

**TOWN OF RYE – BOARD OF ADJUSTMENT
MEETING**

Wednesday, February 5, 2020

7:00 p.m. – Rye Town Hall

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Rob Patten, Patrick Driscoll, Gregg Mikolaities, Charles Hoyt (sitting for the Goyette case) and Burt Dibble (arrived at the meeting in time to sit for the final application).

Also Present: Planning/Zoning Administrator Kimberly Reed and Building Inspector Peter Rowell

I. CALL TO ORDER

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

II. BUSINESS

- Approval of January 8, 2020 meeting minutes

Motion by Rob Patten to approve the minutes of January 8, 2020 as amended. Seconded by Shawn Crapo. Vote: 4-0-1 Abstained: Patrick Driscoll

- Adoptions of the Board of Adjustment Rules of Procedure, as renumbered, revised and codified as Chapter 200 of the Code of the Town of Rye.

Planning/Zoning Administrator Reed explained the Town of Rye signed a contract with General Code, Inc., a couple of years ago, to put all of the Town's building codes, zoning ordinances and regulations in one place. The work also included correcting typographical errors, grammar errors, and outdated references. The regulations are now all in one book and is available online. The voters in March will be voting on whether to adopt the General Code. She noted that each of the Rules of Procedure has a different chapter number. She commented it is highly recommended for this one document to be used and for the Board of Adjustment Rules of Procedure be adopted to go into the Town's code.

Vice-Chair Crapo asked what information will be available in the future to help distinguish the old numbers versus the new code; such as a cross reference.

Mrs. Reed explained the sections are going to be the same. They are just going to be under a new chapter.

Chair Weathersby clarified that all the Board is doing now is putting the Rules of Procedure into that. The Board is not voting on whether the code is adopted or not.

Motion by Shawn Crapo to adopt the Board of Adjustment Rules of Procedure, as renumbered, revised and codified as Chapter 200 of the Code of the Town of Rye.

Seconded by Rob Patten. All in favor.

Note: Patrick Driscoll sat for the vote, as Burt Dibble was not present.

Continuances:

Chair Weathersby noted that a request for continuance has been received for the applications for the Marc Grondahl Rev Trust. There has been an appeal of the NH DES Permit for that project. As she understands, they are waiting to see if DES will accept the appeal, which will be known before the March meeting.

Attorney Tim Phoenix, on behalf of the Marc Grondahl Rev Trust, explained the first decision the wetlands counsel is going to make is whether or not the appeal is going to be considered. That will be done before the next meeting. If it is going to be considered, they will have to wait to see where they are at the next meeting. He noted that the basis of the appeal is that the DES issued its decision without having the position of the Conservation Commission.

Motion by Shawn Crapo to continue the applications of Marc Grondahl Rev Trust to the March 4, 2020 meeting. Seconded by Rob Patten. 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 pursuant to Sections 301.7B, 301.8.B.6 and 701.3 for a driveway within the wetlands and wetlands buffer. Property is in the Single Residence District. Case #45a-2019. Request a continuance to the March 4, 2020 meeting.**

- Continued to the March meeting.

- 2. Marc Grondahl Rev Trust of 1 Bayside Road, Suite 196, Greenland, NH for property owned and located at 314 Brackett Road, Tax Map 19, Lot 136, requests a variance to Sections 301.8 B(5)(b)(2) for surface alteration and removal of 51 trees total (43 in buffer, 8 in wetlands) greater than 4.5" in diameter for a driveway within the wetlands and wetlands buffer. Property is in the Single Residence District. Case #45b-2019. Request a continuance to the March 4, 2020 meeting.**

- Continued to the March meeting.

Note: *Member Burt Dibble was not in attendance for the meeting. Chair Weathersby seated Charles Hoyt for the Goyette Case, as Mr. Hoyt was at the meeting as a member of the public to present an application on behalf of his client.*

Rob Patten recused himself from the Goyette Case #01-2020.

Seated: Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Gregg Mikolaities and Charles Hoyt

- 3. Matt & Natasha Goyette of 750 Brackett Road** Appeal the building Inspector's issuance of a permit to construct 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 #01-2020.**

Natasha Goyette, 750 Brackett Road, spoke to the Board. She stated they are the direct abutters south of the land identified on Map 17, Lot 65. The appeal is for the permit of the rock wall because they are concerned the water on the land and the length of the rock wall will impact their land with pooling of water and an increase in mosquito populations, which as of October 2019 includes Triple E. She continued that when Mr. Rowell came for the final site inspection in November, the stakes that the owner placed as a contingency requirement, were observed. Number 3 on the condition of approval states; "The wall will not extend into the wetlands but be completely on the upland portion of the property, as shown on the plan done by West Environmental. Mark the end of the wall with a high stake prior to construction". The last high stake is located at 75' into the property line. At the time, there was no determined length that the rock wall would extend. She noted that she expressed concerns of how far the stakes went into the wetland. Mr. Rowell had stated that he is working with what he has to determine the delineation of the wetlands. She continued that when she asked Mr. Rowell if he was using the survey done by Ambit Engineering in the spring of 2017, he said that he did ask for it but had not yet received it from the owners.

Ms. Goyette stated that in November she attended the water resource meeting hosted by the Conservation Commission and UNH Wetlands Specialist Amanda Stone. The Rye website town map they used was her starting point for visually understanding the variety of wetlands next to her property. She and her husband hired Mark West to access the land, viewing it from their property. Mr. West gave a length that would keep the rock wall out of the wetlands and it was determined to be around 30'. Eben Lewis, from NH DES, said the rock wall in the wetlands would require a NH DES permit. If the rock wall was 75', it would extend into the wetland and therefore, would require that NH permit. Mr. Rowell said at the Board of Selectmen's meeting in November that the reason the landowners requested to put up a rock wall, was to keep the land from being taken via adverse possession. She pointed out that they do not want the land, as it is wet. She commented that her understanding is that when a permit is issued, the benefit to the landowner should not be outweighed by the harm done to the surrounding residents. At the length of 75', as it is staked out now, her and her husband's harm does outweigh the benefit to the property owner.

Ms. Goyette stated that she received an email from Planning/Zoning Administrator Kim Reed and attached was a letter from Eckman Engineering stating that Joseph Noel, a wetland scientist, determined the upland portion of the land to be 36' on the southern border and a rock wall should not extend beyond 33'. She pointed out that Mark West and Joseph Noel agree on the length of the wall. If the permit is upheld, she asks that the length is specified based on the information that everyone has now.

Mark West, West Environmental, approached the Board.

Chair Weathersby noted that the Board has received his letter and read all the materials. She asked Mr. West if he would like to speak to the area of land in the location of the wall and whether that is wet.

Mr. West stated he knows Joe Noel and if he did an actual delineation, he is happy they delineated it and they know where the uplands are.

