

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

**Wednesday, September 2, 2020
7:00 p.m. – via ZOOM**

***Members Present:* Vice-Chair Shawn Crapo (sitting as acting chair), Burt Dibble, Rob Patten, Patrick Driscoll and Christopher Piela**

***Present on behalf of the Town:* Planning/Zoning Administrator Kimberly Reed**

I. CALL TO ORDER

Acting-Chair Crapo called the meeting to order at 7:10 p.m. via Zoom teleconferencing.

Statement by Shawn Crapo:

As chair of the Rye Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: www.zoom.com ID #873-0030-2464 Password: 042691

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at: town.rye.nh.us go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 603-379-0801 or email: Kim Reed at KReed@town.rye.nh.us.

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance of members:

1. Shawn Crapo
2. Patrick Driscoll
3. Christopher Piela
4. Burt Dibble
5. Rob Patten

(Each board member confirmed that there were no others present with them in the room.)

II. BUSINESS

- Approval of August 5, 2020 Meeting Minutes

Motion by Rob Patten to accept the meeting minutes of August 5, 2020 as written. Seconded by Burt Dibble.

Roll Call Vote: Patrick Driscoll – Yes; Christopher Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo - Yes

Continuances:

Motion by Shawn Crapo to continue the application of Mary H. Murphy Westover to the October 7, 2020 BOA meeting. Seconded by Burt Dibble.

Roll Call Vote: Patrick Driscoll – Yes; Christopher Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo - Yes

III. APPLICATIONS

1. **Christopher Rinko of 10 Cooper Lane, Apt 207, Bedford, NH for property owned and located at 218 Locke Road, Tax Map 12, Lot 5, request variances from §190-6.3.B to demolish an existing structure and replace it with new; from §190-2.3.C(2) for a retaining wall 1' from the left side boundary where 20' is required; from §190-2.3.C(2) for house 9.9' from the left side boundary and 13.05' from the right side boundary where 20' is required; and a waiver from building code §35-14.C(2) for 2' of separation from the seasonal highwater table and bottom of the effluent disposal area for septic system where 4' is required. **Property is in the Single Residence District. Case #26-2020.****

Attorney Tim Phoenix, representing the applicant, presented to the Board. He noted that the application was before the Board at the meeting on August 5th. He summarized that the lot is 26,835sf. It is very narrow with 85' of frontage. There is a small home on the lot, which is only 436sf with two stories. There is a 233sf deck, 150sf shed that is against the rear property line, and a detached 445sf garage that is about 9' from the left property line. The property is serviced by a cesspool, which is located somewhere behind the house. The Rinkos have hired a very good team to design the house and the site, but some relief is needed. The relief that was requested last time was for the right and left setbacks where 20' is required. On the right, the shed is 4.4' and will be removed. The house is at 13.05'. On the left is the garage at 9.9'. Last month the request was for the house to be 9.9'. A variance is also needed for 190-6.3B for abandonment and destruction. The separation from seasonal highwater of 4' cannot be met. Pete Landry found 36" and 26", so there is over 2' which complies with DES requirements. The septic will be located in the front. There is a wetland in the back; however, this will

be more than 100' from it. The design of the house is such that stormwater has been directed down through a swale on the right side of the house. The left side of the house will be filled with a 2' to 3' retaining wall 1' off the property line. The water off the driveway will be directed onto that and out to the back.

Attorney Phoenix explained that one thing that got this application sidetracked last time is that a variance was not requested for the retaining wall. There was some discussion and debate about whether it was needed. The Board ultimately decided that it was needed and the application was continued so it could be added. He pointed out that the variance request has been added. The other thing that happened is that the commentary from the Board was that they appreciated the design, but had some concerns about the side line setbacks, particularly on the left side. There was some discussion about whether something could be built by turning the house lengthwise instead of widthwise, but that creates problems. It creates issues with access, garage taking up the backyard and getting closer to the wetland. He continued that they have done two things to hopefully gain a consensus of agreement. One of which is that the left side setback has been moved from 9.9' to 11.7', which is about 2' farther from the left side line. He noted this is to the eave, so the left side wall is going to be closer to 13'. The Board did not seem to have a problem with the 13' on the right. The Rinkos and the design team worked to take some space out of the house in order to move that back. He continued there was also a lot of discussion about the neighbors and the effect on them. There was testimony about having discussions with the neighbors, but there were no letters. Since that time, letters of support have been sent from;

- **de Lahunta Family, 210 Locke Road**
- **Dawn Richardson, 230 Locke Road**
- **Kurt Jackson, 231 Locke Road**
- **John and Nancy Pappas, 207 Locke Road**

The revised plans for the home were presented for the Board's review.

Attorney Phoenix stated they are hopeful the Board will see and agree that all the requirements are met for the variances. There was discussion at the last meeting about the hardship, public interest and spirit of the ordinance. The hardship test is "are there special conditions?". Attorney Phoenix commented there are special conditions. The lot is long and narrow. It only has 85' of frontage with wetlands to the rear. The Rinkos would really like to have a home that is more traditional with the house and garage facing the front. The second hardship test is "is there a fair and substantial relationship? Is there any reason to apply these strict requirements?" He stated that under the circumstances, the neighbors who would be affected have no objection. There is plenty of air, light and separation. There is plenty of area for stormwater treatment. There is no reason that can be seen, under those circumstances, to deny the variances. Attorney Phoenix asked the Board if they would like him to go through each of the five variance requirements.

Chair Crapo noted they were reviewed last time and a memo was submitted for the record. He also confirmed that letters of support were received from Pappas, Jackson, de Lahunta and Richardson. He asked if moving the left side of the house back by 2' will change the height requirement for the retaining wall and the drainage.

Attorney Phoenix stated the way this is designed there is plenty of ability to catch and channel the rainwater.

Robbie Woodburn, landscape architect, explained the height of the retaining wall is 3' high. Most of the water from the front of the property pitches to the west and goes through a swale around the building. Anything from the side of the house and the grassy area to the east of the driveway will pitch towards the wall. The wall will stop it and the drainage will go down into the crushed stone. There will be a pipe that collects the water and drains it to the back of the property. The water will go into the pipe, run along the side of the property line and once it is past the neighbor's house, it will pitch out into the backyard and into the wetland buffer.

Member Driscoll asked if they are certain water is not going to be added onto abutting property.

Ms. Woodburn replied that is what the wall is for; to stop it.

Member Driscoll asked if there has been any thought to a gutter system. Referring to the garage, he commented that the roof pitches towards that section. He did not see anything about gutters on that side.

Ms. Woodburn replied that they have not discussed gutters, but that is a possibility. She noted there could also be a drip strip below the eave to collect the water. At a minimum, what is presented is what is proposed; however, gutters could be considered.

Chair Crapo pointed out there is earth inside the retaining wall. There will be some gravity percolation of the water. In reality, the pipe is for the excess water.

Ms. Woodburn confirmed.

Member Driscoll commented that was his only concern. It seems the layout of the house looks good. Everything else seems to be set. Having the leachfield in the front yard, he wanted to be sure it was not going to negatively effect the neighbors' septic system or their landscaping; however, they have sent a letter of support and it seems that has all been taken into consideration. He commented that he is in support of the proposal. His only concern is his "eye test" of that drain and its grading to daylight. If the plans show, and the professionals say, it's going to drain in the right area and the neighbors do not have a concern, he does not have any further questions. It seems like a good application and a good project.

