

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

**Wednesday, March 4, 2020**

**7:00 p.m. – Rye Town Hall**

*Members Present: Acting-Chair Shawn Crapo, Burt Dibble, Rob Patten and Charles Hoyt*

*Also Present: Planning/Zoning Administrator Kimberly Reed*

*Note: Shawn Crapo sat as acting-chair for Patricia Weathersby for the meeting.*

*The applications at this meeting were presented to a four-member board with no objections from those who presented.*

**I. CALL TO ORDER**

Acting-Chair Crapo called the meeting to order at 7:00 p.m. and led the pledge of allegiance.

**Continuances:**

The applicants for the property located at 2257 Ocean Boulevard requested to be continued in order to be heard by a full member board.

**Motion by Rob Patten to continue the application of Paul and Helen Kehas to the April 1, 2020 meeting. Seconded by Charles Hoyt. All in favor.**

**II. BUSINESS**

- Approval of February 11, 2020 meeting minutes

**Motion by Rob Patten to approve the minutes as presented. Seconded by Burt Dibble. All in favor.**

**III. APPLICATIONS**

1. ~~Mare 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.~~

- Withdrawn

2. ~~March 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 variance to Sections 301.8.B(5)(b)(2) for surface alteration and removal of 51 trees total (43 in buffer, 8 in the 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.~~

- **Withdrawn**

3. **Joseph & Jane Wahl for property owned and located at 146 Perkins Road, Tax Map 5.2, Lot 186, request variances from Section 603.2 for demolition of a non-conforming structure and replacing it with new; 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', bulkhead 12.4' and house 18.8' 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; and from section 204.3E for impervious coverage of 30.8% where 23.4% exists and 30% is required. Property is in the General Residence, Coastal Overlay District. Case #05-2020.**

**Attorney Tim Phoenix, representing the applicants,** presented to the Board. He noted that there are a number of letters from abutters in favor of the proposal; Tom and Mary Jane Keane, 135 Perkins Road; David and Michelle Mullen, 149 Perkins Road; Mark and Nancy Frechette, 136 Perkins Road; and Steve and Kathy Hesser, 2 McLaughlin Drive. He noted there is also a letter from Neil Ingerman, 150 Perkins Road, who lives next door to the Wahls. The original plan shows a propane tank and generator on Mr. Ingerman's side of the property. In working with Mr. Ingerman, the Wahls have agreed to move those to the other side of the house and the generator would be compliant. He noted that he had the plan with him, which shows very minor changes. Also, the plan submitted did not show the location of the chimney on the right side. The chimney is further from the lot line than the bulkhead.

Acting-Chair Crapo asked for the plan with the minor changes to be submitted. The plan that the Board will be voting on is the one being submitted and presented at this meeting. He asked if the generator pad relief is being struck from the notice.

Attorney Phoenix confirmed. He continued that the lot is 10,000sf with 100ft of frontage. The lot is from two merged lots, which were part of Myrica by the Sea. The neighborhood has a number of similarly sized lots. He continued that there is a small house on the lot that has some challenges and the Wahls want to replace it. Behind the lot, there are several undeveloped landlocked lots. (He reviewed the existing conditions versus the proposed home on the plans. He also pointed out the generator location and the chimney location on the plan.) He stated that the generator is compliant and within the setbacks. The propane tank is buried and does not require any relief. The chimney is a little closer than the eave of the house but is further away from the lot line than the bulkhead.

Attorney Phoenix stated that a deck with steps is proposed in the rear of the house. The rear yard setback requirement is 25'. The existing setback in the rear is 27.2'. The request is for 11.5' to the steps and 14.5' for the deck. The house itself complies with the setback. With respect to the side yard setbacks, on the left 20' is required. The existing setback is 15.2' and 18.7' is proposed. The distance is about 2.5' further from the left side lot line than existing conditions. On the right side, 20' is required and 27.9' exists. The bulkhead is at 12.4', the chimney is 18.3' and the house is 18.8'. The setbacks for the house on both sides are to the eave with the actual wall being at 20'. He continued that the overall impervious coverage requirement is 30%. The proposal is for impervious coverage at 30.8%. He stated that virtually all the neighbors, including Mr. Ingerman, are okay with the proposal.

Attorney Phoenix reviewed the criteria for granting the variances.

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The test is whether the variances will unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives, mere conflict is not enough. The purposes are to lessen congestion in the streets, secure safety from fire, panic and other dangers. This is a single-family home, which will be to code. With regards to promoting health and general welfare, the front yard setback will actually be increased. The primary violation is a deck in the back where there is nobody behind them. Promote adequate light and air. The walls are essentially compliant. The overhangs have an issue. The coverage is just over 30%. Prevent the overcrowding of land. This house does not overcrowd the land. Avoid concentration of population. Facilitate solid waste, water and sewer. This home is on town water and sewer. Assure proper use of natural resources. The relief being requested is minimal. Will granting the variances alter the essential character of the locality or threaten the public health, safety or welfare? There are numerous small lots in the area. Over time, the cottages have come down and people have built year-round homes and that is what is happening here. This is going to fit in to the character of the locality and not alter it. These minor variances for a brand new house are not going to threaten the public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. The neighbors would not be sending letters of support if they thought that it would diminish their property values. The value of this property will be increased by a slightly larger new home. This is a reasonable use of the building envelope and there is not going to be a diminishing of property values.
- Special conditions exist that distinguish the property from others in the area. This is a 10,000sf lot with just 100ft of lot width. The lot has a very small building envelope. The size of the lot and small building envelope create special conditions.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Yard requirements are intended to ensure adequate space between neighbors, air and light. The side setbacks are at the top of the eave or very low at the bulkhead. The rear setback is very low at the deck. The coverage overage is very slight.
- 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. In this case, with the support of the neighbors and the amount of minor relief that is being requested, there is no benefit to the public in denying these variances. Denying them would do harm to the Wahls because they would have to go to a complete redesign, where it is not really necessary, given the location of the home, the improvements that need relief and the location of the deck that abuts landlocked land.

Acting-Chair Crapo noted that Sheet C-1 references a paper street and there is a lot behind this property. He asked if that is an active paper street.

**Paul Dobberstein, Ambit Engineering**, explained that it is an unconstructed paper street. It has reverted back to the abutters because it was not constructed within 20 years of being platted or accepted by the Town.

Acting-Chair Crapo opened to the public.

**Tom Keane, 135 Perkins Road**, stated that he and his wife support the application without any reservations.

**Mark Frechette, 136 Perkins Road**, spoke in support for himself and his wife.

**Neil Ingerman, 150 Perkins Road**, spoke in support.

Hearing no further comments, Acting-Chair Crapo closed the public hearing at 7:27 p.m.

Member Patten stated that what has been done is very tasteful.

Member Hoyt commented it is replacing a tiny house with a small house.

Acting-Chair Crapo stated it is an area where water is an issue. However, he does not see the deck as being the tipping point in causing a travesty in water absorption on the lot.

Member Dibble commented that the lot looks to be level and there would not be an issue with water running off the property.