Attorney Derek Durbin, representing Mr. and Mrs. Simeonov for 720 Brackett Road, stated that it is clear that the wall, as proposed, is in the upland area, which is the only applicable thing for the Board. He continued that he did not hear there was any challenge under the section of the ordinance the appeal was made under. At least there does not seem to be any challenge to the wetland boundary. He continued that it seems like the issue is resolved and the appeal should be rejected. There is certainly not a need for a third party delineation at this stage. He noted that observations from an abutting property is not a means of establishing the wetlands delineation.

Chair Weathersby asked if everyone is in agreement that the wall will be 33 linear feet.

Attorney Durbin confirmed.

Chair Weathersby stated that it sounds like everyone is agreeing that is not in the wetlands but is in the wetlands buffer.

Attorney Durbin confirmed.

Chair Weathersby stated that her issue, in reading this over, is different from the issues that the neighbors have raised. She is concerned the building permit was issued incorrectly because no variance was asked for to add fill within the wetland buffer.

Mr. Simeonov, owner of 720 Brackett Road, stated that as far as he is concerned, boulders are not fill.

Chair Weathersby commented there may be a difference of opinion on that.

Mr. Simeonov noted that he consulted with Ambit Engineering. In their opinion, he has the right to put boulders on upland.

Vice-Chair Crapo pointed out that if the wall is being properly constructed, there will be a footing.

Chair Weathersby asked how the wall will be constructed.

Mr. Simeonov replied there will be no fitting. The wall will be right on top of the soil with dry masonry. He noted that he is going to use a small excavator but it is on the upland.

Attorney Durbin stated the Goyette's have the opportunity, within a certain time frame, to appeal the non-decision to require a variance. He would say that at this point, he believes that issue has lapsed.

Mr. Simeonov stated that he consulted with Peter Rowell and it was agreed that the best time to construct this is now. Right now, the ground is frozen and he can use the excavator without disturbing the marsh.

Chair Weathersby stated that as she reads the appeal to the administrative decision, the description of the alleged error, it says "the permit that has been issued does not corroborate with wetlands ordinances, regarding the land abutting our property". She stated in her opinion it was raised.

Attorney Durbin stated that they didn't raise the appeal under any other section of the wetland section of the ordinance. They specifically raised it as there may be conflicting delineations. He noted Section 301.3.

Vice-Chair Crapo clarified this is in the wetland buffer.

Chair Weathersby confirmed.

Vice-Chair Crapo stated that 301.3 B (1), under the restrictions, it addresses surface alteration by the addition of fill, excavation or dredging. If a rock is put there, it is fill and is prohibited.

Attorney Durbin stated the decision of the building inspector is what is being appealed. As a matter of process and procedure, he thinks the only thing the Board can technically rule on is the section that was appealed from under the ordinance. It wasn't the section Vice-Chair Crapo is citing. It is something that could have been raised at the time; however, to fail to raise that is really fatal to the appeal. Whether it is an issue or not is debatable; however, that is not before the Board.

Peter Rowell, Building Inspector, stated when he issued the permit it was based on Mr. West's plan done in 2015, which showed uplands where this wall is going to be constructed. He agrees it is in the buffer. Referring to Section 301.8 B (3), he noted that it addresses uses that are permitted in the buffer which are listed in 301.5 and allows fences in the tidal buffer. In looking at 'Uses in the Wetland', agricultural use is allowed in the wetland. Typical agricultural use

allows for fences and walls in the wetlands. With regard to tidal buffers, he feels really comfortable allowing it in the buffer, which has been past practice. Fences have been allowed in the wetlands without variances. He continued that the end of the "fence" was not determined. The stakes that were put out marked where the "fence" was going to be located. He pointed out that he was going to determine the end of the wall with the applicant at the time of construction. He also pointed out that in his mind, he always thought the wall was going to be 30' to 35' long. He continued there are miles of walls in the buffer throughout the Town. There are also miles of fences in the buffer in Rye and New Hampshire. The property to the south has a wall in the buffer. The property across the street and the property to the north have walls in the buffer.

Member Mikolaities and Member Hoyt asked for clarification on the location for the proposed wall on the map. Mr. Rowell marked the location on the map for the Board. It was noted that the wall is going to be 33' and has to be 1' off the property line.

Member Driscoll asked if there is a survey pin at the property line.

Mr. Rowell explained there is a survey pin on the wall next to the Town's right-of-way.

Referring to the staked line, Member Driscoll asked if that is the property line.

Mr. Rowell replied he thinks it is 1' off.

Mr. Simeonov noted the string is the property line.

Mr. West stated there is a delineation of this property. That delineation is the Ambit delineation and Mr. Rowell is saying it is not a valid one. However, a wetland scientist delineated the entire property. It is similar to what he showed and it shows that the lot is not buildable. The concern of the Goyette's is that this wall is being built to get a foothold to do something more on the site.

Chair Weathersby stated they need to focus on whether the permit was properly issued. It could be the permit was issued properly. It could be that the permit was issued improperly because it needs a variance. She opened to the public to speak to the application.

Scott Marion, 71 Washington Road, stated that a corner of his lot abuts with the Goyette's. He stated that the Building Inspector has a knowledge that he is interpreting ordinances in particular ways and is talking about past practices. The concern is that past practices have led to serious water quality problems in this town. This wall is not going to help at all. Just because there are other walls in the area, does not mean they should keep following poor past practices. He continued that he agrees with Vice-Chair Crapo that bringing in enough rocks and boulders is fill. Pretty soon there is enough to fill wetlands. He does not want a precedent to be set to waive ordinances and ocean variances when there is a severe water quality problem in town.

Tom Clifford, 95 Washington Road, stated that his property is located on the corner of Brackett and Washington. There is a lot of water between Wallis Road and Washington Road

that drains through that wetlands. He is afraid that the rock wall, no matter how far it extends in the uplands, is going to block the flow coming down Brackett Road, across the Hickson's property and the Goyette's property. The water is going to be retained because the rock wall is going to be placed on top of the uplands soil. He does not see how rock cannot be considered fill. The rock was just dropped there in the middle of the afternoon without asking for a variance and within the wetland setback. He thinks the building permit was issued without considering all the things that occurred in dropping the fill.

Joel Feid, 705 Brackett Road, stated that he shares a similar concern as Mr. Clifford. It feels like the rocks were dumped in that location and the permit was requested afterwards. He noted that the fill is his main concern.

Matt Goyette, 750 Brackett Road, stated that it doesn't feel like it is a concern about a rock wall. The concern is more protocol. He feels the protocol has been done the wrong way. He does not believe the land was purchased to put up a rock wall.

Suzanne McFarland, on behalf of the Rye Conservation Commission, stated that the Commission was asked to look at the property and help the Goyette's with the 2018 maps that show priority wetlands protections in the buffer. The Commission has concerns for that entire property. It is a very sensitive piece that drains into Parsons Watershed. From the Conservation Commission's perspective, it is a fragile piece of land. She complimented the Goyette's for taking the time and energy to try and understand the process for the wetlands and how it impacts other land. She noted that the Conservation Commission is not taking a stand and do not have a recommendation letter. The Commission recognizes that piece of property, along with others in the area, as being part of the fragile eco-system.