Member Piela asked if the elevation is 101 at finished with the neighbors being 100 or will the retaining wall be 104.

The elevation plan was presented on the screen.

Ms. Woodburn explained the garage elevation for the proposed home is 102.7. There is a bit of a pitch going down towards the retaining wall, which sticks out of the ground a bit. The top of the wall is at 101. The top of the neighbor's septic field is at 102.

Member Dibble commented that he does not see any mention of specialized septic treatment. He asked if it will be a standard septic system.

Peter Landry, septic consultant for the applicant, explained it will be an alternative system, compared to a conventional stone and pipe. There is no pre-treatment, but it does filter out the solids more effectively and reduces 99% of the waste water contaminants. It is more adaptable to fit into the

landscape and environment. It is more of a natural and passive process, rather than pumps and filters. There will be no mechanical devices, as it is a gravity system.

Member Dibble asked if there is any elevation of the system in the front yard.

Mr. Landry explained it is 1' below the grade to the bottom of the bed. With a 3' water table, the State allowing a 2' separation and the request for a 2' waiver would have the system comply.

Chair Crapo asked if they are trying to avoid a mound by meeting the town's 4' separation.

Mr. Landry confirmed.

Ms. Woodburn clarified that the septic field will be at 102.7. To the west, there is a swale where it goes down to 100. It will appear to be raised because of the swale on the west side. There will be a 2.7' slope.

Member Dibble commented he is very familiar with the location, as he drives by it several times daily. There have been other reconstructions in this location that have involved raised septic systems. This seems very modest in comparison to others that have been approved. His only concern was that since this is so close to the wetlands, he wanted to know the septic was adequately treated.

Hearing no further questions from the Board, Chair Crapo opened to the public.

Referring to Member Driscoll's comment about the roof runoff and gutters, Attorney Phoenix stated that Ms. Woodburn had mentioned that gutters could be considered or a drip edge. He noted that they would accept a condition that it is either guttered or drip edged, if the Board feels it is necessary.

Member Driscoll commented whether it is conditioned or not will not sway the way that he votes. He is fine with it not being conditioned. It seems like it is a well planned out project. He trusts the right thing will be done.

Member Dibble agreed.

Chair Crapo commented he agrees as well. Landscape wise, sometimes gutters help and sometimes they hurt. In this case there is a swale, so the landscape can probably handle it. He continued that the one thing he was thinking could perhaps be a condition is to have the daylighting of the pipe be towards the interior of the property, not just straight back and not ending parallel to the wall.

Member Dibble pointed out there is a drawing that shows the pipe daylighting more towards the center of the property.

Chair Crapo commented the drawing on the screen does show it on an angle. He does not know if there is a planned set angle.

Member Dibble commented it looks like the land slopes naturally in that direction.

Speaking to Ms. Woodburn, Chair Crapo asked if something should be designated on the plan.

Ms. Woodburn explained that is what “grade to drain” means. She thinks carrying the pipe out a little further into the yard would be a good idea.

Member Dibble stated that this is a significant downhill territory and it’s a crowned road. A lot of water is going to be running off the road. He is interested to know if any of that is going to be going into the swales along the building or whether it will be continuing down the road.

Ms. Woodburn explained that generally when driveways are built, a little hump is built at the end of the driveway. That will be done on this property as well, near the property line.

Member Driscoll pointed out there is an existing drain at the front of the driveway. He asked if that will remain.

Ms. Woodburn confirmed. (She pointed out the location on the plan and explained how the “bump” at the end of the driveway will keep the drainage on the road, which will not be much because of the catch basin in that location.)

Alex de Lahunta, 210 Locke Road, spoke in support of the proposal.

Hearing no further comments, Chair Crapo closed the public hearing at 7:55 p.m.

Member Driscoll stated he is good with the proposal. He likes the idea of putting the condition on the drain pipe; however, he is not sure how that would be done. He feels that since the Board has heard from the applicant that they don’t mind doing that, he is not sure a condition is needed. Hopefully, they will just remember they can’t add any additional water onto the abutter’s yard and the best way to do that is to drain. He is not sure what the condition would be, so he is okay with no conditions on this and is favor of the application.

Chair Crapo commented he is thinking the condition would be that the drain would not end parallel to the wall and will angle towards the center of the property. He would also add that at the end of the driveway, the small feature to protect the water from entering the driveway, be done in conjunction with public works.

Member Piela commented the design looks great. He puts a lot of weight on the abutters’ comments of support. He continued that he is concerned about the “special condition” under hardship. In doing the math, they have 5,000sf plus of buildable space that wouldn’t put them out of compliance on the north or south border. He is trying to balance that versus the fact that the design looks really nice and the neighbors approve of it.

Member Dibble commented he is not sure the condition about angling the pipe is important, but he wouldn’t make that a contention. He thinks that things look better than what was presented at the last presentation. It is a very tight property. It looks like it will be an enhancement to the neighborhood, so he is in favor.

Member Patten stated at the last meeting, he was more troubled by the hardship argument because the variances are really driven by design choices; however, it is a nice design. Attorney Phoenix eloquently explained a case he can get onboard with about the need for the variances. He does not have any

problems with it; particularly, if the neighbors feel good about it. He does not feel it is necessary to have a condition for the gutters.

Chair Crapo stated his main concern last month was whether the abutters realized the height and extent of the retaining wall along the side. The de Lahuntas have reviewed the plans and appear to be more than onboard with it. He commented that he is not sure the 5,000 figure is accurate because there is a hill and it starts getting into the wetlands at the back of the property. If the house were to be turned, the driveway would be more on the edge, and with the retaining wall, there may potentially be another hardship. He likes that it was tightened up a bit from last month. He can be in support with the pipe condition and driveway coordination with public works.

No further thoughts were heard from the Board.

Chair Crapo called for a vote on requested variances with the conditions that the pipe be angled at the end and the end of the driveway be worked on in conjunction with public works;

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

7) The purposed use is a reasonable one?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

Chair Crapo called for a vote on the requested building code waiver;

- **Would enforcement of the specific provision do manifest injustice and be contrary to the spirit and purpose of the building code?**

Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo - Yes

Motion by Burt Dibble to approve the application of Christopher Rinko for property owned and located at 218 Locke Road for variances and relief from the building code as advertised and presented with the amendment to the left side boundary, with the conditions that the outflow of the drain below the retaining wall be angled away from the adjacent property and the road cut for the driveway be established in consultation with Rye Public Works. Seconded by Shawn Crapo.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Rob Patten – Yes; Burt Dibble – Yes; Shawn Crapo – Yes
Motion passed

- 2. Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Blvd, Tax Map 23.1, Lot 28,** requests a special exception pursuant to §190-5.1.C or two signs where one sign is allowed. **Property is in the Business, Coastal Overlay Districts. Case #31a-2020.**
- 3. Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Blvd, Tax Map 23.1, Lot 28,** requests a variance from §190-5.1.A(2) for two 2-sided signs totaling 44sq.ft. where 16sq.ft. is permitted. **Property is in the Business, Coastal Overlay Districts. Case #31b-2020.**

Chair Crapo explained that before the Board can move forward on the applications for Seacoast Apart-Hotels, there has to be a determination by the Board on whether this is a materially different application from the one that the Board voted on and denied, which was on June 3, 2020. He pointed out the Board saw another version on July 1st that was deemed not materially different. Chair Crapo opened to the applicant with regards to how it is felt the application is materially different.

