

## **TOWN OF RYE – BOARD OF ADJUSTMENT**

**Wednesday, January 8, 2020**

**7:00 p.m. – Rye Town Hall**

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

***Others Present: Planning/Zoning Administrator Kimberly Reed***

### **I. Call to Order**

Chair Weathersby called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

### **II. Approval of December 4, 2019 meeting minutes**

**Motion by Shawn Crapo to approve the minutes of December 4, 2019 minutes as presented.**

**Seconded by Patricia Weathersby. Vote: 4-0 Abstained: Burt Dibble and Gregg Mikolaities**

**Note: The Board took the ‘Revisions to the Rules of Procedures’ out of posted agenda order.**

- **Revisions to the Rules of Procedure**

The Board received copies of the proposed changes to the Rules of Procedures for their review. The revisions include changes submitted from Burt Dibble, Patricia Weathersby and Attorney Donovan. There were no comments or questions from the board members regarding the changes.

**Motion by Burt Dibble to adopt the Rules of Procedure as amended. Seconded by Rob Patten. All in favor. (Voting members: Patricia Weathersby, Shawn Crapo, Burt Dibble, Rob Patten and Charles Hoyt)**

### **Requested continuances:**

**Motion by Shawn Crapo to continue the applications for Laing Revocable Trust, 140 Harbor Road, and Judd & Kathy Gregg, 67 Harbor Road, to the February meeting in order for the applicants to meet with the Rye Conservation Commission. Seconded by Burt Dibble. All in favor.**

**Motion by Patricia Weathersby to continue the case for the appeal filed against Matt & Natasha Goyette for property at 720 Brackett Road. Seconded by Shawn Crapo.**

Chair Weathersby noted the person who has filed the appeal is not the one who is requesting the continuance. The property owner has asked for a continuance, as they are not available for the meeting.

**Vote: All in favor**

### III. Applications

1. **Marc Grondahl Rev Trust of 1 Bayside Road, Suite 106, Greenland, NH for property owned and located at 314 Brackett Road, tax Map 19, Lot 136**, requests a special exception to section 301.7B, 301.8.B.6 and 701.3 for a driveway with the wetlands and wetlands buffer. **Property is in the Single Residence District. Case #45-2019.**

Chair Weathersby noted that a request for a continuance has been received from Marc Grondahl Revocable Trust for the 314 Brackett Road property, in order to address the concerns of the Rye Conservation Commission regarding the driveway. The applicant is also asking for clarification from the Board on whether or not a variance is required for the tree cutting in the wetlands and wetlands buffer.

**Motion by Shawn Crapo to continue the application to the February meeting. Seconded by Rob Patten. All in favor.**

Chair Weathersby explained that the application involves building a driveway through wetlands and wetlands buffer. The proposal involves the cutting of a number of trees greater than 4'5" in diameter. The applicant has not asked for a variance for tree cutting; 301.8 B(5). The applicant was under the impression that the special exception provision regarding driveways would cover it. Chair Weathersby stated it is her opinion that while the special exception criteria, outlined in 301.7 F, does involve impacts to the wetland, it does not specifically deal with trees. Where the Town has a buffer restriction that does specifically with trees, that provision should also be addressed and a variance should be requested. She asked the Board their thoughts.

The Board agreed.

**Attorney Phoenix, on behalf of the applicant**, confirmed that the application will be amended.

Member Patten stated it would be helpful if a different colored ribbon is put on the trees to distinguish which ones can be taken without a variance versus the ones under the variance. He would like to be able to see those trees when he visits the site. He commented that there is a lot of room for disruption because the stumps will have to be removed. It would be interesting to see the extent to which that has to be done.

Attorney Phoenix confirmed that he will make sure this has been done.

**Mike Garvan, Conservation Commission Member**, noted that the trees greater than 4'5" in diameter have been marked in orange. There are also some smaller trees that will need to be removed for the construction of the driveway, should it be approved, but those are covered by special exception.

Speaking to Attorney Phoenix, Chair Weathersby asked what the green markers on the site were for.

Attorney Phoenix was not sure.

Mr. Garvan stated the applicant had flagged the center line of the driveway in yellow. He believes the edges of the driveway are green. The pink flags represent the wetland boundary.

Chair Weathersby asked Attorney Phoenix for a color code of the markings before the February meeting.