**Acting-Chair Crapo called for a vote on variances from Sections 603.2, 204.3A, 204.3B, 204.3C and 204.3E:**

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

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - Yes

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

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

**3) Substantial justice is done?**

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

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

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

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

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

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

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

Rob Patten – Yes  
Burt Dibble – Yes  
Charles Hoyt – Yes

Shawn Crapo - Yes

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

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - Yes

**Motion by Burt Dibble to approve the application of Joseph and Jane Wahl for property owned and located at 146 Perkins Road as published with the exception of the generator pad. Seconded by Charles Hoyt. All in favor.**

- 4. ~~William & Nanci Perocchi, Trustees Perocchi Family Trust of Pebble Beach, CA for property owned and located at 21 Carbee Drive, Tax Map 8.4, Lot 104, request variances from Section 603.2 for demolition of existing structure and replace with new; from Section 203.3C for a house in the front yard setback where 34.8' exists, 18.7' is proposed and 34.8' is required; from Section 304.5 and 203.3E for impervious coverage of the dwelling where 14.95% exists, 19.5% is proposed and 15% is required; for total impervious coverage where 20% exists, 26.1% is proposed and 15% is required; and from Section 500.3 for parking in the front yard setback. Property is in the Single Residence, Coastal Overlay and SFHA, zone VE (17), VE (14), X. Case #06-2020.~~**

**• Withdrawn**

- 5. Daniel & Patricia Sullivan for property owned and located at 32 Gray Court, Tax Map 5.2, Lot 89, request variances from Section 603.2 for the demolition of existing structure and replacing it with new; from Section 204.3A for a shed with a rear setback of 1.9' where 22.3' is required and for a deck with a rear setback of 20.0' where 22.3' is required; from Section 204.3B for a house with a right side setback of 9.1' where 20' is required, for a shed with a left side setback of 12.1' where 20' is required, a house with a left side setback of 10.4' where 20' is required and for stairs with an 8.8' left side setback where 20' is required, a walkway with a left side setback of 5.6' where 20' is required; from Section 304.5 for dwelling coverage of 19.5% where 15% is required and for overall coverage of 31.1% where 30% is required; and from Section 500.1 for parking spaces less than the required size of 10'x18' and from Section 500.3 for 2 parking spaces in the front set back. Property is in the General, Coastal Overlay District. **Case #07-2020.****

**Attorney Tim Phoenix, representing the applicants,** presented to the Board. He noted that the lot is 5,323sf with an existing 774sf single story beach house and a 67sf shed. Rye Zoning Ordinance Section 204.3E requires that a house have a minimum of 960sf. The existing house only has 774sf. As the house is today, it violates the zoning ordinance. He pointed out that the 67sf shed is staying and is not changing. The frontage on the lot is only about 60'. When

applying the side setbacks of 20' each, there is only about a 20' building envelope. The applicants had a house designed that respects the small size of the lot, while trying to give them a reasonable amount of living area. The existing cottage will be removed and a new reasonably sized two-story home will be built. The new home does not have a garage and the shed will remain in the same location. He stated that the existing deck is 21.5' from the rear lot line. As proposed it is 20' which is only 1.5' closer to the lot line. On the right side, the stairs are at 10.5' and the eave is 9.1' with the wall of the house at 10.1'. On the east side, the shed that is remaining is at 12.1' and the existing house is at 12.5'. The proposal is for 10.4' to the eave and 11.4' for the house, which is about 1' closer to the lot line than existing. He pointed out that the design tries to respect the remaining distance between the house and the other lots.

Attorney Phoenix stated that the permitted dwelling coverage is 15%. The existing home at 774sf, which does not meet the ordinance of 960sf, is at 14.5%. The proposal is for a footprint of 1,040sf, which takes the dwelling coverage to 19.5%. The overall coverage is currently 33.4%, where 30% is permitted. With the removal of some impervious surface, the proposal will bring the overall coverage to 31.1%. With regards to the parking spaces, there is really no place to put the parking, except for in the front and/or on the side. Because of the size of the lot and the location of the house, it is hard to get parking spaces which meet the 10'x18' requirement. The parking is a condition that is really not changing from what is there today. He reviewed the criteria for granting the variances:

- In regards to public interest and spirit of the ordinance, the test is whether the variances unduly and to a marked degree conflict with the ordinance such that they violate the ordinances basic zoning objectives. In looking at congestion in the streets, it is not going to change. In regards to safety from fire, panic and other dangers, there is an existing home that probably does not meet code that is being replaced with a two-story to code home. Health and general welfare with a new home is benefited. This is a single-family home that does not overcrowd the land. There is no change to transportation or solid waste. There is no change to natural resources. Other public requirements are going to be to code. The variances are required because this is a lot that is 60' wide and only 89' deep. Given the value of land in this general area, it is not possible to construct a reasonably sized year-round home without relief. He noted that the proposal is compliant with the front yard setback and nearly compliant with the rear. The side yard setback allows this modest home to exist in a neighborhood of similar homes and lots. In looking at the lots in the neighborhood, many have parking in the front yard because of the way the lots were created.
- Granting the variances will not diminish surrounding property values. The property is being beautified and it is a nicer home than what is there today. The setback and coverage relief are minor. The rear yard setback is only for an open deck. The value of this property will be increased and no values of surrounding properties will be diminished.
- Special conditions exist that distinguish the property from others in the area. This is a 5,000sf lot with only 60' of frontage and less than 90' of depth, which comprise special conditions.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Yard requirements are intended to ensure adequate

space between neighbors, air, light and to provide for stormwater management. The coverage requirements prohibit over bulking. The proposal is slightly over on coverage but it is an improvement to existing coverage. The setbacks to the walls are very close to what is there today.

- 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 public, is an injustice. In this instance, denying the variances leaves the owners with a very small lot and a very small home, which is not reasonable or fair. The current home violates the lot coverage and that will be slightly improved with the proposal. The variance requests are very minor and there is no harm to the public in granting them. Denying the variances would require a whole new redesign or it would stay the way it is, which would be unfair to the owners.

**Daniel Sullivan, applicant**, stated that the home has been in his family for over fifty years. It has been his dream to take this modest home and bring it to the 21<sup>st</sup> Century, which he feels will give back to the community as well.

Member Hoyt commented this is going from a teeny tiny house to tiny.

Acting-Chair Crapo opened to the public for comments. He noted that letters of support were received from; Rosemary Roach, 21 Gray Court; Jim and Lee Gonsalves, 31 Myrica Ave; Frank Goguen, 29 Gray Court; Joan and Gary Nutter, 10 Gray Court; David and Karen Pelletier, 22 Odiorne Drive; Leroy and Joyce Snodgrass, 33 Gray Court; and Kerin and Tom Ferrin, 37 Gray Court.

**Helen Sloan, 47 Gray Court**, stated that it will be an asset to the neighborhood.

**Tom Farrelly, 18 Gray Court**, noted that he and his wife support the proposal and feel it will be an amazing improvement to the neighborhood.

**Jonathan Murphy, 28 Gray Court**, pointed out that he is a direct abutter on the east side. According to the Rye Zoning Ordinance, if possible, replacement buildings shall conform to the ordinance which it previously did not. The Board has to answer the question of whether the new design did anything further to comply with the zoning. He suspects it didn't. The new design being requested is going to be 8.8' from the property line. Instead of it getting better, it is a 30% reduction in compliance with the zoning. In addition, they are requesting a walkway that will be 5.5' from the property line. In looking at the Sullivan property from his property, he now sees a one-story low level porch with a house that rises a little bit above and it is 12.5' away. The proposal is not only closer at 8.8' but will have volume and bulk, as it is two-story. There will be a closer wall to his property. He stated that this is a small lot with a large build design. It doesn't meet the back or any of the sides and covers more of the lot. He would love to see the Sullivan's have a nice home and understands it is an old house; however, this is a 5,000sf lot. He asks that this be sent back to be designed to meet the neighborhood and the size of the lot.