Doug Palardy, Seacoast Apart-Hotels, explained he is resubmitting an updated design on a non-conforming sign in the Business District. Since the first submittal, both the signs in question have been reduced in size substantially. The large freestanding sign is now 40sf where before it was 55 or 56sf. The sign is now smaller than Hoyt's Cottages, which is down the road, as that sign is at 49sf. The office sign that is proposed for the building has been reduced to 4sf from the original 12sf. He noted that one of the biggest issues with the first submission is not having a clear lighting plan for the emission of light. He now has a determination of the lumens on the site that correctly reflects what exists and what is being proposed. While it is not a visual change, it is a change in components. In addition, the marque portion on the sign is no longer illuminated so the square footage of interior lighting has been reduced. Since the first submission, the times that the sign will actually be illuminated has been changed. It is now planned to be dark from 11p.m. to 7a.m. He believes with those numerous changes, it is substantially different from the submission from June.

Member Driscoll stated he was not part of the June hearing. After that synopsis and reading through the case, it sounds like there is substantial change. He would be happy to hear the application.

Member Piela stated he thinks it is materially different enough to hear the application.

Member Dibble agreed.

Member Patten agreed.

Chair Crapo agreed. He opened to the applicant to present his application(s).

Mr. Palardy stated he is happy to start with the special exception for the two signs where one is permitted. He explained that two signs are being replaced that currently exist on the property. Essentially, the sign on the motel is really the one that is almost the second sign he is looking for, even though there was one existing there which was the large 14" high lettering that spelled 'Pebble Cove' on the side of the building

and ran 12' or 14' wide. Even though only one sign is allowed, he feels there is some precedence in the fact that there were very visually two signs that existed on the property before. The one that is being replaced for the office on the motel is substantially smaller than the marque lettering that once existed. Now that it is at a 2'x2' size, he feels it is not deterring from the neighborhood, as it already existed. The sign is not going to be lighted, so it would not be lit in the evening. He commented that would be his case for allowing two signs even though only one is permitted today.

Chair Crapo asked the applicant to present both applications before the Board has a discussion.

Mr. Palardy stated for the variance request for 190-5.1.C, he is proposing two signs totaling 44sf where 16sf is permitted. Two existing signs are being replaced. Substantial work has been done in designing the signs and creating a lighting plan. The existing signs that had the 100w bulbs on them is probably seven times brighter than the bulbs for the new sign. The new signs will be less offensive than what was there before. While the new sign is actually interior lit, which may initially seem to the average consumer to be brighter, the bulbs inside will actually be reducing the lighting overspray in the neighborhood. He noted that the abutter to the right, looking at the property from Route 1A, does not see the sign. The abutters to the left are well over 100ft from the actual sign. The lumens in the brightest portion of the sign will be putting out light that omits 4' from the sign, before it tails off dramatically, versus the current light that was on the existing signs for Pebble Cove Motel, which were pushing out 30' of light and have lights shooting up at it adding light pollution into the air. He noted that he is doing an authentic renovation of this 1950's hotel. He is trying to keep the historic vibe of what existed here back in 1956. The sign is very reminiscent of what was there but is hugely smaller than what was in place when this opened in 1956. The original sign was probably 14' tall and was massive. This is a much more scaled down version but in keeping with the historic vibe of this building and what has been there for 60 years. He feels it is authentic and speaks to what has been there. It is one of the last few remaining hotels on the Seacoast. It is one of Rye's very few remaining hospitality properties. He feels he has done justice on designing the sign and getting neighbor and abutter support. He feels it will be a great addition to the neighborhood and hopes the Board will feel the same.

Referring to the most current rendition, Chair Crapo pointed out that it shows a reader board sign at the bottom. He asked if this is going to be eliminated.

Mr. Palardy replied it will be there but will not be lit. The original submission in June had that lit up.

Chair Crapo commented that the version that was presented in July showed the circle rimmed with LED lighting. It looks like the rim has been taken off and its back to lighting the yellow part.

Mr. Palardy confirmed. He stated that after doing more research, he discovered that the Town of Rye does not allow for reflective lettering on signs.

Referring to the side of the sign that faces the ocean, Chair Crapo asked if that will be lit or will it just be the face of the arrow.

Mr. Palardy replied both are going to be lit.

The Board did not have any questions regarding the proposal.

Chair Crapo noted the Board has received several letters in support. The letters that really matter for the record would be the ones from abutters. The Board has received the letters in their packets. He continued that a letter has been received from Attorney Derek Durbin on behalf of Paul Simbliaris, 10 Pollock Dive, which is directly across the street from 741 Ocean Boulevard. (He read the letter from Attorney Durbin expressing Mr. Simbliaris' support of the new proposal.)

Chair Crapo opened to the public with any standing. No comments for or against the proposal were heard.

Mr. Palardy stated he appreciates the Board taking the time to hear the applications. He thinks what he is going to do to the property will be a gem of the beach. He thinks the community will be proud of what he has done.

Chair Crapo closed the public hearing at 8:24 p.m.

Member Driscoll reiterated he was not on the original application. In reading through this one, it seems all good to him. He thinks the 2'x2' sign is minimal against the building. The one closer to the road seems to do the job as intended without being overbearing and having a negative effect on the Town. He is in favor of this application.

Member Piela stated the part that got him was the comment about the Hoyt's sign down the street. The Wallis Sands sign is similar in size to the Hoyt's sign, as is the Philbrick's by the Sea and the Driftwood signs. His feeling on the size perspective is that it is in keeping with the other signs that are there. He noted that he does not have any issue with the 2'x2' sign on the building.

Member Dibble stated he substantially in agreement. He likes the idea that it fits into the neighborhood. He is appreciative of the applicant having made some changes since the prior discussions. He is delighted with the retro quality and the way it adds some appeal to the Seacoast.

Member Patten stated he appreciates how much thought the Board has put into the whole project. Mr. Palardy's amount of diligence and revisions is exceptional in this case. The spirit is to bring back something that has existed, better than it was in the past. He is onboard and cannot wait to see it.

Chair Crapo commented this version is a little tamer than the first proposal, but still achieves adequate signage. It gives some of the modern but retro effect the applicant is working towards. Originally, he was against the building sign. Now it is a small office sign, so he can get behind the second sign in this configuration. He appreciates the renditions. The work that has gone into this has been very labor intensive. It has resulted in something he can get behind and thinks it will be a good fit.