***Note: Patricia Weathersby recused herself from the following application. Gregg Mikolaities was seated and Shawn Crapo was seated as acting chair for the application.***

- 2. 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 603.2 to raze an existing dwelling and replace with new and from Section 210.3A for a first floor deck and second floor deck 20.02' from the rear boundary where 22.6' exists and 30' is required. **Property is in the Business, Coastal and SFHA, Zone AO+1. Case #46-2019.****

**Attorney Tim Phoenix, representing the Applicant,** presented to the Board. He stated that 824 Ocean Boulevard is a 15-unit condominium development. Mrs. Sheehan's unit is #1, which is the southern-most unit. The lot is about a 4-acre lot with 15 units. Mrs. Sheehan has an existing home that is slightly within the front, side and rear setbacks. (He reviewed the area of the setbacks on the plan before the Board). The total encroachment presently is about 90sf. He continued that about 20 years ago, a former owner came before the Board to lift the building. They needed relief because the non-conformity in the front setback was being expanded. The Board at that time denied the project. (He reviewed the building envelope on the plans and the proposed encroachment). He noted the proposal is for 86sf, which is slightly less in total encroachment than what exists today but in a different form. The deck violates the rear setback a little bit more than existing conditions. However, the entire building will be moved to the left to create a little more room on the side, so there is no side setback encroachment or front setback encroachment for the building. The only relief that is needed is for the deck. The house, stairs and rest of the deck can be built as a right. The applicant has gone through a couple of design revisions. Originally, the plan was to expand by leaving the building in its existing footprint. Since that required a variance, the applicant was concerned about the neighbors saying the project is blocking views and is increasing the non-conformity by going up. He noted the proposal is still going up but it is not violating that portion of the ordinance. Part of the reason for raising the house is to comply with FEMA. He noted a height variance is not needed, as the building is at 27.5'. The project does not need a front, side or rear setback variance for the house. A lot coverage variance is not needed. The only variance that is needed is for the proximity of the rear deck to the rear lot line. The reason the variance is needed is because at the end of the property there is a fairly significant jog, creating a lack of distance between the rear line and the setback line. He noted the existing deck encroaches by 69sf so there is 17sf greater encroachment now. He pointed out that if the proposed deck was made the same size and in the same location as the existing deck, a variance would not be needed because 603.2 says if a non-conforming structure is destroyed for any reason it can be put back exactly the way it was. This has been done just a little larger than what is there.

Attorney Phoenix reviewed the criteria for granting the variances.

- The variances will not be contrary to the public interest and the spirit of the ordinance is observed. The question is whether it will alter the essential character of the locality or threaten the public health, safety or welfare. This is replacing the rear deck with another rear deck, in the rear of the house where it can't be seen. Even from the street, the compliant stairs and beginning portion of the deck would block any view of the rear deck anyways. The deck itself and the variance for it is not altering the essential character of the locality. There are many homes in Rye that have decks that look out at the ocean. That is the character of Rye. A deck on someone's house is not going to affect the public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. It is not the house, as that can be done as a right. It is whether the variance for that deck diminishes surrounding property

values. Given the location of that deck, behind the house out of view, it is not going to diminish anyone's property value.

- Special conditions exist that distinguish the property from others in the area. Each of the condominium units have a limited common area assigned to it. Where a deck can be located is somewhat limited. Because of the small area, there is only one place to put the home and the deck. The slanted lot line creates the special condition, as does the limited common area.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Setbacks are to provide adequate air, light, stormwater treatments, sight lines, etc. The Atlantic Ocean is behind. It is not effecting anyone's view, air or light. It is not affecting stormwater treatment.
- The proposed use is reasonable. If it is a permitted use it is deemed reasonable. It is a residential use in a residential zone so it is deemed 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 any gain to the general public, is an injustice. To have a decent size deck to enjoy the ocean with stairways to it is reasonable. This is replacing a deck that is almost the same size and almost the same location. There is no benefit to the public by making the applicant cut off that portion of the deck and having a smaller deck. Taking it away from the applicant leads to a much smaller deck, which is unreasonable.

Attorney Phoenix completed his presentation.

Member Patten stated it almost looks like the deck could be done completely within the envelope if the stairway had been flipped with the right side of the deck clipped off. He asked if there was any thought into flipping that so it would be completely within the envelope.

