. He noted this is a pretty significant vegetative buffer, as the property has about 400' of frontage on the creek. The other condition recommended by the Conservation Commission is that a planting plan be developed. They wanted to reserve the right to review the plants for the next three years to ensure there was enough growth.

Mr. Colwell stated that Sheet C-4 shows the septic system disposal. The plan has been approved by the town and has been sent to DES for State approval. The system is an advanced Enviro-septic system and is designed for four bedrooms. The new system is completely out of the 100' tidal buffer zone. He summarized there are five significant improvements to the site, as a result of the construction. First, the new home will be further from Sagamore Creek. The impervious area is reduced by 3%, which is 1700sf over a 1.32 acre lot. The raingarden and impervious driveway will improve and decrease stormwater runoff. The septic system is being removed from the 100' tidal buffer zone. A landscape buffer of native species is going to be planted along the edge of Sagamore Creek. The improvements enhance the buffer, reduces stormwater runoff and offers more protection to Sagamore Creek.

Chair Weathersby asked for clarification on the grading and addition of fill.

Mr. Colwell pointed out the grading is shown on Sheet C-2. Off the screen porch, there is a patio off the back. Off the back of the patio will be a retaining wall. He noted the finished floor elevation is 20.5, the patio is at 18.8 and at grade it is 17. There is about a 1' drop between the patio and grade and a 3' drop between finished floor and the ground. The back is a walkout and will be 8' lower at elevation 12. (He reviewed the grading on the plan for the Board.) He noted that it is relatively flat in the front, drops off on the sides and is lower in the back to 12 and slopes down to Sagamore Creek.

Attorney Tim Phoenix, representing the applicant, stated in addition to the side setback requirements to the town, there are covenants that bring it another 5' away on either side. (He pointed out the 25ft side setbacks on the plan.) He stated that everything that is being proposed is further away from Sagamore Creek. The proposed walkway is the closest point at 77.6'. The house itself is 83.4' away presently and 86.8' is being proposed. The fireplace pit is being replaced at 6.8 and the impervious area is going to be replaced with a permeable area. Overall impervious and pervious surface within the buffer, is being reduced by a few percent. Everything is getting better, including a new state-of-the-art septic replacing a system that is at least partially in the buffer.

Attorney Phoenix stated the Rye Conservation Commission has weighed in on the project and the owner is willing to accept their recommendations. The septic system is pending approval with the State but has been approved by the town. DES wetlands and shoreland permits are also pending. He reviewed the criteria for granting the variances:

- *Granting the variance is not contrary to the public interest and the spirit of the ordinance is observed.*
Under the Malachy Glen Case; "Will granting the variance alter the essential character of the locality? Will it threaten public health, safety or welfare?" There is a smaller footprint of the new home. Only about 30sf is in the buffer, compared to 178sf now. The fireplace to fire pit is getting better because of the impervious surface being removed and it will be pervious. The septic system in all respects is better and better located. Everything else is further away from the resource and/or less impervious coverage than existing conditions. All of those are improvements to the public health, safety and welfare. This is a valuable area in Rye and there are many larger homes in the area. This is a reasonable size given the very large site. Granting the variance is not going to change the essential character of the locality.
- *Granting the variance will not diminish surrounding property values.*
In all respects, the proposal is better than existing conditions. The older home is being replaced with a new beautiful home that will enhance the property values and will certainly not hurt property values. Granting variances that make everything better is not going to diminish property values.
- *Special conditions exist that distinguish the property from others in the area.*
One special condition is the extra 10' that squeezes the side to side building envelope. Another, is Sagamore Creek which has the wetland buffer and shoreland requirements. While it is a very large lot, it is very heavily affected by the buffers related to Sagamore Creek.
- *There is no fair and substantial relationship between the public purposes of the ordinance and the application of it in this instance.*
The purpose of the ordinance is to protect the resource, which is the creek. With the plantings, the blessing of the Conservation Commission, the septic completely outside, the building having less square footage in the buffer and being pulled away from the buffer, there is no reason to apply the strict requirements of the ordinance.
- *The proposed use is reasonable.*
It is a residential use, in a residential zone, and is getting better in all respects so it is reasonable.
- *Substantial justice will be done by granting the variance.*
If there is no benefit to the public, that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to the applicant not outweighed by a gain to the general public is an injustice. Since everything is being improved, in terms of location of septic, impervious coverage and setbacks, compared to existing conditions, the public is not going to be benefited in any way by denying these variances, but it would harm the Silers and disallow their building project and their efforts, in all aspects, to improve the lot given its proximity to Sagamore Creek.

Referring to 301.8B (2), Chair Weathersby stated this is for septic system in the buffer. She does not think this is needed.