Acting-Chair Crapo stated that procedurally the reason why the Board is here tonight is because they are asking for a variance from 603.2. The Board's job is to weigh their application versus the criteria for granting the variance to see if not applying that section, as worded, is appropriate or not.

Mr. Murphy stated that in taking a house that is 12.5' off the property line, they should not come back with a house that is 8.8' or 5.5' with the walkway. He would challenge the question of whether it would diminish property values. If it is going to be moved over to 8.8' and it is going to be raised, he thinks it does diminish value.

**Shane Sullivan, son to the applicants,** pointed out that the driveway is currently less than 8.8'. Right now, there is a car there. With this proposal, it would be vinyl siding. There is not much change.

Attorney Phoenix pointed out that it appears the Murphy's have a driveway that is very close to the common lot line. It looks like there is 5' or 6' between the two driveways. He has worked for the Murphys in the past and gotten variances from the Town. He thinks they know that 603.2 is one of a dozen sections of the zoning ordinance that all have to be considered in the overall circumstances. He noted that there is one neighbor, who lives next door, who is in opposition; however, there are a number of people who are very much in favor. This is pretty minor and he would ask the Board to approve the variances.

Hearing no further comments, Acting-Chair Crapo closed the public session at 7:57 p.m.

Member Hoyt stated that it bothers him that someone, in their thoughts, think they are being negatively impacted. He will have to weigh that in making a decision.

Acting-Chair Crapo asked if he feels there is enough information before him to make that decision.

Member Hoyt confirmed.

Member Dibble stated there has been testimony from the neighborhood so he is comfortable with the issue of property values. In this neighborhood there have been a number of houses changed over from single-story to two-story houses. He thinks this reasonably fits in with the evolving character of the neighborhood. While he understands that to an adjacent property it looks like more bulk on the property, he thinks it is in character with the neighborhood and is in accordance with what is evolving on Perkins Road. This is a modest increase in terms of what is there and the footprint on the ground. He addresses the bulking issue by the character of the neighborhood.

Member Patten stated that this is the way the neighborhood has evolved. In today's world, it is not necessarily practical to make something more conforming on a lot that is 5,000sf. He would love to see every neighbor in support and he has to consider the dissent of the direct abutter. At the same time, he does not think it is an egregious ask.

Acting-Chair Crapo noted that the Board members have read all the letters. Since the point of property values was brought up and that is part of what the Board looks at, he went through the letters from the neighbors. The Gonsalves letter states *"it will enhance the value of their and our property"*. Rosemary Roach's letter states *"it would not diminish the values of surrounding properties or be a detriment to the neighborhood in any way"*. The Ferrin's letter states *"it will increase property values for all of us"*. The Snodgrass's letter says *"it will add to the value of abutting homes"*. The Nutter's letter states *"it will not affect the property values of existing homes on Gray Court"*. The Goguens state *"nor will it negatively impact surrounding property values"*. He pointed out that some say it will not impact values and it seems that the sentiment of the neighborhood is that it will add.

Acting-Chair Crapo continued that in looking at Exhibit B, it will have an appearance of being closer to Mr. Murphy's property. That end of the house has no windows. Also, the property is stepped down and the bulk of it is away. His guess is that the use of Mr. Murphy's home is further away from this application. From the angle, he does not see that it affects light, air, etc. One of the biggest concerns in this neighborhood is the water and the runoff. The topography of that neighborhood and where this house is located is not really at a peak or valley. As far as receiving or shedding off water, it is kind of in a neutral area. He does not see that the additional runoff is going to detrimentally affect the neighborhood. This is a pretty level lot. On a small lot, each square footage can represent multiple percentage points and can add up quickly. He does not have any real trouble with this part of the application.

Member Patten requested to ask Mr. Murphy a question.

Acting-Chair Crapo opened to the public session for the question.

Speaking to Mr. Murphy, Member Patten asked the setback of his house to the property line.

Mr. Murphy replied that his house is at 20'.

Member Patten asked about the driveway.

Mr. Murphy replied that the driveway is roughly 3'. The property line on that side is not a straight line so it may be further away at some points.

Acting-Chair Crapo reclosed the public session at 8:05p.m. He called for a vote on variances from Sections 603.2, 204.3A, 204.3B, 304.5, 500.2 and 500.3:

**1) Granting the variances are not contrary to the public interest?**

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - Yes

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

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

**3) Substantial justice is done?**

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

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

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

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

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

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

**7) The purposed use is a reasonable one?**

Rob Patten – Yes  
Burt Dibble – Yes  
Charles Hoyt – Yes

Shawn Crapo - Yes

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

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - Yes

**Motion by Burt Dibble to approve the application of Daniel and Patricia Sullivan for property owned and located at 32 Gray Court as advertised. Seconded by Charles Hoyt. All in favor.**

- 6. Drew Pierce, Seacoast Modular Homes, Inc for Paul & Helen Kehas of 37 Paquette Ave, Manchester for property owned and located at 2257 Ocean Blvd, Tax Map 5.3, Lot 7, requests variances from Section 603.2 to tear down an existing non-conforming structure and replacing it with new; Section 30.4 for a house with a height 32' where 28' is allowed; and Section 204.3C for the house 21.44' from the Baker Ave front boundary where thirty feet is required. Property is in the General District, Coastal Overlay and SFHA, Zone AO. Case #08-2020.**
- **Continued as the applicant chose to wait to have their application heard by a full member board. (See motion above)**
- 7. Gary Wingate of 15 Sherman Street, Nashua, NH for property owned and located at 20 Oak Ave, Tax Map 5.2, Lot 70, requests variances from Section 603.1 for expansion of existing non-conforming structure; from Section 204.3A for an addition with a rear setback of 23.9' and a generator with a rear setback of 11.9' where 25.2' is required; from Section 204.3B for an addition with a side setback of 18.6' where 20' is required; and from Section 304.5 for dwelling coverage of 17.4% where 15% is required. Property is in the General Residence and Coastal Overlay District. Case #09-2020.**

**Attorney Tim Phoenix, representing the applicant,** presented to the Board. He submitted a letter of support signed by neighbors; Chris Rickey, 8 Alder Ave; Kristin Boyt, 31 Oak Ave; Matt McCann, 6 Oak Ave; Matthew Barton, 25 Oak Ave; Bradley Moira, 30 Oak Ave; and Lisa Dahl, 27 Oak Ave. He noted there is also an email from Michael and Eileen Sarson, 11 Oak Ave. He continued that the lot is 10,280sf with an existing 1,160sf home, a 137sf shed and other improvements on the property. Part of the existing house is a one-story sunroom. He explained the proposal is to remove the shed and build a garage over to the side to incorporate it into the sunroom.

**Paul Dobberstein, Ambit Engineering,** reviewed the location for the addition and the areas that are being removed on the plan before the Board.

Attorney Phoenix stated that the requirement for the rear yard setback is 25.2'. The existing shed is encroaching just under 3' and there is 21.5' to the stairs. What is being proposed for the addition is 23.9'. The existing generator is going to be moved and will be within the setback at 11.9'. The dwelling coverage is currently at 11.3% and it will be going to 17.4% for the 24'x24' garage and the living area connected in the back. The overall coverage is presently 30.3% and is going down to 27.2%. A fair amount of impervious pavement is being removed and will be replaced with permeable pavement or pavers. The rear yard setback is actually improving, although there is more bulk because it is a building instead of a stairway deck. On the right-side setback, 20' is needed and the proposal is for 18.6' to the eave and 20' to the house. The wall meets the setback but up high it is a little less than 1.5' encroaching. The dwelling is a little over 15% but the overall is almost 3% less than 30%.