**Shannon Alther, TMS Architects**, replied that they spent some time in looking at that to see if it might work. The condo association has been pretty helpful in reviewing the applicant's and other projects that have gone on there. Ms. Sheehan made the conscious decision to get their input and involvement. Through the process, she decided that clipping that section of the deck off was a nice thing to do and a good thing to do for the neighbors. He noted that the problem is the deck is so close to that corner. It really made how to get onto the deck not very easy to do. In this area, the house straddles a couple of FEMA zones closely. This house will actually be raised up high enough to become a VE Zone. Part of what is being done, is to accommodate what the house has to be built to now and what is anticipated for the future.

Attorney Phoenix noted that one of the exhibits in the board's packets is the approval from the condo association.

Referring to the stairs to the deck, Acting Chair Crapo stated that he understands that it is limited by the corner. To him, it seems the stairs could go somewhere in the center. It was clipped off to appease the one condo owner next door; however, from looking at the number of people in attendance at the meeting, he thinks they will hear that the corner that is said to be in no one's view potentially is. He pointed out that 603.2 states if what was there was lost it could be replaced; however, if possible, the replacement of the building or structure shall conform. He is not seeing how it is impossible to have the corner of the deck more conforming.

Attorney Phoenix stated that section just read is always a problem because it is internally inconsistent. It can't both be put back the way it was and comply. The more important section is it can be put back. (He

pointed out the area on the plan that is non-conforming, which is affecting views). He noted the house has been pulled over a foot or two, which is an improvement. He cannot see where anyone's view is going to be affected.

Acting Chair Crapo clarified that the height and floodplain regulations are not "triggering" any of this project. It is the desire to expand a home that "triggers" the need for the height, etc.

Attorney Phoenix explained the floodplain compliance results in no violation of the ordinance because it does not take the house over the height.

Member Mikolaities read a note on the 1979 plan; "The signing of the plan of the board does not indicate that the board finds, or does not find, that there are sixteen units on the site at the present time. Consultants International agrees not to erect any fences or plant any trees that would obstruct the views of the abutters". He noted that there was obviously some discussion back then about not obstructing views of abutters. What is missing in that sentence is adding height to the building. The part about "not affecting the view of the abutters" is what jumped out at him.

Attorney Phoenix stated that the applicant is entitled to follow the rules of the condominium association and the rules of the zoning ordinance. The zoning ordinance says this is what can be done.

Acting Chair Crapo stated the lot is being cleaned off with a fresh canvas. The stairs to the deck could go almost anywhere off the back side. The stairs could be more centered and inside the building area. He is not seeing any reason why the "pink" area (shown on the plan) needs to be the size it is, given that the stairs could be moved.

Attorney Phoenix stated he has been before the Board many times. When people ask for a shed or a deck, where something different could be done, this Board is pretty reasonable. The deck is not going to impeded someone's view of the Atlantic Ocean.

**Sally Sheehan, Applicant**, stated that no one will be able to see the deck.

Mr. Alther presented plans showing the existing house versus the proposed. He explained the plan is to slide the house a little to the east and a little to the north to remove any of the front and side setbacks. The existing deck has steps all around so someone could walk off the deck at any point onto grade. One of the design components for the proposed deck was so Ms. Sheehan could take advantage of the southern portion of the deck.

Acting Chair Crapo commented there is going to be a 6' to 8' height difference. Right now, it is not in anyone's sight level because it is just above ground level. Once it is 6' to 8' taller, it will be lining up differently elevation wise.

Mr. Alther noted that the proposed deck, raised up, is in the same line of the existing deck. It does not affect anyone's views because it is in the same parallel line.

Member Mikolaities asked if the driveway is being moved.

Mr. Alther replied “no”. The existing driveway is staying right where it is. During discussion with the Rye Conservation Commission, it was agreed to make a good portion of the driveway pervious. Where the house is on stilts, there is the ability to have parking for one car underneath the house.

Ms. Sheehan stated the people who are primarily affected by the height are her neighbors Jeff and Leslie. In order to make the house conform to the three setbacks, the house had to be moved forward and closer to them so it impacted their views somewhat. She pointed out this is why she gave the clip on the north side because it affects them the most. To the south is just State land and a scenic lookout. There is nobody there that would be looking north.