Chair Weathersby asked if the Conservation Commission has formally held a site walk.

Ms. McFarland explained the Commission was asked to look at the Goyette's' land. Mr. Simeonov has not been before the Commission, so a site walk has not been held for his property.

Speaking to Ms. McFarland, Vice-Chair Crapo asked if it is felt that the wall, where it is going to be placed and how it is going to be constructed, is going to potentially hold back, redirect or affect the flow of the water that it wouldn't if it were not there.

Ms. McFarland stated the Conservation Commission has not seen a formal application. She has not seen where this wall is actually going; however, she does know that it is very wet.

Speaking to Mr. Rowell, Vice-Chair Crapo asked if it is felt that the flow of the water will be altered, once this is built.

Mr. Rowell replied he does not think it is going to affect the water flowing across Brackett Road because it is running parallel to the wall.

Vice-Chair Crapo stated that it was said that guidance for a fence was used to make a determination. A stonewall is not a fence.

Mr. Rowell reiterated that he does not believe that this little piece of stonewall is going to impede any water flow in that area.

In regards to the delineation information that was passed out the Board, Attorney Durbin stated that is a survey his client had done in 2015. He noted that his client did not hand draw on the map. It is a little misleading that this is being referenced for wetland delineation. He continued the Goyette's had the opportunity to appeal under the provision Vice-Chair Crapo mentioned and that was not done. The Building Inspector has testified that he feels the permit was issued properly. Getting back to the section it was appealed from, he thinks that issue has admittedly been resolved.

Mr. Simeonov spoke to the Board regarding his concerns about the Goyette's trespassing on his property and dumping in the wetlands. He noted that the wall is proposed to strictly keep the Goyette's away from his property. He continued that there was a concern that the stonewall was going to impede the water. He pointed out on the map a drainage ditch that drains several properties, including a pond. The ditch has been flooding his property because he has not been allowed to maintain the ditch. If anything, this "fence" is going to keep the water on his property. He noted that he is only building 35' of rock wall.

Chair Weathersby closed the public hearing at 7:57 p.m. She asked the Board to deliberate on whether or not the building permit was properly issued.

Referring to the building permit, Member Mikolaities stated it looks like Mr. Rowell gave this a lot of thought because there are eight conditions, as opposed to just a signature. The Board is talking about if the Building Inspector erred.

Member Hoyt stated that Mr. Rowell said he gave it consideration and looked at the regs. He sees that Mr. Rowell gave some considerable thought to this and gave eight criteria for what looks like a small wall that goes parallel with the flow of the water. He tends to believe it is not going to put any more water onto the neighbor's property. In saying that, if the ordinances are going to be interpreted to say if he erred or not, it is a coin toss.

Chair Weathersby stated that Mr. Rowell clearly gave thought into the issuance of the building permit. Her concern is that she does think he erred in that he did not require them to get a variance from fill. There is going to be a lot of rocks required to build a 33' long and 36" high stonewall. Also, the rocks are going to get dumped and moved with an excavator. That is a disturbance in the wetland. She thinks that requires a variance from 301.8B and the Building Inspector erred in not requiring that. She is not sure if she would or would not vote in favor of the wall; however, she would like more information. She would like the Rye Conservation Commission to go out and fully understand how and where this is actually going to be built. It is

all about the process and not about the wall right now. She thinks the process requires a variance from 301.8B.

Member Driscoll asked if it is okay for the Board to be deciding that now.

Chair Weathersby stated the Board can decide whether or not stones are fill. The Board is the final interpreter of the ordinance. In looking at the application, it referenced 301.3 in terms of the dispute about the wetland boundary. The application says that the permit that has been issued does not corroborate with the wetland's ordinances. She commented it is a close call. Being laypeople and looking at 301.3, it says disputes can go to the Zoning Board of Adjustment and phrasing their application the way they did, she would give it to them because she thinks it is the right process to have happen. She thinks the language they put in their appeal gives them cover.

Vice-Chair Crapo stated the application asks for a specific section; however, they went on further in their description to be broader and say "the wetlands ordinances". He can see how an argument could be made that they are referencing more than just that one section. He continued that reading condition #4 in the Building Inspector's letter, it says "you cannot place any fill on your property beyond the rocks used to construct the wall". In that sentence, the Building Inspector acknowledges the rocks are fill. He continued there is no footing proposed for this wall. If a wall is going to be 36" high, if crushed stone is not put in to be used as a base, in a few years the rocks are going to start heaving and falling. This wall properly constructed cannot follow these rules. He is not sure why the Building Inspector did not call them out for the fill for the variance. The way he interprets it, a variance is needed for adding fill and disturbing the buffer.

Member Driscoll stated his battle is with the surface alteration by additional fill, excavation or dredging. It seems that there is going to be an excavator in there moving rocks. The wall is 3' high and is wide. If that does not have a footing, it is not going to stay there that long. Also, if an excavator is going to be used, the surface is going to be altered, whether it is intended or unintended. The lot is going to be changed. If the Board is allowed to look at it that way, he is far less in favor of it. If this is a "fence", he sees the Building Inspector's thoughts on it and it seems to be reasonable. It's just once they dig deeper and see the feasibility of building that "fence", the way it is proposed, is what he has trouble with.

Chair Weathersby stated it would be good to have more information about the actual building techniques and more information about the water. The Conservation Commission could go out and evaluate the impacts. She continued that she does think that adding those rocks is adding fill, which requires a variance in the buffer.

Member Hoyt stated if 3' of fill is put in to make a berm buffer, that is definitely going to stop the water and impede the water flow on its natural course. However, if rocks of that size are put in with no fill, water is going to go through it. In looking at the Building Inspector's letter, he was probably under the understanding that this wall is not going to use any fill. It is not going to

have a base. It is just going to be a bunch of rocks piled up. The Building Inspector said in his letter "you cannot place any fill on the property beyond the rocks". He continued that he thinks the rocks will allow the water to go through and not impede the flow of water. If this application was before the Board and it had a 2' footer, crushed stone, fill to keep the footer in place and the rock wall was going to be built with mortar, so it provided a more permanent delineation, then he would see the point. He continued that looking at this tonight and seeing the size of the wall, he thinks the Building Inspector did his job.

Vice-Chair Crapo stated he believes both alteration of the surface and fill are being done because this is taken what was a flat surface and building a 3' wall.

Speaking to Member Hoyt, Member Driscoll stated he does not disagree with him. However, his problem is the rock wall is 3' high. The feasibility of building a wall this high by stacking stones means the base is a lot wider than the top of that wall.

Vice-Chair Crapo explained that the charge of the Board is to find if an error was made. It is not saying that if the Board finds that an error was made that the Building Inspector doesn't know his job or was negligent. This is a Board of five evaluating a single person's decision and interpretation of the wording in the zoning. It is not personal. It is a systematic evaluation.

Chair Weathersby commented it is a process question.