**Attorney Phoenix reviewed the criteria for granting the ordinances.**

- In regards to public interest and spirit of the ordinance, the test is whether the variances unduly and to a marked degree conflict with the ordinance such that they violate the ordinances basic zoning objectives. Variances are needed because an addition for a garage can only be added to the home in its existing location. It is traditionally in the area where cars are parked anyways. Now there will be indoor parking, which is an environmental benefit. The size of the garage is pretty standard and incorporating the deck allows for storage. The proposal complies with the front and left-side setbacks and almost with the rear setback. The variances do not alter the essential character of the locality or threaten the public health, safety and welfare.
- Granting the variances will not diminish surrounding property values. These minor variances to make a house much more beautiful, livable and in keeping with the surrounding area is not going to diminish property values.
- Special conditions exist that distinguish the property from others in the area. This is a relatively small lot of 10,000sf. They are starting with the house they have and incorporating the new garage and living space into it. This creates special conditions because this is the only area that the garage could be in with the existing house.
- No fair and substantial relationship exists between the purposes of the ordinance and its application in this instance. Yard requirements are intended to ensure adequate space between neighbors, air, light and to provide for stormwater treatment. Stormwater treatment should improve here because there will be less overall impervious coverage. There is still ample distance between where the garage is located, with the overhangs, and the nearest neighbor.
- The proposed use is 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 public, is an injustice. This is for a new code compliant garage and living space with a decrease in lot coverage. Compliant front and left setbacks and nearly compliant right and rear setbacks with coverage improved. The significant change is the location of the generator and that is de minimis because of its size.

Acting-Chair Crapo opened to the public for comments or questions.

**Gary Wingate, applicant**, reiterated that he went around the neighborhood and spoke to the abutters. There were no negatives from the neighbors.

Acting-Chair Crapo asked if he spoke with the neighbors who would be most affected by the generator.

Mr. Wingate explained that he had to go before the BOA to put the generator in and all the neighbors approved it at that time. This is taking the same generator and just moving it out. He noted that he went to that neighbor and she had asked for the information to be mailed to her. He has not heard from the neighbor since that time.

Hearing no further comments, Acting-Chair Crapo closed the public hearing at 8:25 p.m.

The Board did not express any issues or concerns.

Acting-Chair Crapo called for a vote on variances from Sections 603.1, 204.3A, 204.3B and 304.5:

**1) Granting the variance is not contrary to the public interest?**

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

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

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

**3) Substantial justice is done?**

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

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

Rob Patten – Yes  
Burt Dibble – Yes  
Charles Hoyt – Yes

Shawn Crapo - Yes

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

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

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

**7) The purposed use is a reasonable one?**

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

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

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

**Motion by Burt Dibble to approve the application of Gary Wingate for property owned and located at 20 Oak Avenue as advertised. Seconded by Charles Hoyt. All in favor.**

- 8. Ashbrook Properties, LLC of 277 Middle Road, Portsmouth NH for property owned and located at 381 Sagamore Road, Tax Map 19, Lot 61, requests variances from Section 603.2 for expansion of non-conforming structure; and from Section 301.8 B(1), 301.8 B (5)(b)(2) and 301.8 B for repair of a garage located in the wetlands buffer, adding of ¾” of crushed stone fill and additional gravel base within the wetlands buffer and removal of 4 trees greater than 4.5” in diameter within the wetlands buffer. Property is in the Single Residence District. Case #10-2020.**

**Andy Cole, property owner**, spoke to the Board. He explained that he purchased the property in October 2019 and started working on the interior and exterior of the main house. Subsequent inspections were done as needed, without any mention of the property being in the wetlands or wetlands buffer. He noted that he had some trees taken down that were hanging over the garage and main house. Crushed stone was added to the side of the driveway where crushed stone already existed to level the area. At that time, he moved on to repairing the garage. It was discovered that the garage was more damaged than expected. The structure was braced to start making those repairs. At that point, the building department notified him that the property was in the wetland and wetlands buffer. He pointed out that at that point, he stopped all work and hired Mark West to determine if the property was in the wetlands or wetlands buffer.

**Mark West, West Environmental**, stated that he visited the site and delineated the wetlands boundary. The boundary is located on the other side of the fence that is in the backyard behind the house. Most of the site, except for the front along the road, is within the 100' buffer. This wetland is larger than an acre and is part of the Berry Brook Watershed. There is actually a culvert that comes under Sagamore, dumps into the wetland and flows to the west. He continued that when he visited the site, he looked at the impacts of the tree cutting and found the gravel that was placed along the driveway. There is also a pipe the Conservation Commission noted at their site walk that runs down the fence on the northern boundary, which takes sump pump water out of the basement. He suggested that a buffer be planted behind the garage and to the south of the garage, in the location of the trees. He noted that both of the structures are being built in place and in-kind. There is a shed that was on the back of the garage that is actually being removed. The garage is being reduced in size on the side closest to the wetland. He pointed out that there was a lot of debris to the south of the garage in the proposed location for plantings. During the site walk with the Conservation Commission, there was discussion about totally removing the gravel or consolidating the gravel into a stone trench along the driveway, which will infiltrate runoff and improve the situation from how it existed before. He explained that all the gravel will be put into a trench so when the water runs off it will infiltrate into the gravel. A drywell will also be put in, north of the house before it slopes to the wetlands. The sump pump can be put into the drywell instead of being pumped into the wetland directly. The end result will be improvement to stormwater and a buffer planting where the tree was removed and in an area that is unvegetated now. The Conservation Commission was in agreement with the proposal and they issued a letter to the BOA.

Mr. West commented that the house is much nicer than it was and is being built in the same footprint. The garage is also being built in the same footprint. Everything is being restored so it does not diminish values. The property owner is doing all he can to protect the wetland and improve the situation. It is felt that the spirit of the ordinance is met by making these improvements and working with the Conservation Commission to comply with the ordinance, as best as possible.

Acting-Chair Crapo pointed out there are five recommendations in the Conservation Commission's letter. He asked if there are any issues with complying with those if they are made conditions of approval.



Mr. Cole replied no. He stated that he would like to reinforce what Mr. West has said. There is no expansion. The two structures, deck and garage, are both existing and are being repaired in-kind. There is no change in footprint, except for the removal of the shed on the back of the garage.

Acting-Chair Crapo asked if the work that was started was done with a building permit.

Mr. Cole confirmed.

Acting-Chair Crapo asked if there was any mention of the wetlands or buffer when that permit was applied for.

Mr. Cole replied no.

Acting-Chair Crapo asked if the original permit involved the work on the garage.

Mr. Cole explained that it did not include the garage.

Member Dibble commented there was mention of a catch basin going under Sagamore Road. He asked for a description.

Mr. West pointed out on the map the culvert that comes out on the adjacent lot. He noted that it is coming across the street. More than 100' back, there are wetlands behind those houses. The water flows into the wetlands, which all occurs south of this lot.

Acting-Chair Crapo asked if this is a municipal culvert.

Mr. West confirmed. The inlet is across the street to the east of Sagamore and it drains into this wetland to Berry's Brook.