Acting Chair Crapo commented there are two houses in the background that are going to look past the deck. He continued that typically with regard to view, unless an abutter or someone has a view easement, it is off the table when the proposed expansion is within the building envelope. The only issue to the view is going to pertain to the part that is in “pink” on the drawings. That is the part that needs a variance, as it is outside the allowed building envelope. Once an applicant requests some sort of expansion or bulk that enters into the setback area, it brings the “view” into discussion. It does not necessarily mean if someone’s view is blocked the applicant will lose the variance. It means that it is up for discussion. When this is opened to the public, he would like to not spend a lot of time discussing the part that can be done without a variance. He would like to keep the arguments to the setback. He noted that 603.2 is to raze an existing building replace it. If the applicant was not adding the part in the “pink”, the building would be able to be torn down and built as proposed. The application would not even be before the Board.

Member Dibble asked if the back stairs could be moved over to be inside the building setback.

Mr. Alther stated they spent a lot of time looking at where the stairs could go. The main reason for the location chosen is to maintain the “clip” from the abutter so they had a view. Moving the stairs, there were questions on the neighbors’ end and they did not want to have that as an option.

Referring to the “clipped” corner, Acting Chair Crapo stated if the stairs started there and went towards the ocean, they would be parallel to the side of the building versus parallel to the back. The “clipped” part would be smaller.

Acting Chair Crapo opened to the public for comments.

**Jeff Foyer, abutter at 820 Ocean Blvd**, spoke in favor of the proposal and the location of the stairway to the deck, as it is the only place that will not impeded his views.

**Attorney Kerry Houlihan, representing Andrew and Diana Bates at 824 Ocean Blvd**, spoke to the Board. She noted that her clients live directly behind Ms. Sheehan. She stated that under the condo declarations this expansion is not allowed. The declarations state; “Any reconstruction or repairs made to a unit shall be identical to the previous design and dimensions of the original unit”. That is obviously not the case here. The original design was a one floor building and it is being changed to essentially a three story building. The declaration says that in order to amend the section regarding reconstruction, approval is needed from all unit owners and any mortgage holders of the units. She pointed out that she has not seen any revisions made to this section of the declarations.

Attorney Houlihan stated the building is going from one story to a three story building, which is not in character with the other units. Most of them are one story and only one bedroom. The essential character of the neighborhood would drastically change if this were allowed. It would set a precedent for surrounding buildings to allow for further expansion. Future expansion would create overcrowding and over development that may conflict with other zoning objectives. Granting the variance would not bring substantial justice. Any loss to the applicant would not outweigh the gain to the general public if the variance was denied. Denying the variance will benefit the public and the essential character of the neighborhood will be preserved and the objective to the ordinance will be upheld. She pointed out this is not the applicant's primary residence and the property is rented out. Denial of the variance would not prohibit the applicant from continuing to run the condo as she has for the last ten years. She noted that the values of surrounding properties will be diminished, if there is a structure in front of the property.

Acting Chair Crapo stated the essence of what is before the Board is the part that is in the "pink".

Attorney Houlihan stated that she will go back to the point that this is not allowed under the condo declarations. The applicant needs to get approval from all the condo owners, as well as all mortgage holders on the property.

Acting Chair Crapo explained this is not something before the Board. There may be a separate procedure that needs to be sought and followed.

Ms. Sheehan noted the condo docs have been amended in the last two years. She will provide Attorney Houlihan with those documents.

Member Hoyt asked if it was amended to allow for expansion.

Ms. Sheehan replied "yes", specifically, to allow the units to go up for flood compliance. She also noted that she has permission from all owners to do this.

**John Meehan, 15 Pulpit Rock Road**, stated the Town approved the condo development in 1979. There was a process that they went through to make sure the views were not going to be destroyed so the structures cannot be raised. He asked if the condo association has to go back to the Town to gain approval for any major changes.

Acting Chair Crapo stated this would fall under the Planning Board review.

Planning/Zoning Administrator Reed explained the applicant needs a variance from this Board and will then need Planning Board approval.

Acting Chair Crapo asked if the proposal will need to go to the Planning Board, if the variance is granted.

Planning/Zoning Administrator Reed confirmed.

Acting Chair Crapo asked if the concerns regarding expansion and the condo docs would be the jurisdiction of the Planning Board.

Planning/Zoning Administrator Reed confirmed. She noted that any exterior changes to a condo must go back to the Planning Board.