Member Mikolaities stated he is trying to understand the logic. He asked if they are talking about the dimensions of a wall that the Building Inspector is supposed to be responsible for issuing a permit for. He asked if the Board is going to start worrying about building permit details.

Vice-Chair Crapo stated it is in the wetland buffer. In that buffer, there is a restriction on surface alteration and adding any fill. He is saying that adding a stack of rocks 36" tall is fill and is an alteration of surface.

Member Mikolaities asked if going forward any wall has to be rejected by the Building Inspector and go before the Zoning Board.

Vice-Chair Crapo replied if it is in the wetland buffer. He feels that this wall in this location is fill and is altering the surface.

Chair Weathersby stated the consensus she is hearing from some of the Board is that walls being built in wetlands or wetland buffers require a variance because they are altering the surface and bringing in fill. When they come for a variance, the Board can better understand how it is being built and the impact to the wetland would be evaluated. It would then be approved or not approved.

Hearing no further discussion from the Board, Chair Weathersby called for a vote:

Has there been an error in any order, requirement, decision or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16?

Gregg Mikolaities – No
Charles Hoyt – No
Patricia Weathersby – Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes

Motion by Shawn Crapo to grant the Administrative Appeal of Matt and Natasha Goyette. Seconded by Patrick Driscoll.

Chair Weathersby stated that the findings are that variances from Section 301.8 B (1) and (7) are required.

Vote: 3-2 Opposed: Gregg Mikolaities and Charles Hoyt

Mr. Rowell addressed the Board and said that by granting the appeal you have taken away all my power as the Building Inspector what does the Board want to do.

Chair Weathersby replied stating the permit was issued in error and is null and void, he can apply for a new permit, you can deny it and explain he needs variances.

Mr. Rowell repeated that you took the power away from the building dept. when you heard this case you took the power and you can do anything you want with it. What you are saying is, they can do another application make changes to it, if they want to, and I can pass it over to the Board and you can pass it or deny it.

Chair Weathersby said he would need to apply for a variance. We do not approve or deny the building letters. You deny the permit and he would appeal your denial to this board with an application request for a variance. Then we would have a discussion about water and conservation commission can weigh in. Okay?

Mr. Rowell yes and no.

Charles Hoyt was unseated and Rob Patten was reseated.

Seated for the following application: Patricia Weathersby, Shawn Crapo, Rob Patten, Patrick Driscoll and Gregg Mikolaities

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 301.5A 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 SFHA, Zone AE. Case #02-2020.**

Matt Silva, representing the applicant, spoke to the Board. He noted that the notice says the building will go from pilings to a slab; however, there is actually a crawl space inside of that space as well. He explained that as the process of redesigning the home took place, the concept was that his clients would not be able to put the house on a foundation, which was one of their goals in this. He noted that he was not involved in the process prior to the applicants getting their original approval. When he heard that his clients' goal was to put the house on a foundation, primarily for storage, he looked at the plans. He thinks the determination by the land engineers was that soil conditions out there wouldn't support a foundation. In looking at the plans, he saw that by the way the septic system was designed and the fact that they would be berming underneath the home to put a patio, it became his opinion that just doing a foundation was the appropriate call; one for berming and two for longevity. He continued this is a seasonal home. They are only allowed to be in that home for nine months out of the year and that is part of the condition of approval. They do not have the ability to put a shed on the property. This home will be used strictly in the summertime so they are looking to store lawn furniture, kayaks and things of that nature underneath that crawl space. He continued that it is his opinion that this is a sensible change.

Member Mikolaities asked what the grade is now and what it will be going to. He noted that on the Geotech report it says that saturated soils were encountered at 1' to 2' below existing grade.

Mr. Silva stated that on that report it says when it meets resistance. It also addresses the foundation process that would be followed, which basically involves excavation and putting stone in.

Member Mikolaities asked if water will be pumped somewhere in order to keep the crawl space dry.

Mr. Silva explained that the top elevation of the slab is above what the existing grade is now. What is underneath the slab is drainable material.

Vice-Chair Crapo noted that the wetlands permit was based on the building being on piers. He asked how this change will affect the permit.

Mr. Silva replied the permit was not set for being on piers alone. It is about putting a home inside that wetland zone. The structure is not being changed, other than what is being put underneath.

Vice-Chair Crapo commented that the application that was put forward would have been for piers. He asked if there is any indication that changing it to this structure would or would not have cause a different review.

Mr. Silva replied that as a matter of opinion, he would say no. Their concern really has to do with coverage and disturbance all around the wetlands. He noted that in terms of the equipment being on the site, this would actually shorten the amount of time that heavy equipment would have to be on the job site, which would be a benefit in general.

Speaking to Chair Weathersby, Vice-Chair Crapo stated he would like to see that determination. He does not think the Board can make the determination, as to how it complies. Also, he thinks they could potentially have a notice issue because the abutters were notified of a change from piers to slab. The Board may or may not have seen abutters if they had known it was a proposed crawl space.

Mr. Silva stated the dimensions of the plan have not changed. This is not something that affects anything outside. In this particular case, vents have to be used as part of the FEMA Flood Regulations. The other alternative is the structure will be put on piers with some type of lattice skirting around the structure.

Chair Weathersby clarified if it was on a slab, it would be the slab and the house on top. This is the slab at the same elevation as it would be to put the house there with a concrete foundation of 4'. Environmentally, it is the same impact as if it were on slab and a height variance is not being requested.

Vice-Chair Crapo stated that he does not buy that it is the exact same environmentally.

Chair Weathersby clarified that she is saying that on slab, versus on slab with walls, is not an environmental difference, requiring notice change.

Member Driscoll noted the vents that have to be put in allow the water that comes in to go out in the other direction.

Referring to the June 2018 NH DES Permit, Chair Weathersby pointed out that number 1 says; "All work is in accordance with the plans by Altus Engineering, dated February 8, 2018". She asked if those plans reflect the foundation type.

Mr. Silva explained there was an original plan done for this property that was submitted, when what was intended to be built was different. The home was bigger and was on a foundation. He

continued that Altus has confirmed that the only reason they decided to stop the process of going forward with the foundation was that they assumed the soils would not be suitable, and the testing has now been done to confirm that they are.

Chair Weathersby stated that she will leave the DES Permit issue for the Building Department.

Peter Rowell, Building Inspector, stated that when the new plans came into the Building Department, it clearly showed a foundation where the approvals were for pilings. In looking at the impact of installing a foundation, it is going to be much greater than installing pilings. When a foundation is dug down 4' below existing grade, a big hole will be made and there will be a lot more impact to the marsh.

Speaking to Mr. Silva, Chair Weathersby stated that she understood that the proposed slab is above the existing grade and there would not be digging down to 4'.

Mr. Silva replied that they are digging down. The foundation plan shows they will be digging down 6' in order to put footings into the ground. He pointed out they do not have to completely excavate 6'. They have to excavate 6' into the ground where the footings will be. The top of slab is higher than existing grade.