Hearing no further comments, Chair Crapo called for a vote on the special exception request to 190-5.1.C and 190-7.1;

- **Is it neither injurious nor detrimental to the neighborhood?**

Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion by Burt Dibble to approve the application for a special exception by Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Boulevard as advertised. Seconded by Rob Patten. Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes
Motion passed

Chair Crapo called for a vote on the requested variance to 190-5.1.A(2);

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo – Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - 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 that provision to the property?**

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

Motion by Burt Dibble to approve the variance application by Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Boulevard as advertised. Seconded by Chris Piela. Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes
Motion passed

4. **Derek Brucato & Seana Zelanzo for property owned and located at 391 Central Road, Tax Map 8, Lot 6, request variances from §190-6.3.A for expansion of a non-conforming structure and from §190-2.3.C(2) for building 10' from the front boundary where 40' is required. Property is in the Single Residence District. Case #32-2020.**

Derek Brucato, applicant, presented to the Board. He explained he has been doing work to the house. The north side of the house is a configuration of two separate rooms that were built at different times. It has caused a conglomerate of an old roof with a newer roof built on top of an old gable at a really low pitch. The front section of the house runs up at a really low pitch to the ridge and runs down to the gable at the back of the house. He would like to raise the roofline on that north section of the house to increase the pitch and even off the ridge against the main house. It would bring the low pitch up and even it out in the back. He noted the house is very close to the road so the work is within the setback. The footprint is not changing. The ridge from the center is being raised about 8' with a small knee wall on the front and back side.

Chair Crapo asked for clarification on the address.

Mr. Brucato confirmed the address is 391 Central.

Chair Crapo asked if it will end up being two rooflines.

Mr. Brucato explained it is basically going from an offset gable to its traditional centered gable. It will be raised up to increase the pitch of that gable to a 5.5 pitch. It will come down from the center of main house even over the existing walls that are already there. He pointed out that some mass is being added up.

Chair Crapo noted that the variance criteria have been addressed by memo and included in the Board's packets. He asked the board members if they are okay with the information in the packets or if they would like the applicant to go through the criteria.

No concerns were heard from the Board with regard to the variance criteria.

Member Dibble asked if there is going to be occupied area in the new space above the roof.

Mr. Brucato replied no; that is not the plan. He noted it might be considered down the road, but it is not in this application.

Member Dibble asked how much head room there would be if this were done down the road.

Mr. Brucato replied it would probably be about 6' at 7' to 8' from the knee wall.

Member Dibble commented it looks like this would be more for storage than space for occupancy. He asked how many bedrooms are in the house.

Mr. Brucato explained it is listed as a four bedroom; however, two of them are unheated and not really occupied. These rooms are in the section where the roofline change would happen.

Member Dibble asked for clarification on the size of the septic system for the number of bedrooms for the house.

Mr. Brucato stated the system was installed in 2005. It is a pump system and is rated for four bedrooms. He continued that he is not looking to add bedrooms or to make the house look like something it isn't. He

would just like to improve the esthetics and correct the roofline. This seems like a good opportunity to correct the situation.

There was some review of the sketches that were submitted by the applicant.

Chair Crapo opened to the Board for further questions.

Member Driscoll stated it looks good to him. He agrees it will do a better job at shedding rain and snow off the roof. The long single pitched roof on the front is not ideal. He does not think it changes the neighborhood or safety. The hardship is there with the existing roof not being serviceable. He is favor of the application.

Member Piela agreed with Member Driscoll. The proposed modification is all positive.

There were no further questions from the Board. Chair Crapo opened to the public. He noted that a letter was received from the Hillmans, who abut the property to the east, who are in complete support of the improvements. Hearing no comments from the public, Chair Crapo closed the public hearing at 8:57 p.m.

Member Dibble stated this is a needed improvement for the outside appearance of the building. It will be more in keeping with the neighborhood. He has no issues with this project.

Member Patten stated it is a nice esthetic improvement and looks like it is going to be a structural improvement to the home. He is happy with the proposal.

Chair Crapo commented it is a modest improvement to take care of the snow load and angle of the roof. Years back, the house was in disrepair and subsequent owners have brought it slowly back to being more modern. This will put more of a finishing touch on those efforts. As far as the setback, all he is doing here is changing the roofline. He can get behind the project and can see why it should be done.

Chair Crapo called for a vote on the requested variances:

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo – Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - 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?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

7) The purposed use is a reasonable one?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

Motion by Burt Dibble to approve the application of Derek Brucato and Seana Zelanzo for property owned and located at 391 Central Road for variances requested to §190-6.3.A and §190-2.3.C(2). Seconded by Patrick Driscoll.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes
Motion passed

- 5. Robert & Lori Wright, Trustees of the Wright Family Revocable Trust for property owned and located at 64 Alehson Street, Tax Map 16, Lot 46, request variances from §190-2.3.C(2) for a generator 8' from the side boundary where 20' is required; and from §190-3.1.H.2(a), (e) and (g) for changes in landscaping for a patio, retaining wall and to remove 4 trees and add a gas firepit all in the wetlands buffer where 75' is required. Property is in the Single Residence District. Case #33-2020.**

Robert Wright, applicant, spoke to the Board. The proposal is to install a generator 8' from the side boundary. He noted there is really no other place to put the generator. The house sits exactly 20' from the lot line with a few inches lacking in the northeast corner of the house. If the generator were moved to the north it would be within the front setback. If it were to go south, it would be in space that is used as a backyard. Any further south of that would put it into the wetland area. The generator cannot be located to the west because that is the location for the leachfield. (He presented a plan on the screen showing where the generator would be located.) He noted that letters have been received from the Hopleys and the Jones, who are both immediate abutters and do not have any objections.

Chair Crapo asked the size of the wetlands.

Mr. Wright replied it has never been surveyed. The house was built in 1976, prior to the wetland regulations. He pointed out that the rear of the house is probably sitting in the buffer. Anything that is done in the backyard is in the buffer.

Chair Crapo asked if the wetlands are an acre or larger.

Mr. Wright replied not to his knowledge.

Chair Crapo commented he does not see why there is a 75' buffer.

Planning Administrator Reed explained that the building inspector told Mr. Wright a variance was needed.

Chair Crapo stated that under Section H, Wetlands Buffer, it says; “the wetlands buffer shall include all land.” In B, “within 75’ of wetlands one contiguous acre or larger in size.” He is having trouble thinking there is 1-acre of wetlands in the back of these home lots. He is not sure they need a buffer, in this case.

Planning Administrator Reed pointed out that when Mr. Wright first came in with the application, it was only for the generator. That is why there are some slight changes. She suggested that the Board be polled on whether the variances are needed and just act on the generator.

Speaking to Mr. Wight, Chair Crapo stated he would hate to find out later it is an acre and the application would have to come back. They can move forward assuming the relief is needed, but there is a potential it is not needed.

Mr. Wright stated he will defer to however the Board would like to handle it. In order to reconstruct the patio, which is the second part of the request, electrical and gas permits were needed anyways. It was not anticipated having a challenge on the wetlands. It is not on any map as a wetland. It is simply marked as a wet area. He did not want to go to the expense of hiring an engineer or surveyor. He is acting as if it is a wetland and is okay with the buffer and need to comply with the regulations of the wetland. He commented they still want to go ahead with the project.

Member Dibble commented he walked the back area and looked at the depressed territory. His first thought was it did not look like an acre. His second thought was that if there is standing water in the spring, it looks like it could be a vernal pool. He would like to see a soil scientist state what is there and get the Conservation Commission’s opinion before the Board agrees to any disturbance of the ground behind the house.

Mr. Wright noted the Conservation Commission walked the land. The commission said that the patio that was being replaced and the trees that are intended to be cut are in an area that is at a higher elevation. They did not deem it to be disturbing the area. The commission just asked that nothing further be cut from what has been marked and that no dumping take place.