Harry Wilson pointed out that the culvert starts behind the Blaisdell property, which is across the street.

Acting-Chair Crapo opened to the public.

Mr. Wilson stated that his concern is how much fill is going to be put in around the back. There is also a concern about the trees that are being cut. He noted that there are two spruce trees to the north, opposite the sump pump, where is mother's property wraps around. He is not worried about the trees because they are a danger to people who park between the houses. His biggest concern is about an increase in water if there is fill put in and trees taken out. He pointed out that when Forest Green was built, there was fill put in. There is water that now sits behind those houses and leaches down behind his mother's house.

Mr. West stated the only fill material that came in is some gravel along the edge of the garage. That was all within the footprint of the gravel that was around the garage already. The only

other fill material is the stone along the driveway that is now being put into an infiltration trench. There is no new fill material on the lot.

**Priscilla Wilson, 361 Sagamore Road**, stated that her lot backs up to the rear of this lot and it is all wetland. She is concerned about the septic and water being pumped into the wetlands in the back. That is going to cause more water to come onto her property and beyond.

In regards to Mrs. Wilson's comment about septic, Mr. West clarified that this was the sump pump. Right now, there is a pipe that goes along the fence, on the northern property boundary, which pumps the water all the way down. The Conservation Commission has asked for that water to be put into a drywell to infiltrate it so it will not go straight into the wetland.

**Alberta Loomis, 377 Sagamore Road**, stated that before Forest Green, the wetlands weren't really that wet because there was a path that came through from that area where the children would ride their bikes. It was very dry in some areas. She noted that the black hose that comes out of the back of the house often pumps 24-hours a day. It pumps water into the wetlands from the basement. Because of all this water being pumped out, it is coming over into her property and all the vegetation in the back of her property is rotted out.

Acting-Chair Crapo explained that the current property owner is proposing a change to that situation. (He explained the proposal for the pipe going into the drywell.) Speaking to Mr. West, Acting-Chair Crapo asked if this will help alleviate some of the issue with runoff from the sump pump which is allegedly damaging Mrs. Loomis' property.

Mr. West stated it should help because the way the pipe was laid out, it was right on the property boundary closest to the Loomis property. This would not only be further away from the wetland, but also not be infiltrating right on the boundary. The reason why the Conservation Commission suggested this is to improve the situation.

**Danna Truslow, Conservation Commission Member**, stated that the Commission conducted a site walk on the property and talked about all these issues. The applicant agreed that they would take measures that would improve the drainage. With new vegetation, there will be less runoff and damage to the wetlands. The drywell will be much better than having the discharge pipe out to the wetlands. The Commission feels this will be an improvement. She pointed out that one thing that was agreed to onsite is that if the vegetative plantings are not completed before the house is sold, there would be an escrow fund to be sure the planting does occur.

Acting-Chair Crapo stated the Board does not get into escrow funds. The Planning Department is more familiar with escrow funds. The BOA's intention is to make the conditions recommended in the Commission's letter.

Planning and Zoning Administrator Reed explained that the Conservation Commission Chair approached the Town Administrator in regards to this issue. The advice of Attorney Donovan was sought and he confirmed the Board of Adjustment does not do escrows. It is something that could be done by the Conservation Commission.

Acting-Chair Crapo explained to the Board that if one of the conditions of the variances is to do the plantings and that is not done, the new owners will be in violation because the variances run with the land. It is up to the current property owner to figure out how to achieve the plantings. He reviewed the recommendations of the Conservation Commission;

- **Digging a drywell within 20' to 30' of the back of the house and connect the house from the basement sump pump into the drywell.**
- **Plant a buffer of native trees and shrubs along the side of the garage even with the edge of the deck, as well as behind the garage along the wetland boundary (which is fenced). The plantings should contain at least 3 oak trees and 3 red maple trees of large size as replacement for the trees already cut and removed. The rest of the buffer should consist of various native shrubs and plants.**
- **The only gravel or crushed stone along the garage should be a drip edge to infiltrate storm runoff.**
- **The south edge of the driveway should be a 2' trench of crushed stone and the rest of the stone in the area should be removed. The debris in the wetland buffer in that area should be removed.**

Acting-Chair Crapo commented that any vote taken would be done with those recommendations as proposed conditions of approval. In his opinion, it would make the variances contingent upon those, whether it be the current property owner or a new owner. Those conditions are aimed at improving the water runoff towards the wetland and the neighbor's property, who has spoke at this meeting.

**Dean Loomis** stated that he likes the idea of the drywell. His only suggestion is that he would like to see the drywell location somewhere between his property line and the garage.

Acting-Chair Crapo pointed out the proposed location for the drywell on the map for Mr. Loomis.

Mr. Loomis spoke to Acting-Chair Crapo about his preferred location.

Acting-Chair Crapo explained that the drywell is subsurface. Speaking to the applicant, he asked the depth of the drywell.

Mr. Cole replied 42".

Speaking to Mr. Loomis, Acting-Chair Crapo clarified it is going to be almost 4' down. The water is going to flow the way mother nature takes it. He does not see the water flowing uphill towards Mr. Loomis' property.

Member Dibble asked if the drywell has been designed in accordance to the estimated waterflow out of the basement.

Mr. West replied it has not been designed yet.

Speaking to the applicant, Member Dibble asked if it will be engineered properly to meet the water flow.

Mr. Cole confirmed.

Member Dibble asked the location of the septic field.

Mr. Cole replied that it runs along the right side of the garage.

Member Dibble commented it would be possible to move the driveway a little further to the back.

Mr. Cole agreed.

Mr. West explained the drywell cannot be moved too far down the slope. It needs to be within about 25' of the house to be on higher ground in better soil. It cannot be too close to the septic system either.

Member Dibble commented he is thinking about a condition that the location of the drywell be engineered in accord with the existing waterflow from the sump pump system and be so located to minimize any subsurface water migration towards the adjacent property.

Referring to the Building Inspector's letter, Acting-Chair Crapo stated he does not really require a stormwater management plan. This is not stormwater. This is groundwater from the sump pump. However, he is going to require final review of the plans.

Member Dibble stated that he understands the natural flow of the groundwater is away from the abutter's house and down toward the wetland. However, he does not think it is too much of an ask to have the drywell be moved a little further away from the lot line. He commented it needs an adequate engineering plan because there will be more and more groundwater as time goes by.

Speaking to Mr. West, Acting-Chair Crapo asked if there is enough knowledge about the drywell that if they ask that it be to the rear of the house, no closer to the abutter to the gable end of the house, that this would be enough leeway.

Mr. West replied as long as they do not have to go down the hill.

Mr. Loomis stated that his concern about the location is that it is awfully close to the corner of the house. He cannot see what would prevent the water from going back into the basement. (He pointed out an area on the map that would be an area that would be below his basement.)

Acting-Chair Crapo explained that if relief is not granted tonight, there is a sump pump that would still be sitting there and running on the surface of the ground. The applicant and the Conservation Commission are trying to mitigate the surface damage caused by the exit of water from the black pipe. He continued that they still need to have water pumped out of their basement. They can't put it in the septic or there will be a different issue with septic failure near

the wetlands. It is in this applicant's, and in this property's interest, to size things so they are not just pumping the same water back into their basement. They need to ultimately get it down to the wetland. He does not want to burden it with an engineering cost but agrees that some more formalization is needed so future property owners will know there is a drywell and the details.