Attorney Phoenix explained that when he read this in the building inspector's denial letter, he interpreted it as them saying relief was needed for the septic system. However, when he reread the letter, he thinks the building inspector was talking about the fill. He agrees that it is not needed for the septic but for the fill around the septic.

Mr. Marsden confirmed.

Member Hoyt disclosed that he designed Matt Silers' house at 75 Odiorne Road in Portsmouth; however, that is not going to impede on his ability to deliberate effectively or fairly.

Attorney Phoenix confirmed they are okay with that.

Member Hoyt pointed out there is a very large building envelope. There is a chance to get everything within the setbacks. He asked why it is not more conforming.

Attorney Phoenix explained that they had to respect the distance from the road, and the raingardens were going to take up part of it, along with the driveway. It left the house in an area that has a relatively small amount, compared to existing conditions, in the setback. He thought it was a fair tradeoff because it is being made better than it was and essentially complies with 603.2.

Brendan McNamara, Architect, stated the house is not as big as it might appear. Essentially, it is a one story house with a small second story. (He reviewed the plan of the home for the Board.) The heated square footage is 4800sf, which includes the walkout basement.

Mr. Colwell noted that because of the 25' setbacks, if the house was to go any closer to the road, it would be within the setback and would require more relief. The house cannot go any closer to the road without going into the 25' setbacks. (He reviewed the 25' setback to the drip edge on the plan.)

Referring to the decks in the wetland buffer, Chair Weathersby asked if they are elevated decks on posts.

The architect confirmed. The surface under the decks is crushed stone.

Member Hoyt asked how they determined a height variance was not needed.

Ray explained they worked off the existing grade. The peak of the tower is 32' above the original grade.

Mr. Colwell noted the grade plan, shown on the existing features plan, is shown at 17.2.

Chair Weathersby opened to the public.

Bob Stevens, 29 Harborview Drive, spoke in support of the proposal.

Mr. Marsden stated there is a drainage easement to the west of the property and there are some substantial grading changes happening within that easement that could affect the raingarden.

Mr. Colwell explained there is a catch basin on Harborview and there is a pipe that runs down the middle of the drainage easement out to Sagamore Creek. There is some grading going on over the easement because of the raingarden. He would not call the grading significant. The lowest point is elevation 15 over 15.5 there now. At the worst case, there's less than a foot of fill and less than a foot in cut going on in the drainage easement. The top of the pipe elevation has been determined. In some cases, the grading adds a half foot of cover and in some cases subtracts a half foot of cover. In no case, does it leave the pipe exposed. He commented they did check to be sure the coverage was adequate over the draining pipe all the way down. There is nothing that is going to hinder that pipe and its ability to drain water from Harborview to Sagamore.

Chair Weathersby asked if the easement is for the Town of Rye.

Mr. Colwell confirmed.

Chair Weathersby asked if the town was notified of the application.

Planning Administrator Reed commented that the town was not notified.

Chair Weathersby commented that to give the town has a chance to air any concerns that they may have, this could be continued or, if it is approved, there could be a condition that it has to be approved by DPW.

Attorney Phoenix noted this is not an abutter notice issue because the Town of Rye does not own an abutting property.

Mr. Marsden commented it is a town easement and they like to know about these issues.

Chair Weathersby asked the Board if they would want to get DPW's input on the application.

Member Patten stated he would be more in favor of getting DPW's input after the Board decides on the project. From what he can see, it is really a minor point.

Vice-Chair Crapo stated it would be subject to the wording of the easement.

Eric Salovitch, TF Moran, noted there are no grading changes directly over the pipe. The pipe runs pretty much right down the property line. There will not be any grading over the property line. The ground over the pipe is not being changed. It is just within the easement.

Mr. Marsden stated that the plan is better than what is currently there. It definitely shows that they are not increasing any stormwater runoff to any other property. However, the raingarden might have to be redesigned based on what DPW says.

There was some discussion on conditioning it upon DPW's approval if the project is approved by the Board.

Hearing no further comments, Chair Weathersby closed the public hearing at 10:41 p.m.

Chair Weathersby stated that if the Board is going to approve anything, she would be in favor of a condition of the grading changes within the town's easement be reviewed and approved by Rye's DPW.

The Board agreed. The Board also agreed that they did not have an issue with the fire pit.

Referring to the house, Vice-Chair Crapo stated that in looking at the existing house, that area is already disturbed and there is not a new disturbance to have an issue with.

Chair Weathersby stated the intrusion is minor and it is a pretty good distance from the creek. She does not have a problem with that little bit of a porch. The only intrusion of the deck is the post into the ground underneath. The amount of the deck that is in the subsurface is such a small area.

Vice-Chair Crapo stated that because of the layout of the property and the size, he does not see the use of the home effecting the resource.

Member Patten stated that in looking at the way it is positioned, in every way it makes sense. He thinks the house is in an optimal spot.