Speaking to the landscaper, Chair Crapo explained there is different criteria if a wetland is an acre or larger. There may not be a setback needed if it is smaller than an acre. Member Dibble is under the opinion that it may be a vernal pool. If it is a vernal pool then it would be a 100’ buffer. He would like to hear what the project entails. Is it simply replacing what is there or are there new disturbances?

Jason Kindstedt, Green Penguin Landscaping, stated they were only looking to increase the existing patio by 200sf. Currently, it is a brick patio that is settling and needs to be evened out. The Wright’s are looking to update it with bluestone and incorporate a fire pit. It will be a gas-powered fire pit that will be tied in to the propane service with the generator. In order to meet the 20’ clearance for combustibles, it puts it just off the existing patio. To get the clearance, about 200sf total will be added to the patio. He continued they do understand that if it is a vernal pool or just a wetland, they are within the setback. It is felt that it is a minimal disturbance. The Wrights did not want to spend the time or cost on a soil scientist. It is right on the edge, so that is why they are going through the process of getting BOA approval. Mr. Kindstedt pointed out there is already a landscaped area and fence. They are not looking to extend into the wet area. The intent is to just go 8’ or 9’ off the existing patio, as it stands, to get the clearance for the gas fire pit.

The plan was presented on the screen for the Board's review.

Chair Crapo asked if the retaining wall is in the front near the driveway.

Mr. Kindstedt confirmed. He noted the existing retaining wall is starting to fail. It is going to be replaced in the same footprint and location with better materials.

There was review of the location for the trees that are proposed to be removed.

Mr. Kindstedt noted that the tree removal is going to be done by 'Seacoast Tree' and will be done with a crane. There will be very little impact to the area. The stumps will be cut flush and left in place.

Referring to the plan on the screen, Chair Crapo stated he is trying to determine where the buffer starts and stops.

There was review of the location of the wet area, as shown on the plan.

Mr. Wright pointed out that from the designated wet area shown on the plan to the back of the house is the buffer.

Chair Crapo stated the landscaped timber in the front is not in the 75' buffer. He asked if it could be within the 100' buffer, if that is determined to be a vernal pool.

Mr. Wright replied it would be just outside 100'.

Speaking to Mr. Kindstedt, Chair Crapo asked if it appears that it could be a vernal pool or just wet?

Mr. Kindstedt replied it is more of a wet area. He believes it is under an acre.

Member Dibble asked if there has been standing water in that territory in the springtime.

Mr. Kindstedt replied there has not, but he is not always on the property.

Chair Crapo commented that Lot 47 looks larger than the wetlands shown on the plan and it is less than an acre. Lot 54 is just under an acre and looks considerably larger than the wetland. He would surmise it is less than an acre.

Planning Administrator Reed noted that there is speculation that a vernal pool has standing water, but that is not the only determination for vernal pool. In looking at the Town's definitions, it has to have distinct plants and animals. It is not only just standing water.

Mr. Wright asked what the process would be if they were to say they still want to do the project, whether the buffer is 100' or 75'. No matter what it is deemed, they are asking for relief because the house was built in 1976; however, they are not looking to substantially change anything that is there.

There was review of the Conservation Commission's letter and meeting/site walk minutes addressing the property.

Referring to the Conservation Commission's meeting minutes, Chair Crapo stated they contemplated that it was maybe a vernal pool, but that was based on some plan. He asked what made them think it might be a vernal pool.

Mr. Kindstedt stated this was from the fact that it was labeled as a "wet area" and not classified as anything on the plans. It was a bit of an unknown until it was looked at during a site walk.

Chair Crapo stated that they sometimes make changes and add omitted variances. If this was to be modified to include Section A, which is 100' from a vernal pool, would that be a considerable enough change?

Planning Administrator Reed pointed out it has already been legally noticed as needing the wetland relief. A vernal pool is in that same section. It could be done for the vernal pool and the wetland without re-noticing because it has already been legally noticed as wetlands relief.

The Board reviewed the Conservation Commission's letter dated August 26, 2020.

Referring to the RCC's letter, Chair Crapo asked the applicant if he had any problems with the conditions recommended by the commission.

Mr. Wright replied not at all.

Chair Crapo pointed out the relief that has been requested is from 190-3.1.H.2(a), (e) and (g) which is in the buffer restrictions section. Section 2 says "it shall include all land" and Section A addresses the vernal pool and B the 75' buffer from wetlands 1-acre or larger. The relief would basically be the same. His thought is to proceed. The sections that the variances would be from would be the same whether it be 75' from the wetlands or 100' from the vernal pool.

Chair Crapo opened to Sally King from the Conservation Commission who was on the meeting.

Sally King, Conservation Commission Member, stated the commission visited the property. There is a bit of confusion because normally the commission asks for a wetland scientist delineation. This is a unique property because the back portion is shared by other properties. She noted that it is extraordinarily dry this year, so it was hard to observe. The commission members are not wetland scientists. Having said that, it looks like a low-lying wetland and not a vernal pool per se. The commission felt that what they were looking at, which was an existing patio essentially to be resurfaced pervious and the cutting of a couple of trees, would not affect the wetland behind them in a reasonable fashion. The commission was not opposed to the proposal. It seems to be a reasonable project.

Chair Crapo asked if they commission would feel or approach the review of the application differently, if it was confirmed this was a vernal pool.

Mrs. King replied that from what she has seen she doubts that is the case. It looks like a low-lying wetland area and not a vernal pool. Had it been designated as one, of course the commission would have felt differently. There is a caveat here that the Conservation Commission did not require this applicant to do what normally an applicant would, which is to delineate the wetlands.

Suzanne McFarland, Conservation Commission Chair, stated the Wrights asked RCC to look at the property when they presented their proposal. In being on the land, she concurs with Sally King. The commission was a little hesitant and thought they would be asking for a delineation. However, with the shading and the sloping the RCC came away as a group feeling it was not necessary.

In regards to the protection of the vernal pool, Chair Crapo commented he is not seeing that this activity would impede the nature activity.

Mrs. McFarland agreed.

Mrs. King stated it is clearly a wetland of some sort; however, it did not seem this would be very impactful.

Mr. Kindstedt pointed out that they are planning on putting silt fence up anyway to prevent construction creep causing more repairs. The patio is being expanded but the work around it is going to be very minimal. The silt fence will further decrease the impact of this project on the area.

Speaking to the Board, Chair Crapo asked if there are any issues or concerns with proceeding with the relief that has been requested, whether it is deemed large enough to be a wetland or is deemed to be a vernal pool.

Member Driscoll noted he is fine with moving forward. He would hope that Mr. Wright would be okay with submitting the plan to Mrs. Reed so it can be part of the record, as that has not been submitted to the Board.

Mr. Wright agreed to send the plan to Mrs. Reed.

Member Driscoll asked how confident they are that the scale, as shown on the plan, is accurate from the wetlands to the proposed patio and the building.

Mr. Kindstedt replied he is relatively confident. This is based on a septic plan for the property. When he measured with a 1/20 scale it seemed accurate.

Member Driscoll commented he is good going forward.

Member Piela agreed with Member Driscoll.