Mr. Silva stated that in order to put pilings into the ground, the engineering report recommends digging down 16' until they meet bedrock resistance. In addition, there is septic system being designed that is simply a berm. He stated that if there was not a house out there, he would put the septic system in, as designed, and nothing would be around it. All that would be seen until the house was built, would be one big giant mound. He continued this is an area that has the potential to flood. It is not in the Velocity zone. If there is a mound out there, would that mound survive another 50 or 60 years? Instead of having that mound on its own, he is actually putting a concrete berm on one side. In his opinion, the mound will last a lot longer, than if it is just a mound sitting in the middle of nothing. Driving pilings into the ground is a process that takes several days or even weeks. A piece of equipment that is driving the hydraulic pressure is essentially just pumping water out of that "sponge" and getting the water to rise the entire time. He noted that super vents will be used to make sure this does not become a pond inside the building. If the house were on pilings, there would be some type of lattice with the house held up with piers. If there was 3' of water running through the property, having it locked inside a concrete foundation is a much safer bet for the house and anything that exists underneath that property. He commented that a foundation can go in within a matter of a few days. It would be one day with a small piece of equipment versus multiple days with an extremely large piece of equipment driving extremely large pieces of material into the ground.

Chair Weathersby stated she is envisioning a house on pilings, a lot of water and flooding occasionally. Water would be moving underneath the pilings. The foundation would be blocking and changing the movement of the water. She is trying to understand how this would be better for the wetland.

Mr. Silva replied that water is a leveler. The water table just rises. It doesn't rise higher on the north side of a house versus the south side because the water just rises.

Chair Weathersby commented that would be assuming it is coming from groundwater.

Mr. Silva agreed. He continued that in this particular case the house is being secured to something that prevents an uplift. It will be secured to a foundation. There is really nothing that is going to get underneath that house.

Chair Weathersby noted that wetland relief is being requested. She is trying to understand how it would be better for the wetland than what was approved.

Mr. Silva stated that his answer to that would be the longevity concern. The time it takes to put this foundation in versus putting piers in. Also, if every time there is something that can deteriorate the mound where the septic system is held, there is a risk of having to replace that septic system.

Vice-Chair Crapo stated the wetland permits reference a certain set of plans. He commented it might be different if these set of plans went in. He thinks there needs to be a condition upon getting the DES Permits.

Mr. Silva summarized that piers will be a lot more impactful and have a greater disturbance. His company builds zero energy homes and they look at ways to not impact the environment. The time on site, because of the way the house can be built, is overall far less if it is able to be built this way. He thinks it is in the best interest.

Mr. Rowell stated that if they get a velocity flow out there, the foundation will become a detriment because the water will scour around the foundation and wash away the soil next to the foundation. If it is on piers, the water will flow underneath through the breakaway panels. He continued the septic system was designed to be put in that area with the mound. He is not saying that the foundation will not work during a flood event. The cellar hole is going to fill with water, the flood vents will allow the water to run in, up to the level of the flood, and run back out again just like the piers. He reiterated that he thinks the piers would be less detrimental to the wetlands and better for the flooding.

Chair Weathersby noted a letter was received from the Rye Conservation Commission indicating that they had no objection to the change in the type of supporting structure that is proposed. They believe the construction process will be less impactful to the site.

Suzanne McFarland, on behalf of the Conservation Commission, stated that the Commission had a hard time with this. The Commission had to base some of their recommendations on the fact that they were being given new information that is not their field of study. The way the proposal was presented, the Commission felt it was less impactful.

Speaking to Mr. Rowell, Chair Weathersby asked what kind of engineering study would be required.

Mr. Rowell replied a Geotech study which would show the subgrades and ledge. The study also helps the engineer in designing the foundation because he knows what the soils are and how much they have to dig.

Chair Weathersby opened to the public for comments or questions. Hearing none, she closed the public session at 8:49 p.m.

Member Mikolaities stated he does not agree there is less environmental impact. The house is so small that in half a day four pilings could be put in and be done. That crawl space is going to continue to flood, but as long as there is no mechanical pumping, it does not matter to him one way or the other. It is the same height, size and volume that has already been approved. He doesn't agree with all the arguments, but it is not enough for him to say "no".

Vice-Chair Crapo asked what the existing house is on.

Mr. Silva replied it is just on concrete blocks.

Vice-Chair Crapo stated he remembers this original application. He is pretty sure that part of the discussion was that if granite was hit, the pilings would need to be as deep. He understands that they cannot hold this up for the whole wetland permit but in looking at the whole application, it becomes part of the picture. The pilings and footprint disturbance were part of his evaluation to allow it. He feels this is not an expansion of the existing approval. It undoes it.

Member Patten stated he agrees with Member Mikolaities. He does not buy all the arguments that it is less impactful, but it is not enough of a change to be disagreeable to.

Member Driscoll agreed. He continued the smart vents work great. However, the one thing he is struggling with is part of the reason they want to do this is for storage. What is going to happen if they store a bunch of stuff in there, water comes in and the storage blocks the outflow of the smart vents. Then everything is moot. In thinking about the health of the home and the health of the area, that is a big concern.

Vice-Chair Crapo asked if they can condition this based on the State reviewing the new plan and signing off. He would prefer to wait on his decision and see something from the State on whether or not they feel that this will impact the wetlands.

Motion by Shawn Crapo to continue to get a letter or permit ruling from DES. Failed due to lack of a second.

Chair Weathersby stated she thinks this will be more impactful to the wetlands than the pilings. The construction process may be slightly less impactful, but not greatly. She thinks the long-term impact will be greater with a foundation.

Vice-Chair Crapo stated that in order to vote favorably, the Board has to determine that it is hardship to not do it this way.

Member Patten pointed out that having the berm around the septic seems to be a better solution than just having it sitting out there. What is worse for the environment? If there is a catastrophic flood and there is scouring around the foundation, what becomes of the septic system? Having a structure and some additional berming may hold the whole thing together a bit better. Granted, pilings seem pretty clean and water goes right through. On the other hand, if there is the opportunity to reinforce the ground around the septic, it would seem to make sense.

Vice-Chair Crapo stated the flooding is going to raise. It is going to affect the septic, whether there is concrete next to it or not. In the extreme there was scouring, he could see that it would potentially actually eat away the slope of the septic more than if water was just coming through the pilings.

Speaking to Member Mikolaities, Chair Weathersby commented that he is a professional engineer. She asked if his thought is this is not going to make an environmental impact.

Member Mikolaities stated that if this were a 4,000sf house he would have a different opinion. The house is 400sf and there is going to be a week and a half of excavation and putting in a foundation. His whole statement is based on 400sf.

Vice-Chair Crapo asked he thinks it is going to matter to the State when they see the new plans.

Member Mikolaities pointed out everything is unique. This is a unique discussion on this lot.

Chair Weathersby stated that the Building Inspector is going to be sure the DES Permits are valid.

Member Mikolaities stated his biggest concern is mechanical pumping long-term.

Chair Weathersby stated that can be made a condition.