Member Dibble suggested wording for a condition; "the drywell positioned as far to the west as practical and designed in such a manner to handle the sump pump outflow".

There was some discussion with Mr. West on the best location for the septic with review of the plan.

Member Dibble suggested; "west as far from the dwelling as practical".

Acting-Chair Crapo closed the public hearing at 9:20 p.m.

Member Hoyt stated that he likes what the Conservation Commission is saying that the project is improving the situation. He thinks they should grant the variances requested with the conditions as presented by the Commission, numbers 1 through 4, with Member Dibble's wording on the drywell.

Member Patten stated that his concern is that they have taken three large trees down, which serve to mitigate the groundwater. This is compounding the issue that the abutters have and it will only be worse in the future. In reading the conditions in the Conservation Commission letter, they mention large trees and he thinks this is an excellent idea. He continued that his concern is that the property is being flipped. The tendency would be to try to minimize the amount of expense and large trees are expensive. He pointed out that there needs to be enough there, as a replacement, to cover the water that was used by those trees. He continued that it comes down to the specificity of the requirement and the condition. It could be a "large" sapling versus a rather expensive tree that is 6' to 8' in height. He wants to be sure there is no avoidance of that given the trees were taken down.

Member Dibble asked if he is suggesting that the condition include that the trees should be in the 6' to 8' height range.

Member Patten commented that he would open it back up and ask the Conservation Commission how to specify something that is adequate.

Acting-Chair Crapo agreed. He opened the public hearing for the limited purpose of discussing size of trees with the Conservation Commission and Mr. West.

Mr. West noted that he has prepared a report that states the sizes and species. It states there are three trees at 6' to 7' in height, the shrubs are 3' height and the red maples will be 4' in height, as they are going to be behind the garage. There are twelve shrubs and six trees that are being planted, which is listed in the wetlands report. He commented this could be a condition of the permit.

**Speaking to Conservation Commission Member Danna Truslow, Acting-Chair Crapo asked if the Commission is comfortable with the report and the planting proposal.**

**Ms. Truslow confirmed.**

Member Patten commented the report covers exactly what he was talking about.

Acting-Chair Crapo stated the intention of the Conservation Commission with the buffer and plantings is to replace the loss of transpiration of the water by the trees and vegetation. He noted that they are not solving or removing any wetland issues. The application is attempting to renovate the structure. In renovating, there has been some issues with the wetlands. The proposal before the Board achieves the applicant's purpose of renovating the property and the Conservation's approach of trying to balance mother nature, the runoff and sump pump water next to a very sensitive resource. He continued that if the Board did not grant the relief, and work was done that is not wetlands related, this property would probably be more of a detriment to the community down the road, as opposed to doing the whole package.

Acting-Chair Crapo called for a vote on variances from Sections 603.2, 301.8B (1), 301.8 B (5)(b)(2) and 301.8 B:

**1) Granting the variances are not contrary to the public interest?**

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

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

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

**3) Substantial justice is done?**

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

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

Rob Patten – Yes  
Burt Dibble – Yes  
Charles Hoyt – Yes

Shawn Crapo - Yes

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

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - 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?**

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - Yes

**7) The purposed use is a reasonable one?**

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo - Yes

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

Rob Patten – Yes

Burt Dibble – Yes

Charles Hoyt – Yes

Shawn Crapo – Yes

**Motion by Burt Dibble to approve the variance request from Ashbrook Properties for property owned and located at 381 Sagamore Road as published, to include provision 1 through 4 of the Conservation Commission's letter, including placement of the drywell directly to the west of the building as far as practical and to include plantings as provided in the February 14, 2020 letter from West Environmental. Seconded by Charles Hoyt. All in favor.**

**ADJOURNMENT**

**Motion by Charles Hoyt to adjourn at 9:29 p.m. Seconded by Rob Patten. All in favor.**

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

Respectfully Submitted,  
Dyana F. Ledger



Joseph & Jane Wahl  
 146 Perkins Road  
 Relief Required

<u>RZO Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>§204.3 A.</u> Rear yard	25' <sup>1</sup>	27.2'	11.5' (steps)/14.5' (deck) (house complies)
<u>§204.3 B.</u> Side yard			
• Left (east)	20'	15.2'	18.7' (house) (improvement)
• Right (west)	20'	27.9'	11.3 (pad)/12.4' (bulkhead)/18.8' (house)
<u>§204.3 C.</u> Front yard	30'	25.1'	27.2 (stairs)/28.8' (house) (improvement)
<u>§204.3 E.</u> Impervious Coverage <sup>2</sup>	30%	23.4% 2,336 s.f.	30.8% 3,076 s.f.
<u>§603.2</u> Destruction	Build in same location or improve nonconformity. See above demonstrating improvement to front setback and left-side (east) setback.		

<sup>1</sup> 30' or ¼ the depth of the lot whichever is less.

<sup>2</sup> The 2019 amendment to RZO §204.3.E deleted the 15% building coverage requirement. Building coverage requirement is now 30%; overall impervious coverage is also 30%. The proposed main structure occupies 1,913 s.f. of 10,003 s.f. or 19.12 %. (Exhibit C, Sheet C-2).

# 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, Coastal Overlay

**Application case:**

Case # 05-2020

**Date of decision:**

March 4, 2020

**Decision:**

The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.2 demolition a non-conforming structure;
- Section 204.3 A for steps 11.5' from the rear boundary;
- Section 204.3 A for a deck 14.5 from the rear boundary;
- Section 204.3 B for a house 18.7' from the east side boundary;
- Section 204.3 B for the bulkhead 12.4' from the west side boundary;
- Section 204.3 B for a house 18.8' from the west side boundary;
- Section 204.3 C for stairs 27.2' from the front boundary;
- Section 204.3 C for a house 28.8' from the front boundary; and
- Section 204.3E for overall impervious coverage of 30.8%.

  
Shawn Crapo, Acting-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.

Daniel & Patricia Sullivan  
 32 Gray Court  
 Relief Required

<u>RZO Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>§204.3 A. Rear yard</u>	22.3' <sup>1</sup>	1.9' (shed) 21.5' (deck)	1.9' (shed) 20.0' (deck)
<u>§204.3 B. Side yard</u>			
• Right (west)	20'	10.5' (stairs)	9.1' eave/10.1' house
• Left (east)	20'	12.1' (shed) 12.5' (house)	10.4' eave/11.4' house 8.8' (stairs) 5.6' (walkway)
<u>§304.5 Coverage</u>			
Dwelling	15%	14.5% (774 s.f.)	19.5% (1,040 s.f.)
Overall	30%	33.4% (1,779 s.f.)	31.1% (1,658 s.f.) improvement
<u>§500.2 &amp; 500.3</u> <u>Size and location of</u> <u>parking spaces</u>	2 10' x 18' spaces Not in front or side setback	2 stacked 1 space in front setback Both in side setback	not stacked, slightly undersized 2 spaces in front setback, 1 of which in side setback
<u>§603.2</u> <u>Abandonment/Destruction</u>	Replacement must conform or improve nonconformity. See above for improvements to rear setback and coverage.		