**David Conte, 20 Pulpit Rock**, stated they have a responsibility to overall environmental concerns and shoreland development is difficult right now. He would hate to see the buildings along the boulevard being allowed to go up over 30'.

Acting Chair Crapo pointed out that in this zone it is limited to 28'. The applicant is not requesting a height variance. Before the Board is the request for part of the deck and stairs that are within the rear setback.

John Meehan stated that he is against the variance request for the encroachment of the deck.

Acting Chair Crapo summarized letters that were received in opposition from:

- **Dan Richard, 3 Davis Road**
- **David Conte, 20 Pulpit Rock**
- **Attorney Houlihan, on behalf of Andrew and Diana Bates, 824 Ocean Blvd**

Mr. Conte pointed out that the neighbors who are opposing the project are permanent year-round residents.

**Mike Garvan, Conservation Commission Member**, asked if the letter dated September 21<sup>st</sup> from the Commission was received.

Acting Chair Crapo confirmed.

Mr. Foyer commented that he heard there may be a need for a new septic. He asked if this has been addressed.

Acting Chair Crapo noted that is in the Conservation Commission's letter.

Member Mikolaities stated this proposal is close to total lot coverage. He asked if any relief is going to be needed. He commented it is a 3900sf lot. In adding up the building footprint, driveway and apron for the new driveway, he would not be surprised if it went over.

Attorney Phoenix replied the 3900sf is Ms. Sheehan's limited common area. The lot has sixteen units on it.

Member Mikolaities stated he does not want to see this coming back before the Board. He wants to know if this has been checked.

Attorney Phoenix agreed to double check the lot coverage. In regards to the septic, he stated the original plans had the septic out back. The Building Inspector prefers it to be in the front. Test pits have been done recently. An email was received from Civil Works Septic saying that the septic can go in the front. It is going to be an advanced treatment system, which is an environmental benefit compared to the ancient 1979 system that is there now. He pointed out the current system is under the neighbors' deck and that potential problem will go away. He continued the house is being lifted to comply with not only the current requirements, but also the proposed requirements that are expected this year.

Acting Chair Crapo commented they do not have an approved septic plan yet, so it is still unsure if it will work in the front yard or not.



Attorney Phoenix replied that the applicant has been told the septic will work but they do not have a design.

Mr. Alther reviewed the area on the plan that is being proposed for the septic.

Acting Chair Crapo asked if the septic can be installed without a variance.

Attorney Phoenix reiterated they do not have a design yet. He clarified that it was the Building Inspector who wanted it moved to the front. He commented that once they get the septic design, if there is a problem, they will have to come back. In regards to the condo issues, he noted that those are outside the purview of this Board. In regards to Attorney Houlihan's comments, he stated that those really relate to the house and not the deck.

**Leslie Feldman, 820 Ocean Blvd**, commented that the change in grade for the septic would impact her as an abutter. She pointed out that her driveway is on the abutting property line.

Mr. Alther explained that the RCC went through the different scenarios. The concept was that the existing system could be maintained if it was in good working order with a replacement system on file. This whole association has issues with septic so the applicant was sensitive to what the options might be. The Town wants a new septic system installed, regardless if the State says it is in working order. He noted they are working with the Building Inspector to come up with a new design and a new location.

Acting Chair Crapo asked if the current system is working or if it is in question.

Mr. Alther replied that the company that pumps it every year says it is in good working condition, but there is not a letter stating that. He further explained in the last couple of weeks the discussion has come up that the Building Inspector wants a new system to be installed and he would like it in the front. A couple of test pits have been done to determine the options.

Member Hoyt asked if test pits have been done in the existing location.

Mr. Alther confirmed.

Member Hoyt asked if the test pits passed.

Mr. Alther confirmed.

Member Hoyt stated that in theory it sounds best to be in front but in practicality it might be best where it is.

Attorney Phoenix stated this probably falls under the building code that says the applicant has to get a new design but it doesn't have to be put in if it can be proven the existing system is working; however, the Building Inspector was strongly suggesting it. For good building practice for a brand new home and a system that is 40 years old, the applicant agreed to do it and to try to comply with the Building Inspector's wishes to get it as far from the ocean as possible.