Chair Weathersby confirmed the conditions of the first approval are still valid:

- Native species
- Silt sock along the driveway
- Erosion control measures on the plans
- Working with town officials to manage construction vehicles during construction parking on the property.

- Patio being installed remains pervious

Member Driscoll stated that he would ask for an updated erosion control plan.

**With the conditions; no post-construction dewatering and updated erosion control plan;
Chair Weathersby called for a vote on variances to Section 603.1, 603.2, 301.8 B(10 and
301.8 B(7):**

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

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten - Yes

2. The spirit of the ordinance is observed?

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes

3. Substantial justice is done?

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten - Yes

4. The values of surrounding properties are not diminished?

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten - Yes

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

Gregg Mikolaities - Yes

Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten - 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?**

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten - Yes

- 7. The purposed use is a reasonable one?**

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes

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

Gregg Mikolaities - Yes
Patricia Weathersby - Yes
Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten - Yes

Motion by Patricia Weathersby to grant relief from 603.2, 603.1, 301.8 B(1) and (7) for the removal, rebuild and expansion of the dwelling conditioned upon there being no post-construction dewatering and the Building Inspector be provided an updated erosion control plan. Seconded by Shawn Crapo. All in favor.

- 5. Judd & Kathy Gregg for property owned and located at 67 Harbor Road, Tax Map 9.2, Lot 5 & 16, request variances from Section 603.2 for expansion of a non-conforming structure on a non-conforming lot; from Sections 301.8 B(1)(3) & (7) for site renovations within the 100' wetland buffer; and from Section 203.3C 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 #03-2020.**

Corey Colwell, TF Moran, presented to the Board. He stated that the applicants recently purchased a home at 67 Harbor Road and is currently in the process of interior renovations. The applicants are also planning some exterior renovations to the site and a few exterior renovations to the home. The property is 2.7 acres in size and is located entirely within the 100ft tidal buffer zone. Harbor Road is a public road up to the property line. From the property line and running through, it is a private road. The private road serves four more homes beyond the Gregg's property. All of the homes and most of the paved surface are in the tidal buffer zone from the marsh in the back. The home sits about 34' from the highest observable tide line and 40' from the tidal marsh in the back. The applicants are proposing to rebuild the first and second floor decks. The decks will be rebuilt in the same footprint as the existing decks, with the exception of a crescent bump-out added to the first-floor deck. The first-floor deck on the east side of the home will be removed and replaced with a portico and steps. On the second floor a new deck will be added, but that addition is all within the footprint of the existing home. The third improvement is a screened porch on the southeast corner of the home. There is an existing deck in the location of the proposed screened porch, but the area with the sitting wall around would be new. The applicants are also proposing a pergola over the existing concrete patio. This does not require any relief. They are also proposing a generator and propane tank. There is an existing generator to the home. A stonewall is being proposed for the uplands portion of the property to act as a barrier to the tidal marsh. The entire back of the property is pavement and it goes right into the tidal marsh. To delineate that edge and give the marsh more protection, the stonewall is being proposed to run along the edge of the tidal marsh. Lastly, they will be removing about 2276sf of pavement and replacing it with grass. There is 3125sf of pavement being removed and being replaced with crushed stone. There is also an area that is currently pavement and would be replaced with pervious pavers that would serve as a couple of parking spots and provide access to the garage at the basement level. The total pavement to be removed is about 6300sf. The impervious coverage is being reduced from 8.7% down to 8%, where 15% is allowed.

Mr. Colwell continued that to complete the improvements two variances are necessary. First, a variance to Section 301.8 B, for site renovations within the 100' buffer. It also requires a variance to Section 203.3C for the expansion of the first-floor deck for a small section of the stairs and a section of the screened porch to be in the front yard setback. Even though Harbor Road is private, the ordinance measures the front setback from a public or private right-of-way. Therefore, the front yard setback runs right through the middle of the house. Since a variance to Section 301.8 B is needed, the application is required to have Conservation Commission input. In January the plans were presented to the commission and a site walk was completed. A summary of the site walk was issued to this Board stating that the Rye Conservation Commission believes the project is generally well designed but had some recommendations; (1) To relocate the generator and propane tank to the south side of the lot, which would provide greater protection to the marsh from any accident involving those utilities. He noted that they had initially proposed the propane tank on the back side of the shed. The Commission felt that was close to the tidal marsh and asked if it could be relocated. The applicants have agreed. The generator would be placed just inside an existing stonewall. The propane tank will be relocated to the lawn area between the existing leachfield and Harbor Road. (2) To plant native salt

tolerant plants and grasses along the existing seawall to assist in minimizing erosion from tidal events. The applicant agrees and concurs to do those plantings.

Charles Hoyt, Architect, reviewed the proposal on the plan for the Board.

Mr. Colwell reviewed the criteria for granting the variances:

- Granting the ordinance would not be contrary to the public interest and the spirit of the ordinance would be observed because there would be a reduction in impact to the wetlands by removing and replacing these impervious surfaces, which will improve the infiltration of stormwater runoff. It helps the wetlands buffer. The minor expansions of the existing house will not diminish the health, safety and general welfare of the community. The site gets better. The environment gets better post construction, primarily because impervious area is being reduced by 6,300sf. With regards to the front setback, there are no direct abutters to the front that would be affected. Granting relief from the front setback would not create any harm or affect the abutters or the general public. Further, the existing building already exists in the front setback and the small additions really have no effect on that front yard setback.
- The value of surrounding properties are not diminished. The existing house only has two neighboring houses to it. The improvements to the westerly side of the property are well within the side yard setbacks. The expansions on the east side are the window overhang and a small portion of steps, which will have no detrimental impact to the abutter on that side. The proposed improvements will not create a burden on abutting properties and the removal and replacement of pavement improves the infiltration of stormwater runoff. The renovations will be an aesthetic improvement to the property and the neighborhood, which increases the value of the property and surrounding properties.
- Literal enforcement of the ordinance would result in an unnecessary hardship because there are special conditions of the property that distinguish it from other properties in that area. This parcel is almost entirely within the town's 100' wetland setback. Applying the state and town setback, the entire parcel is within the setback. Nothing can be done on this property without relief from the wetland's variance. The expansions being proposed are very minimal. The improvements have a positive effect on the wetlands with the reduction of 6300sf of impervious surface, which reduces the runoff. This project reduces the impact of stormwater runoff to the resource and the expansion of the existing building does not negatively affect the community or the abutters. For those reasons, there is no fair and substantial relationship between the purpose of the ordinance and the provision of the specific application of that provision to this property.
- The proposed use is reasonable because the existing use of the property, and all the properties in this area, is single-family residence. This will remain a single-family residence with modest expansions, which is a reasonable use.

Chair Weathersby asked if there will be any impact on the septic system.

Mr. Colwell pointed out the location of the existing system on the plan before the Board. The system is functioning and there are no problems with it today. He pointed out the area on the plan that would be suitable for another system if the existing system were to fail.

Chair Weathersby asked about State permits.