Member Dibble commented he is in favor of deliberating on the project.

Member Patten and Chair Crapo both agreed to move forward.

Chair Crapo asked for further questions from the Board for the applicant.

Member Dibble stated that there is some dumping along the edge of the wetland. He would like to think about conditioning this on cleaning up that activity.

Mr. Wright replied he will be happy to remove it.

Chair Crapo commented he anticipates that adherence to the recommendations of the RCC will also be a condition.

Mr. Wright pointed out that the building inspector had noted that the retaining wall was within the front setback. The wall is 49' from the lot line.

Mr. Kindstedt explained the denial letter said it may be within the front setback, but it did not say if it specifically was or not. This was included in the application to cover all the bases.

There was some discussion on the retaining wall and the applicant confirmed that it sits back 49' from the monument.

Referring to the drawings on the screen, Chair Crapo stated that it looks like the retaining wall ends at the same distance to the side line. He is thinking the building inspector meant to say it was potentially in the side setback.

Mr. Wright clarified that the boulder wall is not being changed. The only work being done is on the timber wall.

Chair Crapo stated he does not see that relief is needed for that, but he would hate to have someone "bounced back" by the building department. He continued that it is on the application, so he would be of the mind to add it as part of the Board's analysis and vote. It might not be needed and it will still be limited to "as presented" so it will not be moved closer to the road or anything like that. Rather than have the building inspector do a further analysis and he comes up with a different measurement and sends this back, he would feel comfortable adding 190-2.3.C(1) for the front setback for the retaining wall.

The board members confirmed they were comfortable with adding it.

Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 9:58 p.m.

Member Driscoll read the conditions proposed by the Conservation Commission;

- Only the four flagged trees are cut and the stumps are not removed;
- No dumping in the wetland buffer or wetland;
- No further cutting of trees in the wetland buffer or the wetland in accordance with Rye Wetland Ordinances; and

Member Driscoll added;

- Applicant to remove the existing dumping that's in the wetland buffer.

Member Dibble stated they have gotten to a good place with this. He does not think the application was completed in a way that made it easy. He looked at the steepness of the falloff at the back of the backyard. It looks like whether it is a wetland or vernal pool, there is not going to be any more encroachment on that territory by this project than what is there today. He is inclined to be in favor of the proposal.

Member Driscoll agreed with Member Dibble. It seems like in the spirit it's okay. He does not have any objection to any of the criteria. He is in favor.

Member Piela also agreed with Member Dibble. If it is a wetland, in his mind it is not an acre in size in comparing it to the other lots. The question in his mind is whether it is a vernal pool or not; however, in either case, it does not make a difference in his consideration of the project.

Member Patten agreed with the Board.

Chair Crapo stated whether this was a wetland created by the development or a wetland that was there and the development was created around it, does not make much difference. He thinks in comparing it to the lot that shows to be about an acre, this appears to be smaller. On the caution that it might be a vernal pool, the relief can be reviewed as requested. It would be the same relief regardless of whether it's a vernal pool or a regular wetland buffer with just different encroachment distances because of the 75' versus 100'. The project is not likely to disturb the wetlands that much. If it was a vernal pool, he does not see it denigrating the activity that the vernal pool buffer is intended to protect.

Chair Crapo called for a vote on the requested variances to 190-2.3.C(2); 190-3.1.H.2(a),(e) and (g) with the addition of 190-2.3.C(1) for the front yard setback for the retaining wall with the conditions, as outlined in the Conservation Commission's letter and removal of the debris in the wetland buffer:

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo – Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Chris Piela – Yes

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

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - 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?**

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

Motion by Burt Dibble to approve the application of Robert and Lori Wright for property owned and located at 64 Alehson Street for variances from §190-2.3.C(2), §190-3.1.H.2(a), (e) and (g), with the addition of a variance to §190-2.3.C(1) with conditions that only the four flagged trees are cut flush and the stumps are not removed; there be no further tree cutting in the wetland area; no further dumping in the wetland area and any materials previously dumped in the wetland area be removed. Seconded by Shawn Crapo.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion passed.

The Board discussed the possibility of holding a second meeting for the month of September. It was agreed to hold a second meeting to address continued applications on September 23rd.

Motion by Shawn Crapo to continue the applications of Todd Cronin and Karen Stewart for 546 Washington Road; Jay Mason and Jacqueline Dougherty for 4 Washington Road; Lawrence and Mary Teirney for 1 and 3 Cable Road; Brian and Mary-Ann Carlson for 24 Glendale Road; and Todor and Pauline Simeonov for 0 Brackett Road to the September 23, 2020 meeting. Seconded by Burt Dibble.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion passed

- 6. Patricia Brown and the Rye Conservation Commission for property owned and located at 81 West Road, Tax Map 6, Lot 9, request a variance from §190-2.3.C(1) for a shed 1.7' from the side boundary where 20' is required. Property is in the Single Residence District. Case #34-2020.**

Sally King, Rye Conservation Commission, explained this is a project that started about six years ago. It's a simple two lot subdivision that divides off the 2.7-acre house and outbuilding (shed) lot from the 78-acre conservation piece. The request is for 1.7' from the side setback for the shed. In dividing the house lot, the stonewall was followed because that is a natural division. She pointed out that nothing is changing. The existing buildings will remain where they are currently located. Next to the existing shed will be the large field. She noted that NRCS is going to be holding the easement and the Town will own it for passive recreation so it will be available for public use. It's a huge benefit for the Town.

Tracy Degnan, Rockingham County Conservation District, stated they have been working with very patient landowners for five or six years. She noted this has gone through two planning boards (Rye and North Hampton) and has received their approval. A very small approval is needed from the Rye Zoning Board and State subdivision approval. The Commission is hoping the approvals will be received by the end of this month. (Mrs. Degnan shared the site plan on the screen for review.) She pointed out on the plan the location of the structure (shed) that is 1.7' off the new side lot line. In working with NRCS on the easement, the Commission tried to create a lot that met all the zoning ordinances, not realizing this one structure was that close to the lot line. However, the easiest way to delineate the new lot was to use the existing lot lines, so that is what was done. She pointed out that the rest of the land is under a conservation easement already. There is a parcel on the property that is known as the Brown Orchard that has been permanently protected, as well. The project involved four different landowners of adjoining properties who sold the land to the Conservation Commission in 2019. She commented that it was originally thought that the shed could be moved but that is not the case, as it is pretty heavy. The landowners would like to keep the shed where it is located and that is why this is before the Board. She continued that the one request for a variance is in the best interests of the Town. The Town is going to retain 79-acres which will be managed by NRCS through their Wetland Reserve Program. (Mrs. Degnan presented a plan showing the surrounding area. She explained why the preservation of this property is so important, as it protects Bailey's Brook and the Wellhead Protection area.)

Chair Crapo asked why it is a hardship to just go 20' on the other side of the stonewall and put in the boundary markers.

Mrs. King noted that the field is the value of the property. The field is adjacent to that shed. The appraisal for the property is done with the consideration of development potential. The development potential is in the field, which is to the right of the shed. The line was drawn for that reason. There has to be value to the property in order for NRCS to be interested. A lot of the money for this purchase of this property came from NRCS.