Member Dibble stated it always comes down to philosophy. They don't have to build a house this big. People would not be before the Board seeking variances if they did not want them. It is the Board's job to protect the town. He does not see anything happening here that is doing any harm to the town. It's a great project.

Member Hoyt stated he does not have any problem with it. It's a great project and neighbors are coming in to talk in favor. He may have had a problem in the beginning because it is such a big buildable area. However, the impact is minimal. There is going to be more impact from the lawn and fertilizers than from the encroachment on the 100' buffer. He supports the project.

Chair Weathersby called for a vote on variances to Sections 603.2 and 301.8 B(1) and (7), with the conditions that the grading changes in the town's easement will be reviewed and approved by DPW and compliance with Rye Conservation Commission's recommendations.

In regards to the planting recommendation from the RCC, Member Patten stated that he would not necessarily require it because of the way the lot is laid out and the amount of vegetation that is already there.

Member Dibble commented that he is surprised that they did not have some limitation on the use of fertilizers.

Member Patten stated it is a huge amount of area, 3000sf, and it is a considerable expense. There is mature landscaping where it is now. There is not going to be any difference in the way water runs off now and how it runs off in the future. Seeing they want to do this, he thinks it is great, but he is torn about making someone do this. He is not sure how he feels about that as a condition.

Vice-Chair Crapo stated that he has an issue with the commission's condition listed under #4, which says a planting plan must be created for Conservation Commission approval before installation of native plants. He does not think it should be subject to a further meeting and vote for approval. That is a little too strict and harsh.

Member Patten commented they also said they want to inspect it within three years. He thinks this is a great deal of expense to the owners, where their neighbor isn't required to do it.

Chair Weathersby stated they are trying to improve conditions and trying to protect the resource. Planting the native plants along there will go a long way in filtering the runoff. She would be in favor of the conditions. She could go either way with the planting plan, as long as they do the native plants that are on the list.

Member Hoyt stated it behooves the homeowner to better the ecology around their home.

Member Dibble stated that water in Rye is a central consideration for everything. When the adjacent properties are redeveloped, they will have to put in a buffer. Because the neighbors don't have one now, does not persuade him this is not a desirable thing to do.

Chair Weathersby polled the Board on whether they were okay with the Conservation Commission's recommendations.

Member Dibble stated he was okay with them.

Member Hoyt replied he is okay.

Chair Weathersby stated she would like number one to say "vegetative buffer of native plants to be installed and maintained".

Vice-Chair Crapo stated he is for 1-3, as written.

Member Patten noted that #4 seems burdensome.

There was discussion on whether the word "maintained" should be included in the RCC condition.

Chair Weathersby suggested the conditions (from the RCC recommendations)

1. There be a vegetative buffer of native plants along the entire frontage of Sagamore Creek.

Also; #2, #3 and #5

The Board agreed to the suggested conditions.

1) Granting the variances would not be contrary to the public interest?

Shawn Crapo – Yes

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo – Yes

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt - Yes

Patricia Weathersby - Yes

3) Substantial justice is done?

Shawn Crapo – Yes

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

6) There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of those provisions to the property?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to grant variances to Matthew L. Siler Revocable Trust of 2007 for property owned and located at 23 Harborview Road for variances to Sections 603.2, 301.8B (1) and (7) conditioned upon the review and approval of the Rye easement from the Town of Rye and the recommendations in the Conservation Commission letter; numbers 1, 2, 3 and 5, with number 1 amended as discussed. Seconded by Charles Hoyt. Vote: 5-0 All in favor.

6. **LL & MR Tierney Revocable Trust, Leonard & Mary Tierney, Trustees of National Engineering 72 Mirona Road, Suite 4, Portsmouth, NH, for property owned and located at 1 Cable Road, Tax Map 5.3, Lot 43 and 3 Cable Road, Tax Map 5.3, Lot 44,** request variances from Section 603.1 and 603.2 to expand and replace two non-conforming dwellings with one on a combined lot; from Section 203.3A for a garage 3.6' from the rear boundary where 40' is required; from Section 304.4 for height of a porch overhang 22.6' from the front boundary where 40' is required; from Section 304.4 for house and addition with cupola 34.2' and ridge 31.09' where 28' is required; from Section 304.5 for house and addition with 21.1% of dwelling lot coverage where 15% is allowed and 48.1% of total lot coverage where 30% is allowed; and from Section 500.3 for parking within 10' of the rear property line. **Property is in the Single Residence, Coastal Overlay and SFHA, Zone AO+1. Case #37-2019. Request a continuance to October 2, 2019.** (See motion to continue above.)

Adjournments

Motion by Burt Dibble to adjourn at 11:05 p.m. Seconded by Charles Hoyt. All in favor.