Mr. Colwell replied that the application for those permits have been started but have not yet been filed, as he was waiting on the outcome of the variances.

Member Driscoll asked about the construction of the stonewall on the wetland side.

Mr. Colwell explained the stonewall has to be built on grade. The purpose is to protect the marsh by delineating between where the uplands end and the marsh begins. He commented it is up to the Board on whether it requires relief.

Chair Weathersby pointed out that relief from 301.8 B(1)(3) and (7) has been requested for site improvements.

Mr. Cowell noted that the site improvements, as shown on the plans, are what they are requesting relief from.

Chair Weathersby opened to the public for comments.

Suzanne McFarland, on behalf of the Conservation Commission, stated the Commission did not write the entire recommendations for the stonewall on purpose because this property is being invaded by phragmites. It was not written into the recommendations but it was suggested on the site walk that they look into phragmites mitigation because it is going to encroach into the land and the stonewall that is going to be built.

Chair Weathersby noted letters received in support of the proposal from:

- Phil and Mae Winslow, 100 Harbor Road
- Scott Laing, 140 Harbor Road
- Jeanne Varney, 94 Harbor Road

Hearing no further comments, Chair Weathersby closed the public hearing at 9:39 p.m.

Member Mikolaities stated he does not have any problems with the proposal. It is tastefully done.

Chair Weathersby agreed. She commented there are no negative effects and great positive effects. The front yard setback is still 15' away and it is a low travelled road.

Member Driscoll stated the application seems very well thought out and the design is very attractive. It looks like a great addition to the neighborhood.

Chair Weathersby reviewed proposed conditions;

- Updated plans to Building Inspector showing relocation of generator and tank to the lawn area on the south side; and
- Native plantings.

Speaking to Mr. Colwell, Chair Weathersby stated that a variance was requested from 603.2 but she believes it should be 603.1.

Mr. Colwell replied the variances that were requested were directly from the Building Inspector's letter dated December 10th. He identified two variances that were needed; 203.3 C and 301.38 B.

Chair Weathersby stated the application is for 603.2 as well, but it should be for 603.1. She also determined that 301.8 B (3) was not needed, as the wall is not in the tidal wetland but is in the tidal buffer.

Mr. Colwell stated that he would concur that relief from 301.8 B (3) is not needed because that is purely has to do with work in tidal wetlands and nothing is being proposed for tidal wetlands.

Chair Weathersby called for a vote on variances to Sections 603.1, 203.3 C, 301.8 B (1) and (7);

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll – Yes

Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – 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
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

7. The purposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Patricia Weathersby – Yes

Motion by Rob Patten to approve the Judd and Kathy Gregg for property owned and located at 67 Harbor Road for variances from Sections 603.1, 301.8 B (1) and (7), and 203.3C; with the conditions of an updated site plan showing the relocation of the propane

tanks and generator and native plantings, as recommended by the Rye Conservation Commission. Seconded by Shawn Crapo. All in favor.

Motion by Shawn Crapo to continue the application of Joseph and Jane Wahl to the March meeting. Seconded by Patricia Weathersby. All in favor.

Note: Patrick Driscoll was unseated and Burt Dibble was seated for the remainder of the meeting.

Seated: Patricia Weathersby, Shawn Crapo, Rob Patten, Gregg Mikolaities and Burt Dibble

6. **Karen Brouillette Rev Trust, Karen Brouillette, Trustee for property owned and located at 14 Fairhill Ave, Tax Map 20.2, Lot 144,** request variances from Section 204.3A for a generator 16' from the rear boundary where 25.5' exists and 26.2' is required and from Section 204.3B for a second floor deck 13.7' from the side boundary where 17.7' exists and 20' is required. **Property is in the General Residential and Coastal Overlay District. Case #04-2020.**

Attorney John Ratigan, representing the applicant, spoke to the Board. He explained the first variance requested is to allow the placement of the generator at the rear of the house. The second variance is to allow the connection of an existing porch with a porch over the garage. The porch will not be connected on the ground so there will be no impact on the land and impervious surface.

Gary Densen, Densen Construction, stated that all conditions of the Rye Conservation Commission were met for the certificate of occupancy, except for one condition. He explained the garage is under construction now. All the plantings were done on the whole site. The only thing that will have to be done after construction is the stone drip edge along both sides of the garage and any disturbed areas around the foundation will need to be seeded. He reviewed the proposal for the porch on the plans for the Board. He also showed the location for the generator and propane tanks.

Attorney Ratigan reviewed the setbacks for the proposed generator and second floor deck.

Vice-Chair Crapo stated the deck is towards the rear of the garage. The side of the garage, where there is no deck, is where the dimension on the plan is showing 13.7'. Back near the deck, the only dimension on the plan is 27.4' to the corner of the existing house. He asked if all the proper measurements have been made for the setbacks.

Attorney Ratigan stated they measured it at 13.7'. Because the garage is not straight, that is the closest point.

Vice-Chair Crapo pointed out that is to the corner of the garage. The porch is going to be further back.

Attorney Ratigan confirmed. The porch could actually be 14.7' or 15.7' because the garage is more angled than the lot.

Vice-Chair Crapo stated they need to be more accurate with the exact distance of the edge of the corner of the new deck to the lot line.

Attorney Ratigan stated that it is correct that they do not know that information but it would be greater than 13.7'.

Chair Weathersby noted the Board does not want to give a variance for 13.7'.

Attorney Ratigan stated that it could be said the width of the deck not to exceed 4', so the width of the deck would be the control. He commented it would be less than 13.7'.

Chair Weathersby stated they can continue the application for the exact measurement or base it off the plan. She reiterated they can reference the plan. She would be more comfortable having the dimension for the setback, as they are asking for setback relief.

After some review of the plan, it was determined the relief should be 16' +/- for a deck as presented on the plan.

Chair Weathersby opened to the public for comments.

Carmen Place, 11 Fairhill Ave., spoke in support of the proposal.

Chair Weathersby noted if this is approved it should be clear that it is for a second-floor cantilever deck, as shown on the plans.

The public session was closed at 10:16 p.m.

Chair Weathersby called for a vote on variances to Sections 204.3 A and 204.3 B:

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

Shawn Crapo – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes

Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Burt Dibble - 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
Gregg Mikolaities – Yes
Burt Dibble - 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
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The purposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes

Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Karen Brouillette Rev Trust for property owned and located at 14 Fairhill Ave for variances to Section 204.3A for a generator 16' from the rear boundary and Section 204.3B for a second floor cantilever deck 16' +/- from the side boundary; in accordance with Plan Revision 8 dated January 10, 2020. Seconded by Shawn Crapo. All in favor.