Member Piela asked if they are trying to maximize the value of the land the Town would get. That is why the lot line is right up against the shed.

Mrs. King confirmed. Also, the easement into the back land, which is for passive recreation for the Town to enjoy, is through that field. This is the only way into the property.

Member Patten asked if they are saying if the property line were 20' from the shed, the property would not have enough value to attract funding.

Mrs. King confirmed.

Mrs. Degnan explained the easement has already been placed on 79-acres. The easement was surveyed by NRCS. There is already an established out easement area, which is what is being used as the lot line.

Member Patten commented that it was said the shed is too heavy to move. He pointed out that the Rand Lumber Barn was moved.

Mrs. King stated the property owner has been working with the Conservation Commission for about six years. They have been extraordinarily patient. She pointed out that every year it becomes harder to conserve land in Rye. These landowners have done everything the Commission has asked and waited years for the land to be leveraged through NRCS so the Town pays so little to conserve this land. In her mind, this is a very small ask. It is not changing anything. The field will remain the same. The building will remain where it is. There will be no changeable impact.

Member Patten commented that he would tend to agree; however, no shed is too heavy to move.

Chair Crapo stated if they were to move the shed in 20' to comply, it would be on top of the other outbuilding. It would almost be as far in as the house.

Member Dibble stated that he understands that preserving as much field as possible because of the value, is a very valid position. He continued that he looked at the layout of the buildings on this property pretty carefully and the building they are talking about could hardly be described as a shed. It is more like a small house. He commented that anything can be moved. However, he thinks the loss to the applicant outweighs the gain to the Town by trying to move this building.

Mrs. King commented that moving it was never really a consideration. This family has bent over backwards. It is becoming really rare to have people who want to conserve land because the value of land is so tremendous. The benefit to the Town for conservation of this land is really significant. Having the lot line follow the existing wall just made sense and gave the homeowners what they wanted, which was to keep their outbuildings. It is really an acceptable balance.

Chair Crapo asked what triggered this. If it was by the building inspector, did they miss the generator? The generator didn't need initial relief when it went in but now it is just a bit further in from the shed by maybe a foot. He thinks relief is needed for the generator, as well.

Mrs. King replied this has not come up.

Chair Crapo pointed out that the generator is only a foot or two from the lot line, as well. He thinks the generator needs to same relief. That relief will need to be added for consideration.

Member Driscoll pointed out this isn't a problem because it's a variance from the same section and has already been noticed. He continued that the Board has allowed some sort of spacing, whether its 2' or 1.5', in order to service the side of the building while still be on the property. This seems to satisfy that. The explanation they have given has satisfied his hardship criteria. He asked about the building near the rear boundary and whether it needs relief.

Mrs. King replied the building is no longer there.

Member Patten asked if the owner's lot will be a conforming lot.

Mrs. King confirmed.

Hearing no further questions from the Board, Chair Crapo opened to the public. Hearing none, he closed the public hearing at 10:40 p.m.

Member Driscoll stated he appreciates what the Conservation Commission and the owners have done to try to improve the Town. The request passes all the criteria in his mind. He thinks the hardship is satisfied. Keeping the stonewall as the boundary and having space to access that side of the shed, seems like a simple one in his mind.

Member Piela concurred with Member Driscoll. It looks like if the side yard was moved to be complaint, there would be a loss in value and they would lose the easement. That is hardship, as far as he is concerned.

Member Patten commented they have satisfied the hardship argument. He thinks it's a fantastic project and he is definitely behind it.

Chair Crapo reiterated that the generator needs to be added into the consideration. There is roughly 1' or 2' between it and the stonewall.

Chair Crapo called for a vote on the variance requested along with consideration of the generator;

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

Patrick Driscoll – Yes

Chris Piela – Yes

Burt Dibble – Yes

Rob Patten - Yes
Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo – Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - 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?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

7) The purposed use is a reasonable one?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

Motion by Shawn Crapo to grant the application of Patricia Brown and the Rye Conservation Commission for property owned and located at 81 West Road for relief from §190-2.3.C(1) for the shed 1.7' from the side boundary where 20' is required and for the generator, approximately the same distance, in its current location and setback from the new boundary, (also referenced as the stonewall). Seconded by Patrick Driscoll.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion passed.

Chair Crapo noted the Board has already motioned to continue application number 7; however, the owners have requested it be heard due to time and construction restraints. Under the rules, there needs to be unanimity to push forward and open up this application.

Josh Perry, contractor, noted that Anne Whitney, the architect, had worked with Peter Rowell on this a year and a half ago and it was approved. Since the new building took over, he took another look at the project. Work was to begin on a section in the back and the building inspector decided to have the Zoning Board take a look. He noted that the barn is in the same exact footprint. It is being raised 30" because the previous barn was so low; however, it is still 4' lower than the house. It seems like the project is pretty cut and dry and approval was already received before.

Chair Crapo polled the Board on whether to continue with the application:

Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo - Yes

Motion by Shawn Crapo to un-continue the application for 546 Washington Road (application #7) to be heard at this meeting. Seconded by Patrick Driscoll.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion passed.

- 7. Anne Whitney Architect for Todd Cronin & Karen Stewart for property owned and located at 546 Washington Road, Tax Map 16, Lot 204, requests variances from §190-6.3.A for expansion of a non-conforming structure; from §190-6.3.B to demolish an existing barn; and from §190-2.3.C(2) for a new barn 8.47' from the left side boundary where 20' is required. Property is in the Single Residence District. Case #34-2020.**

Chair Crapo commented that he is not sure if they lost any abutters from the meeting when this was continued.

Todd Cronin, applicant, explained there were three abutters that were notified. They have spoken to all of them and there are no issues.

Member Patten asked if there were any letters in support received.

Mr. Cronin replied not submitted. There were two emails from two of the neighbors, but there were no issues.

Chair Crapo asked if a building permit was issued by Peter Rowell (former building inspector).

Mr. Perry explained that his company spoke with Anne Whitney a year and a half after she drew the plans. He believes that Anne went through the process with Peter Rowell and he did not see any issues with the project. He continued that his company applied for the building permit, not thinking there would be any variance issues. The current building inspector, Chuck Marsden, gave permission to build the other addition off the back and wait on this. He wanted this part of the project to go before the ZBA because the height is being increased. The footprint is exactly the same. The homeowners wanted more height in order to get cars in the barn and for drainage also. The original intent was to raise the barn; however, it was not a good enough structure, integrity wise, to do that.

Chair Crapo asked if a building permit was issued by Peter Rowell and then overturned by Chuck Marsden.

Mr. Perry replied not to his knowledge. He continued that Anne Whitney would not have applied for the building permit but she would have checked variance issues and gone through that process with Peter Rowell.

Chair Crapo asked what is being replaced that is different from what was there.

Mr. Perry explained that esthetically it is going to look the same as it did. Some height is being added to get it up off the ground more so cars can get into it. Before the barn was about 19' off the ground and it is going to 22'.

Mr. Cronin explained the original garage sat probably 30" below where the floor plan would be. Part of it is to have a flat floor plan from the garage to the back area into the existing home.

Karen Stewart, applicant, explained there was a drainage issue with runoff going into the garage. There is a little bit of height being done on the grade and a bit of height being added to the structure as well.