Acting Chair Crapo stated the reason he is letting this discussion continue, even though the septic is not before the Board, is that overall 603.2 for teardown and rebuild, the ability to do that relies on the septic. He continued that on a standard one building house lot, the runoff cannot be increased towards the

neighbor. Here, the neighbor is within the same condo plat. If the septic mound is built, does it need to not shed any more water towards the abutter or is that not in play since it is the same physical property?

Attorney Phoenix replied that he is not sure of the law but he feels pretty comfortable that Ms. Sheehan does not want to negatively affect her next door neighbors. Also, he thinks the Building Inspector would take the position that it is technically the same lot but it is the neighbor's living area and water should not be put on it.

Referring to the 1980's survey plan, Member Mikolaities pointed out that when the septic is put in and the house is built, they will have to regrade to bring it to the south. The low point is the center of the driveway and it will be draining that way.

Mr. Meehan stated that he put in an advanced system for his property and had to raise it 4'. The leachfield is much smaller but it still has to have the proper layers. He noted that the nature of his front yard had to change to accommodate the septic. If the septic is on the street side, he cannot imagine what it would look like. The small amount of distance between the road and the building, seems to be problematic in having it on the street side.

Acting Chair Crapo stated that the applicant is saying that the septic can be done in the front setback. Part of the reason the Town asks for a septic approval, is to make sure the new building is not going on the only part of the land that is available for the replacement area. Here, the house is virtual in the same spot just slightly towards the existing leachfield.

Attorney Phoenix stated that the neighbors' concerns are well taken and deserve to be vetted further. He continued that Ms. Sheehan has agreed to do away with the stairs and have only one set of stairs to the deck. There would not be a second means of egress down.

Mr. Alther marked the plan before the Board to show the proposed change.

Attorney Phoenix commented the encroachment goes from 86sf total to 44sf.

Acting Chair Crapo clarified the steps and landing are being cut off but the request is still for the squared corner.

Hearing no further comments, Acting Chair Crapo closed the public hearing at 8:30 p.m.

Acting Chair Crapo reviewed possible conditions of approval:

- Septic permitting and approval;
- Following the recommendations of the Rye Conservation Commission; and
- Planning Board approval.

Member Patten stated that in light of the applicant's willingness to reduce the encroachment onto the setback, it is a fairly small asks. In removing the stairs, it is back to approximately 22.6 which is the existing setback. He is very sympathetic to the neighbors' concerns; however, they are discussing the triangle, not the height. The volume of the structure is clearly not at play here. The Conservation Commission's recommendations are very reasonable and are in line with what he would expect. He heard tonight that the septic is in good working order and then there was a bit of a change of heart. He thinks

they may need a design; however, he does not think he would say they must get a system installed. He would refer to the Building Inspector on that.

Acting Chair Crapo explained his intention was not that they put in a new septic. He is worried that a potential new septic disrupts this plan.

Member Patten stated he would go along with the condition of Planning Board approval. He continued if views were something the Board was regulating and preserving, he may feel differently. He commented he would probably go along with the project with the conditions.

Member Hoyt stated he is onboard with the project. The only thing that would give him “heartburn” in the future is if they were planning to put a septic system in the front yard, but that is not in front of the Board. He is onboard with what they are presenting, along with the reduction in square footage.

Acting Chair Crapo explained his reasons for the septic condition is in the event they need to move the building for the septic, the whole project would be back to the drawing board.

Member Dibble stated that making this conditioned upon being compliant with the Town’s and State regulations with regard to the septic system is all that is needed.

Acting Chair Crapo commented he was not in favor of the big ask for the stairs. He does not see the need for the deck part. He does not see the hardship for it. However, he also sees in the analysis that cutting it back any further is not really going to give any gain to the public.

Member Dibble pointed out that moving the whole house back makes it more compliant, so that is in favor for the applicant. On the other hand, it is so trivial he finds it hard to see it as meaningful. Taking the stairs off is a significant give. The substance of the presentation seems to be that the building is being more zoning compliant; therefore, they have an opportunity to ask for a variance for the deck. Now, the request for the deck has been made smaller. He finds himself unable to be in opposition of the application with the conditions as described.

Member Patten asked if it is being said that there should not be a condition for the removal of the stairs.

Acting Chair Crapo stated the application now has no stairs and no landing. That is already a done deal. He continued that if they had not made that move, his vote would be a definite “no”. He is still struggling on whether there is an actual “hardship” for the corner that is still in the pink area. However, in looking at denying the pink corner, he is not seeing a huge gain to the general public.