- 7. Joseph and Jane Wahl for property owned and located at 146 Perkins Road, Tax Map 5.2, Lot 186, request variances from Section 204.3A for steps 11.5' and a deck 14.5' from the rear boundary where 27.2' exists and 25' is required; from Section 204.3B for a house 18.7' from the east side boundary where 15.2' exists and 20' is required and for a generator pad 11.3' and bulkhead 12.4' from the west side boundary where 27.9 exists and 20' is required; from Section 204.3C for stairs 27.2' and a house 28.8' from the front boundary where 25.1' exists and 30' is required; from Section 204.3E for impervious coverage of 30.8% where 23.4% exists and 30% is required; and from Section 603.2 for demolition of a non-conforming structure and replacing it with new. Property is in the General Residence, Coastal Overlay District. Case #05-2020.**

- Continued to the March meeting.

IV. OTHER

- An Invitation to Participate in Rye Day – Sunday, September 27, 2020

The Board discussed the possibility of participating in Rye Day, which is being held on September 27, 2020. It was agreed that booth or table participation is not really a fit for the Zoning Board; however, members may volunteer and will certainly attend if able. Chair Weathersby will follow up with response to the Rye Day Committee.

ADJOURNMENT

Motion by Shawn Crapo to adjourn at 10:35 p.m. Seconded by Rob Patten. 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

The Board voted 5 to 0 to adopt the following:

§ 1. Acceptance of codified rules.

The Board of Adjustment Rules of Procedure, as renumbered, revised and codified as Chapter 200 of the Code of the Town of Rye, are hereby approved, provided the March 10, 2020 Town Meeting adopts the new Town Code.

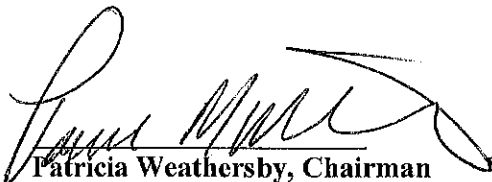
§ 2. Continuation of existing provisions.

The provisions of Chapter 200, insofar as they are substantively the same as those of rules in force immediately prior to the preparation of the Town Code, are intended as a continuation of such rules and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior rule. All such provisions are hereby continued in full force and effect and are hereby reaffirmed as to their adoption by the Board of Adjustment, and it is the intention of said Board that each such provision contained in this chapter is hereby reaffirmed as it appears in the Code.

§ 3. Changes in previously adopted rules.

The following changes, amendments or revisions are made herewith, to become effective upon the effective date of this enactment. (Chapter and section number references are to the rules as they have been renumbered and appear in the Code.)

- A. Throughout Chapter 200, the title "Zoning Board of Adjustment" is amended to "Board of Adjustment"; the title "Chairman" is amended to "Chair"; and the titles "Zoning and Planning Administrator" and "Zoning Administrator" are amended to "Planning and Zoning Administrator."
- B. Section 200-8B(1)(a) is amended as follows: "(If the application requires relief from the ~~wetland~~ ordinances Wetlands Conservation District, the applicant is required to attend a Conservation Commission meeting for its opinion first.)"
- C. Section 200-8D is amended as follows: "The applicant shall pay the cost of such sign(s) to the Rye ~~Zoning and Planning Board~~ Board of Adjustment at the time their application for relief is submitted."



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: Marc Grondahl Rev Trust of
1 Bayside Road, Suite 106, Greenland, NH

Property: 314 Brackett Road, Tax Map 19, Lot 136
Property is in the Single Residence District

Application case: Case #45-2019

Date of decision: February 5, 2020

Decision: The Board voted 5-0 to continue the application to the March 4, 2020 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

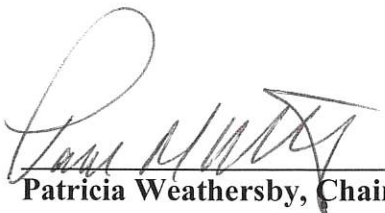
Applicant: Matt & Natasha Goyette of 750 Brackett Road

Property: 0 Brackett Road, Tax Map 17, Lot 65
Property is in the Single Residence District

Application case: Case #45-2019

Date of decision: ~~January 8, 2020~~ February 5, 2020

Decision: The Board voted 3-2 that the fence permit for a proposed stonewall to be built in the wetlands buffer at 0 (720) Brackett Road, Tax Map 17, Lot 65 was issued in error as a variance from Zoning Ordinance Sections 301.8 B.1 and 301.8 B 7 is a necessary prerequisite for the 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: Matt Silva of Profile Homes

Owner: Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of
21 Whippoorwill Drive, Newton, NH

Property: 140 Harbor Rd, Tax Map 9.2, Lot 17
Property is in the Single Residence District, Coastal Overlay
and SFHA, Zone AE

Application case: Case # 02-2020

Date of decision: February 5, 2020

Decision: The Board voted 5-0 to grant variances from the following sections of the
Rye Zoning Ordinance to enable the proposed home to be built on-slab
with footings rather than on pilings:

- Section 603.1 and 603.2 to expand a non-conforming structure;
and
- Section 301.8 B (1) & 301.8 B (7) for expansion of a dwelling
14.8' from the tidal marsh and 19.6' from the wetlands.

Each variance was granted upon continued compliance with the following
conditions:

1. The applicant submits a new erosion control plan to the building
inspector for review and inspection; and
2. There be no post-construction de-watering.


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:

Judd & Kathy Gregg

Property:

67 Harbor Road, Tax Map 9.2, Lots 5 & 16
Property is in the Single Residence District, Coastal Overlay
and SFHA, Zone VE (Elv 16') and A (Elv9').

Application case:

Case # 03-2020

Date of decision:

February 5, 2020


Decision:

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

- Section 603.1 to expand a non-conforming structure;
- Section 301.8 B (1) & (7) for site renovations within the 100' wetlands buffer; and
- Section 203.3 C for the expansion of the first floor deck 15.1' from the front boundary.

Each variance was granted upon the following conditions:

1. An updated site plan be submitted to the Town reflecting the changed location of the propane tank and the generator to the lawn on the south side of the lot; and
2. Plantings of native, salt tolerant plants and grasses be made and maintained along the length of the seawall per the 1-29-2020 letter of the Rye Conservation Commission.



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: Karen Brouillette Rev Trust, Karen Brouillette, Trustee

Property: 14 Fairhill Ave, Tax Map 20.2, lot 144
Property is in the General Residence District and Coastal Overlay

Application case: Case # 04-2020

Date of decision: February 5, 2020

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

- Section 204.3 A for a generator 16' from the rear boundary; and
- Section 204.3B for a second-floor cantilevered deck 16'+/- from the side boundary built in accordance to FSM drawings dated 01/10/2020 (rev 8).



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

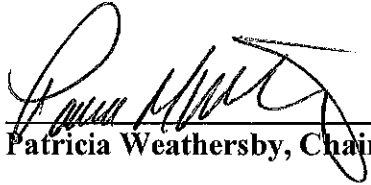
Applicant/Owner: Joseph & Jane Wahl

Property: 146 Perkins Road, Tax Map 5.2, Lot 186
Property is in the General Residence District and Coastal Overlay

Application case: Case # 05-2020

Date of decision: February 5, 2020

Decision: The Board voted 5-0 to continue the application to the March 4, 2020 mee3ting.



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.