Mr. Perry reiterated the footprint is the same. The barn was not salvageable enough to go through a move like that. Also, the lower half of the barn was rotted.

Chair Crapo asked if a building permit was received for part of the project.

Mr. Perry confirmed a permit was received for the addition and the connector. He explained it was a deep project with site work. There was a septic involved and timing issues. His company was under the impression that everything was okay. The work was in motion and the current building inspector said he was not going to approve this portion of the project without the Board looking at it.

Chair Crapo noted that technically any expansion in the setbacks does go before the Board. He asked if the septic and the addition that was done in the rear received permits.

Mr. Perry confirmed. He noted the work has already been completed.

Member Driscoll pointed out that this is addressed in the building inspector's denial letter. (He read the letter.) Member Driscoll noted that the letter also asks about generators, HVAC equipment, LP tanks and rinsing stations. He asked if those items have been considered for this project?

Mr. Perry noted that those items are not being considered for this project.

Referring to the soffits and fascia, Member Driscoll asked if what is existing is going to be replicated so there would be no further encroachment.

Mr. Perry confirmed there will be no further encroachment.

Chair Crapo opened to the public for comments.

Sally King, Conservation Commission, stated the Cronins purchased this property with the 5-acres behind it already in conservation to benefit the Town. The Cronins came into town with a conservation minded affiliation. She thinks everyone in town really appreciates their work on this 1725 house.

Chair Crapo asked if they have worked with the Historic District.

Ms. Stewart noted the Historic District Commission approved all the plans. This has also gone before the Demolition Review Committee when it was determined the barn had to be taken down. She noted that Josh and his team took the barn down by hand, in order to preserve as many barn boards as possible.

Hearing no further comments, Chair Crapo closed the public hearing at 11:03 p.m.

Member Driscoll stated it seems pretty straight forward. He is glad they went through the HDC. It looks like it is a great rebuild of what's there and should give far more function. Referring to the letter from Chuck Marsden, it seems it was in favor of getting the project going while correctly pointing out something that needed a variance. He thinks Chuck Marsden is doing right with the denial letters in certain applications. He continued that everything passes his criteria. He has no objection.

Member Piela agreed with Member Driscoll. The project makes sense.

Member Dibble stated this is a net improvement to the neighborhood. He does not see anything to be gained for denying the application. He commends the owners for being so attentive to a property that is in the center of town.

Member Patten stated he likes what they are doing and sees the value. He does not have any questions or concerns. He can't wait to see how this turns out when completed.

Chair Crapo commented the project makes sense. It is not becoming more encroaching. It is simply raising it up to meet some modern standards.

Chair Crapo called for a vote on the variances requested;

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo – Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo – Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - 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?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

7) The purposed use is a reasonable one?

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
Burt Dibble – Yes
Rob Patten - Yes
Shawn Crapo - Yes

Motion by Burt Dibble to approve the application of Anne Whitney Architect on behalf of Todd Cronin and Karen Stewart for property owned and located at 546 Washington Road as advertised. Seconded by Patrick Driscoll.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion passed.

- 8. Jay Mason & Jacqueline Dougherty of 77 Tyler Park, Lowell, MA for property owned and located at 4 Washington Road, Tax Map 13, Lot 40, request variances from §190-2.4.C(2) for a dwelling 6.6' from the left side boundary where 20' is required; from §190-2.4.C(3) for a dwelling 7.5' from the front boundary where 16.8' is required; from §190-3.4.E for dwelling coverage 21.2% where 15% is required; from §190-3.1.H(2)(a), (b) and (g) for building 78.9' from the tidal wetland buffer where 100' is required and for 41.5' from the freshwater buffer where 75' is required and for**

a septic 90' from the tidal wetland buffer where 100' is required and 81' from the freshwater buffer where 75' is required; and requests waivers from the building code §35-14.B(1)(a)(2) and §35-14(C)(1) for a septic system 4' from ledge where 6' is required; from §35-14.B(5) for septic 9' from left side boundary where 20' is required; from §35-14.B(2)(a) and §35-14.D(1)(a) for septic system 41.5' from the freshwater buffer where 75' is required; from §35-14.D(1)(a) for a septic system 90' from the tidal marsh buffer where 75' is required; and from §35-14.F(1) for new construction standard compliance. **Property is in the General Residence, Coastal Overlay District. Case #35-2020.**

Continued to the September 23rd meeting (see motion above).

9. **Lawrence L. Teirney & Mary R. Teirney Revocable Trusts, Lawrence & Mary Teirney, Trustees of 72 Mirona Road, Suite 4, Portsmouth, NH for property owned and located at 1 and 3 Cable Road, Tax Map 5.2, Lots 43 and 44,** requests variances from §190-2.3.C(1)(3) for a house 3.9' from the rear boundary where 23' is required, for a house 16.2' from the side boundary where 20' is required and a porch 23.6' from the front boundary where 40' is required; from §190-2.3.C(5) & 3.4(D) for dwelling coverage of 21.1% where 15% is required and lot coverage of 26.4% where 15% is required; from §190-3.4.D for a ridge height of 28.2' and cupola height of 33.29' where 30' is required (for Freeboard) and from §190-6.3B for replacing a non-conforming structure. **Property is in the Single Residence, Coastal Overlay District and SFHA, Zone AO+1. Case #36-2020.**

Continued to the September 23rd meeting (see motion above).

10. **Brian K. & Carrie-Ann B. Carlson of 690 Lancaster Ave, Lunenburg, MA for property owned and located at 24 Glendale Road, Tax Map 20.2, Lot 129,** request variances from §190-2.4.C(3) for a home 16.5', a deck 13.7' and a walkway +/- 3' from the front boundary; from §190-2.4.C(2) for a home 11.8' from the left side boundary and for a home 14.2' and deck 7.9' from the right side boundary; from §190-5.0.B for 2 parking spaces less than 10' from any lot boundary; §190-6.3.B for replacement of a non-conforming structure; and a waiver from the building code §25-14.B(5) for a septic system 10' from the side boundary where 20' is required. **Property is in the General Residence, Coastal Overlay Districts. Case #37-2020.**

Continued to the September 23rd meeting (see motion above).

11. **Mary H. Murphy Westover for property owned and located at 9 Perkins Road, Tax Map 5.2, Lot 123,** requests variances from §190-2.4.C(1) for a rinsing station 12.6' from the rear boundary where 25' is required and from §190-6.3.A for expansion of a non-conforming structure. **Property is in the General Residence, Coastal Overlay District. Case #38-2020.**

Applicant requested a continuance to the October meeting. (See motion above)

- 12. David Eckman, owner representative for Todor & Pauline Simeonov for property owned and located at 0 Brackett Road, Tax Map 17, Lot 65, requests an Administrative Appeal per §190-7.2 of Rye Zoning Ordinance to appeal the building inspector's letter dated 7-27-2020 that the construction of the stonewall is within the wetland buffer. Property is in the Single Residence District. Case #39-2020.**

Continued to the September 23rd meeting (see motion above).

ADJOURNMENT

Motion by Burt Dibble to adjourn at 11:12 p.m. Seconded by Rob Patten.

Roll Call Vote: Patrick Driscoll – Yes; Chris Piela – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes

Motion passed.

**Respectfully Submitted,
Dyana F. Ledger**