<sup>1</sup> RZO 204.3.A provides for a rear yard setback of 30-ft. or ¼ the depth of the lot.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Daniel & Patricia Sullivan

**Property:**

32 Gray Court, Tax Map 5.2, Lot 89  
Property is in the General Residence, Coastal Overlay

**Application case:**

Case # 07-2020

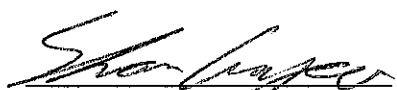
**Date of decision:**

March 4, 2020

**Decision:**

The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.2 demolition a non-conforming structure;
- Section 204.3 A for a shed 1.9' from the rear boundary;
- Section 204.3 A for a deck 20.0' from the rear boundary;
- Section 204.3 B for a house 9.1' from the right-side boundary;
- Section 204.3 B for a shed 12.1' from the left-side boundary;
- Section 204.3 B for a house 10.04' from the left side boundary;
- Section 204.3 B for stairs 8.8' from the left side boundary;
- Section 204.3 B for a walkway 5.6' from the left side boundary;
- Section 304.5 for dwelling coverage of 19.5% and overall coverage of 31.1%; and
- Section 500.3 for 2 parking spaces in the front side boundary.



Shawn Crapo, Acting-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.

Gary Wingate  
 20 Oak Avenue  
 Relief Required

<u>RZO Section</u>	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
<u>§204.3 A. Rear yard</u>	25.2' <sup>1</sup>	-2.7' (shed) 21.5' (stairs)  21.3' (generator)	N/A 23.9' (addition)  11.9' (generator)
<u>§204.3 B. Side yard</u> • Right (west)	20'	1.8' (shed) >20' (house)	N/A 18.6'(eave)/20.0' (house)
<u>§304.5 Coverage</u> Dwelling Overall	15% 30%	11.3% (1160 s.f.) 30.3% (3118 s.f.)	17.4% (1784 s.f.) 27.2% (2801 s.f.) improvement
<u>§603.1</u> <u>Expansion</u>	Nonconforming expansion prohibited.		

<sup>1</sup> RZO 204.3.A provides for a rear yard setback of 30-ft. or ¼ the depth of the lot.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Gary Wingate of 15 Sherman Street, Nashua NH

**Property:**

20 Oak Ave, Tax Map 5.2, Lot70

Property is in the General Residence, Coastal Overlay

**Application case:**

Case # 09-2020

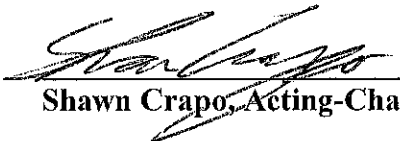
**Date of decision:**

March 4, 2020

**Decision:**

The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.1 for expansion of a non-conforming structure;
- Section 204.3 A for an addition 23.9' from the rear boundary;
- Section 204.3 A for a generator 11.9' from the rear boundary;
- Section 204.3 B for an addition 18.6' from the side boundary; and
- Section 304.5 for dwelling coverage of 17.4%



Shawn Crapo, Acting-Chairman

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**RYE CONSERVATION COMMISSION  
10 CENTRAL ROAD  
RYE, NH 03870**

February 27, 2020

**RE: 381 Sagamore Road, Tax Map 019, Lot 061**

The Rye Conservation Commission (RCC) conducted a site walk at 381 Sagamore Road on February 19, 2020 to assess a project to repair an existing garage in the wetland buffer and where trees in the wetland buffer had been removed and a Notice of Violation had been issued by the Rye Building Department.

Andy Cole, Ashbrook Properties, purchased the property for the purpose of fixing it up and reselling it. The property abuts a wetland in the Berry's Brook watershed and almost all of the property is in the 100 foot wetland buffer. Mr. Cole was unaware of the wetland ordinances and he cut and removed three large (greater than 4" diameter at 4.5' of height) trees in the wetland buffer along the edge of the driveway in violation of the Rye wetland ordinances. He tore down an 8ft x 10ft shed attached to the back of the garage and also tore down about one half of the garage to repair rotted sills. There is crushed stone in a strip about 3 feet wide along the edge of the drive. A black hose runs from the back of the house across the lawn and deposits water adjacent to and in the wetland. This hose is attached to a sump pump in the basement.

Mark West, West Environmental, has prepared a plan to address the issues of concern. The removed shed will not be replaced which will result in a reduction in impervious surfaces. Mr. West proposes to plant a vegetative buffer of native plants behind the garage and along the driveway. This would include 3 oak trees, 3 red maples and a number of shrubs. The wetland boundary should also have a vegetative buffer planted. The sump pump hose will go into a dry well near the house allowing any outflow to be infiltrated well before the wetland.

There was a discussion about the gravel alongside the garage and along the driveway. A 2 foot trench would be dug along the driveway and filled with crushed stone to intercept and infiltrate runoff from the driveway. The garage vegetated buffer should extend past the garage so that it is even with the edge of the deck. Crushed stone under the drip edge of the garage on the south side would accomplish the same. The rest of the gravel would be removed. The commission members discussed the plans and were satisfied with the proposed remediation. The property is already under contract so there may be a need to escrow the landscape funds.

The Conservation Commission is in favor of the project remediation as designed to include the following recommendations:

- 1) Dig a dry well within 20-30 ft. of the back of the house and connect the hose from the basement sump pump into the dry well.
- 2) Plant a buffer of native trees and shrubs along the side of the garage even with the edge of the deck, as well as behind the garage along the wetland boundary (which is fenced). The plantings should contain at least 3 oak trees and 3 red maple trees of

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant:** Drew Pierce of Seacoast Modular Homes, Inc.

**Owner:** Paul & Helen Kehas of 37 Paquette Ave, Manchester NH

**Property:** 2257 Ocean Blvd, Tax Map 5.3, Lot 7  
Property is in the General Residence, Coastal Overlay and ' SFHA, Zone AO