**All corresponding files and documents may be viewed at the building department, Rye Town Hall.*

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Matthew L. Siler, Revocable Trust of 2007, Matthew L. Siler Trustee
Of 75 Odiorne Point Road, Portsmouth NH

Property: 23 Harborview Road, Tax Map 26, Lot 4
Property is in the Single Residence District and SFHA, Zone AE (9)

Application case: Case #36-2019

Date of decision: September 4, 2019

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

- Section 603.2 to raze the existing dwelling and replace with a new dwelling;
- Section 301.8 B (1) and 301.8(B)(7) for steps 78.9', a house 86.8' and a firepit 6.8' from the tidal wetland and associated grading and fill all as depicted on the Plan of the Site Renovations by TFM dated July 3, 2019.

The variances were granted with the following conditions:

1. The Rye Department of Public Works (DPW) review and approve the grading plan over the town drainage easement; and
2. The following recommendations of the Rye Conservation Commission be adhered to:
 - a. There be a vegetative buffer of native plants along the entire frontage on Sagamore Creek.
 - b. The buffer should be 10 feet in depth but can vary from a minimum of 3 feet but must average 7 feet. The curved area where erosion has already occurred should be planted to a depth of 10 feet.
 - c. The planting of the protective buffer may be installed over a period of three years.
 - d. The RCC has the right to inspect the work after completion of each phase.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

James Holland

Property:

2250 Ocean Blvd, Tax Map 5.3, Lot 70

Property is in the Single Residence District, Coastal Overlay and SFHA,
Zone AO +1

Application case:

Case #33-2019

Date of decision:

September 4, 2019

Decision:

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

- Section 203.3 A for a walkway 6.0' from the rear boundary;
- Section 203.3 A for stairs 10.1' from the rear boundary;
- Section 203.3 B for a rinsing station 14.6' from the left boundary;
and
- Section 203. B for a walkway aligned with the edge of stairs,
approximately 16.5' from the right-side boundary as depicted on
Exhibit A.

Each variance was granted upon the condition that the native planting recommended by the Rye Conservation Commission and made a condition of variances granted in April, 2016 be installed and maintained.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner:

Attorney Scott E. Hogan on behalf of:
David and Karen Pelletier, 22 Odiorne Drive
Michael and Tami Pelletier, 30 Odiorne Drive
Becky Williams, 1235 Ocean Blvd.
Francis and Judy Scott, 1237 Ocean Blvd.
Shawna Healy, 1201 Ocean Blvd.
William Morin, 1250 Ocean Blvd.
Sandy Milley, 1256 Ocean Blvd.
Valerie and Bill Wilson, 1252 Ocean Blvd.

Property:

1215 Ocean Blvd, Rye Tax Map 17.3, Lot 6
Property is in the General Residence, Business and Coastal Overlay
District and SFHA, Zone

Date of decision:

September 4, 2019

Decision:

The Board voted 5-0 to deny the request for rehearing and reconsideration of its July 10, 2019 decision granting variances to John Samonas for property at 1215 Ocean Blvd, Tax Map 17.3, Lot 6. The Board did not find its decision was unlawful nor unreasonable and therefore the matter did not warrant rehearing.



Patricia Weathersby
Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Jackie & Jay Rushforth

Property:

199 Locke Road, Tax Map 12, Lot 86
Property is in the Single Residence District

Application case:

Case #32-2019

Date of decision:


September 4, 2019

Decision:

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

- Section 203.3 A for a storage barn 10' from the rear boundary; and
- Section 203.3 C for a storage barn 22' from the front (Recreation Road) boundary.

A survey plan is recommended prior to applying for the building permit.


Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: LL & MR Tierney Revocable Trust, Leonard & Mary Tierney Trustees
Of National Engineering, 72 Mirona Road, Suite 4, Portsmouth NH

Property: I Cable Road, Tax Map 5.2, Lot 43 and 3 Cable Rd, Tax Map 5.3, Lot 44
Properties in the Single Residence, Coastal Overlay and SFHA, Zone AO

Application case: Case #37-2019

Date of decision: September 4, 2019

Decision: The Board voted 5-0 to continue the application to the October 2, 2019
meeting.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Sally Sheehan of 111 Cottage Street, Mansfield, MA

Property: 824 Ocean Blvd, Tax Map 23.1, Lot 29-01
Property is in the Business, Coastal Overlay and SFHA, Zoning AO+1

Application case: Case #35-2019

Date of decision: September 4, 2019

Decision: The Board voted 5-0 to continue the application to the October 2, 2019 meeting.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Paul R. Bacon

Property: 200 Parsons Road, Tax Map 19, Lot 115
Property is in the General Residence, Coastal Overlay and Wetlands
Conservation Overlay Districts.

Application case: Case #33-2019

Date of decision: September 4, 2019

Decision: The Board voted 5-0 to continue the application to the October 2, 2019
meeting.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.