Acting Chair Crapo called for a vote on variances to Sections 603.2 and 210.3 A:

**1. Granting the variances is not contrary to the public interest?**

**Rob Patten – Yes**  
**Charles Hoyt – Yes**  
**Gregg Mikolaities – Yes**  
**Burt Dibble - Yes**  
**Shawn Crapo - Yes**

**2. The spirit of the ordinance is observed?**

**Rob Patten – Yes  
Charles Hoyt – Yes  
Gregg Mikolaities – Yes  
Burt Dibble - Yes  
Shawn Crapo - Yes**

**3. Substantial justice is done?**

**Rob Patten – Yes  
Charles Hoyt – Yes  
Gregg Mikolaities – Yes  
Burt Dibble - Yes  
Shawn Crapo - Yes**

**4. The values of surrounding properties are not diminished?**

**Rob Patten – Yes  
Charles Hoyt – Yes  
Gregg Mikolaities – Yes  
Burt Dibble - Yes  
Shawn Crapo - Yes**

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

**Rob Patten – Yes  
Charles Hoyt – Yes  
Gregg Mikolaities – Yes  
Burt Dibble - Yes  
Shawn Crapo - Yes**

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

**Rob Patten – Yes  
Charles Hoyt – Yes  
Gregg Mikolaities – Yes  
Burt Dibble - Yes  
Shawn Crapo - Yes**

**7. The proposed use is a reasonable one?**

**Rob Patten – Yes  
Charles Hoyt – Yes  
Gregg Mikolaities – Yes  
Burt Dibble - Yes  
Shawn Crapo - Yes**

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

**Rob Patten – Yes**  
**Charles Hoyt – Yes**  
**Gregg Mikolaities – Yes**  
**Burt Dibble - Yes**  
**Shawn Crapo - Yes**

**Motion by Burt Dibble to approve the application as amended of Sally Sheehan for property owned at 824 Ocean Blvd for variances from Section 603.2 and Section 210.3A, conditioned upon meeting the septic requirements for the State and Town, meeting the recommendations of the Conservation Commission review and Planning Board approval. Seconded by Charles Hoyt. All in favor.**

- 3. Matt & Natasha Goyette of 750 Brackett Road** Appeal the Building Inspector's issuance of a permit to contract a rock wall at 720 Brackett Road, Tax Map 17, Lot 65, pursuant to sections 701.1 and 702. **Property is in the Single Residence District. Case #47-2019.**
  - *Continued to February (See motion above).*
- 4. Matt Silva of Profile Homes for Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH for property owned and located at 140 Harbor Road, Tax Map 9.2, Lot 17,** request changes to the plans submitted and relief granted May 1, 2019 to have the building go from pilings to on-slab; therefore, they request relief from 603.2 for expansion of a non-conforming structure; Section 603.1 for expansion of a non-conforming structure on a non-conforming lot; from Section 301.8 B(1) and 301.8 B(7) for expansion of dwelling 14.8' from tidal marsh and 19.6' from wetland; and from Section 301.5 A for surface alteration for pervious patio 35' from tidal marsh and 23.5' from wetland. **Property is in the Single Residence District, Coastal Overlay and SFAH, Zone AE. Case #48-2019.**
  - *Continued to February (See motion above).*
- 5. Judd & Kathy Gregg for property owned and located at 67 Harbor Road, Tax Map 9.2, Lots 5 & 16,** request variances from Section 603.2 for expansion of a non-conforming structure on a non-conforming lot; from Section 301.8 B(1) (3) & (7) for site renovations within the 100' wetland buffer; and from Section 203.3 C for expansion of the first floor deck 15.1 from the front yard boundary where 40' is required. **Property is in the Single Residence District, Coastal Overlay and SFHA, Zone X0VE (Elev 16') and A (Elev 9'). Case #49-2019.**

**IV. Other Business**

- Revisions to the Rules of Procedure – *See above*

**Adjournment**

**Motion by Gregg Mikolaities to adjourn at 6:41 p.m. Seconded by Charles Hoyt. All in favor.**

*\*All corresponding documents and files may be viewed in the Building Department, Rye Town Hall.*

Respectfully Submitted, Dyana F. Ledger