**Application case:** Case # 08-2020

**Date of decision:** March 4, 2020

**Decision:** The Board voted 4-0 to continue the application to the April 1, 2020 meeting.



Shawn Crapo, Acting-Chairman

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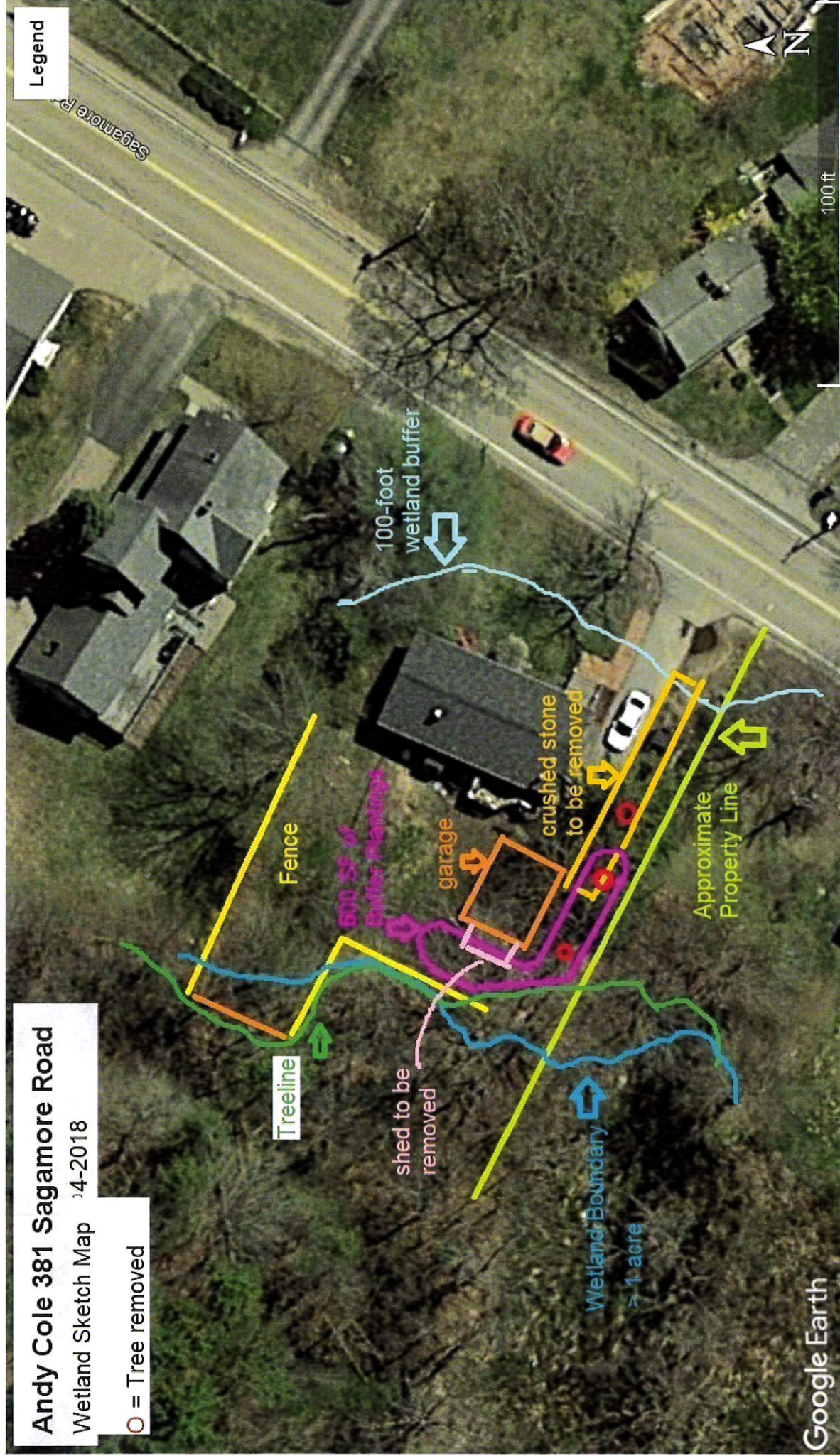


# Andy Cole 381 Sagamore Road

Wetland Sketch Map 10-4-2018

○ = Tree removed

Legend





381 Sagamore Road Rye, NH



1. This is a view of the site with the trees and garage on the left side of the photo.



2. Looking west at the crushed stone place south of the driveway.



381 Sagamore Road Rye, NH



3. View of the south side of the garage with cut trees and crushed stone to be removed.



4. This area south of the garage will be planted with native trees and shrubs.



381 Sagamore Road Rye, NH



5. Looking north at the back of the garage where the shed was removed.



6. Looking northwest at the wetland behind the fence and the proposed buffer planting area.

# BOARD OF ADJUSTMENT

New Hampshire

## BOARD DECISION

**Applicant/Owner:**

Joseph & Jane Wahl

**Property:**

146 Perkins Road, Tax Map 5.2, Lot 186

Property is in the General Residence, Coastal Overlay

**Application case:**

Case # 05-2020

**Date of decision:**

March 4, 2020

**Decision:**

The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.2 demolition a non-conforming structure;
- Section 204.3 A for steps 11.5' from the rear boundary;
- Section 204.3 A for a deck 14.5 from the rear boundary;
- Section 204.3 B for a house 18.7' from the east side boundary;
- Section 204.3 B for the bulkhead 12.4' from the west side boundary;
- Section 204.3 B for a house 18.8' from the west side boundary;
- Section 204.3 C for stairs 27.2' from the front boundary;
- Section 204.3 C for a house 28.8' from the front boundary; and
- Section 204.3E for overall impervious coverage of 30.8%.

  
Shawn Crapo, Acting-Chairman

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# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## SUBJECT OF DECISION

**Applicant/Owner:**

Daniel & Patricia Sullivan

**Property:**

32 Gray Court, Tax Map 5.2, Lot 89  
Property is in the General Residence, Coastal Overlay

**Application case:**

Case # 07-2020

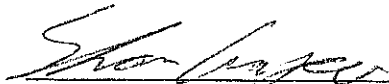
**Date of decision:**

March 4, 2020

**Decision:**

The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.2 demolition a non-conforming structure;
- Section 204.3 A for a shed 1.9' from the rear boundary;
- Section 204.3 A for a deck 20.0' from the rear boundary;
- Section 204.3 B for a house 9.1' from the right-side boundary;
- Section 204.3 B for a shed 12.1' from the left-side boundary;
- Section 204.3 B for a house 10.04' from the left side boundary;
- Section 204.3 B for stairs 8.8' from the left side boundary;
- Section 204.3 B for a walkway 5.6' from the left side boundary;
- Section 304.5 for dwelling coverage of 19.5% and overall coverage of 31.1%; and
- Section 500.3 for 2 parking spaces in the front side boundary.



Shawn Crapo, Acting-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:**

Gary Wingate of 15 Sherman Street, Nashua NH

**Property:**

20 Oak Ave, Tax Map 5.2, Lot70  
Property is in the General Residence, Coastal Overlay

**Application case:**

Case # 09-2020

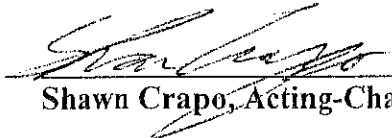
**Date of decision:**

March 4, 2020

**Decision:**

The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.1 for expansion of a non-conforming structure;
- Section 204.3 A for an addition 23.9' from the rear boundary;
- Section 204.3 A for a generator 11.9' from the rear boundary;
- Section 204.3 B for an addition 18.6' from the side boundary; and
- Section 304.5 for dwelling coverage of 17.4%

  
Shawn Crapo, Acting-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:** Ashbrook Properties, LLC of 277 Middle Rd, Portsmouth NH

**Property:** 381 Sagamore Road, Tax Map 19, Lot 61  
Property is in the Single Residence District

**Application case:** Case # 10-2020

**Date of decision:** March 4, 2020

**Decision:** The Board voted 4-0 to grant the variances from the following sections of the Rye Zoning Ordinance:

- Section 603.2 to expand a non-conforming structure; and
- Section 301.8 B (1), 301.8 B (5)(b)(2) for fill in buffer; and
- Section 301.8 B for garage and cutting trees in buffer.

Each variance was granted upon the following conditions based on the February 27, 2020 Rye Conservation Commission letter recommendations # 1-4 and an additional condition by the Board:

1. Dig a dry well within 20-30 ft. of the back of the house and connect the hose from the basement sump pump into the dry well.
2. Plant a buffer of native trees and shrubs along the side of the garage even with the edge of the deck, as well as, behind the garage along the wetland boundary (which is fenced). The plantings should contain at least 3 oak trees and 3 red maple trees of large size as replacement for the trees already cut and removed. The rest of the buffer should consist of various native shrubs and plants.
3. The only gravel or crushed stone along the garage should be a drip edge to infiltrate storm runoff.
4. The south edge of the driveway should be a 2ft. trench of crushed stone and the rest of the stone in the area should be removed. The debris in the wetland buffer in that area should be removed.
5. The placement of the drywell directly to the west of the Building as far as practical.
6. The placement of the planting per the February 14, 2020 West Environmental letter.

  
Shawn Grapo, Acting-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.