

TOWN OF RYE – BOARD OF ADJUSTMENT MEETING

Wednesday, October 6, 2021
7:00 p.m. – Rye Public Library

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Chris Piela, Patrick Driscoll, Burt Dibble, Sandra Chororos, John Mitchell and Michael Brousseau

Also Present on behalf of the town: Planning/Zoning Administrator Kim Reed

I. CALL TO ORDER

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

II. BUSINESS

- Approval of the September 1, 2021 meeting minutes

Seated for voting on minutes: *Patricia Weathersby, Chris Piela, Patrick Driscoll, Burt Dibble and Sandra Chororos*

Motion by Burt Dibble to approve the minutes of September 1, 2021 as amended.
Seconded by Chris Piela. All in favor.

III. APPLICATIONS

Note: *Patricia Weathersby recused herself from the request for rehearing. Shawn Crapo was seated as acting chair.*

Seated: *Shawn Crapo, Chris Piela, Patrick Driscoll, Burt Dibble and John Mitchell*

- **Request for rehearing and reconsideration**, per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment's August 4, 2021 of variances and special exception by Attorney Mark E. Beliveau on behalf of Peter and Patricia Brotchie for property located at 63 Old Beach Road, Tax Map 8.4, Lot 134, cases #31a-2021 and 31b-2021. **Public hearing closed during Board discussion the request.**

Acting Chair Crapo noted that the Board's packets have the response from Attorney Phoenix on behalf of the applicant. Procedurally, this will be closed within the Board for deliberation. The Board needs to evaluate two criteria. One is whether or not information has come to light that would could possibly change the decision making that night. It would be more enlightening and

the outcome could have possibly been different. It's substantial information that could not have been presented that evening. If it would have been available but was just not presented, that does not meet the threshold. He continued that the other criteria are that the Board evaluates whether or not they feel that either individually, or as a whole, made a misinterpretation of zoning or some mistake of law that would have changed the outcome and therefore warrants that the application be reheard.

Acting Chair Crapo noted that at the end of the deliberation, he will poll the board and take a vote as to whether it warrants a rehearing. Procedurally, the way it works is if a rehearing request is granted, it then basically turns the clock back to the application's start. Basically, the hearing would start fresh at a new date as a rehearing. It would not just be a corrective. It would be a total rehearing. Acting Chair Crapo stated that the way he read this is that their primary argument is that they feel it does not meet the five application criteria for hardship for granting the variance. He asked if everyone had a chance to read through both sets of documents.

(Board confirmed.)

Member Dibble stated that his principal issue was about the area interpretation and that related to potential diversion of water to the adjacent properties and potentially water washing down from the ocean, down that access road. He thought that the Board thrashed that out pretty thoroughly and decided all of those properties, at the end of the day, would need to be improved. He still favors the decision the Board arrived at.

Member Piela agreed. He doesn't know that they procedurally erred in coming to their conclusion. He was sympathetic with the abutters, but does think the Board came to a reasonable conclusion and followed all the proper procedures in their consideration.

Member Mitchell stated that his view hasn't changed since that evening. He doesn't think there was enough information for the Board to make a determination on what was going to happen on either abutting property. It is just intuitive that if there is a high-water event, this property will be like a ship in the night and it's going to cause even more flooding on the abutting properties. He had asked for further information and really didn't get any answers to that. He reiterated that he doesn't feel there was enough information. So, voting on it that evening, he was not comfortable because there was not enough information on what the result was going to be for the abutters on both sides.

Member Driscoll commented that Member Mitchell brought up a couple of good points. However, the Board voted in favor of this application 5 to 0. He asked Member Mitchell if he feels like he misinterpreted or made an error in judgement by voting in favor of the application.

Member Mitchell replied that the way that the questions were stated, he was answering the questions to the best of his ability. In looking at what he answered in the negative, it was how this is going to adversely affect the butters. He still thinks that and still thinks that if there had been further information that could explain the situation, the Board could have possibly made a

different decision. It was also something that had come up where the Board could have requested further study. He voted in the affirmative to have that done, but it was voted against by 3 to 2. He can only state what is on his conscience because it's really a nice design. It's an upgrade to the property, but he also feels a responsibility to the abutters. Member Mitchell continued there is water behind the property. There's water that comes down the lane. Also, in looking at AE zoning, it was stated that night that there's only a 1% chance that it would even hit the high-water level that they're required to build to. But, if you really look at that FEMA code, there is a higher percentage that it could possibly happen within the 30-year life of mortgage. He does not think that they really gave adequate consideration to the abutters.

Acting Chair Crapo asked if he feels that adequate consideration was given to the zoning questions at hand. He continued that the way a lot of the zoning is created, and the way most case law that has to do with particularly the wetlands and the regulations is, is that the subject lot cannot put water onto the neighbors at a higher rate or degree post construction than it did before. Neither side really presented conclusive case law but it was anecdotal whether or not a lot must accept floods in from others. Perhaps that's an error courts need to flush out. From Rye's zoning, they need to satisfy the criteria as they are written. He has said that he didn't think any engineering analysis was going to show anything different. The proposal was to build the wall. Their runoff was going to percolate down the wall. It was keeping it from going laterally and forcing it down. He didn't see any zoning perspective that made them need to inherit water, be it from the ocean coming down the right-away, across the street or from the abutting properties. He thinks it's an interesting potential case here because it definitely deals with; does someone have to accept the floods? Can they protect from the floods? He doesn't think that zoning wise, there was an added height of duty that the Board had to override the criteria at hand versus what was evaluated and presented.

Member Driscoll stated that the reason he asked for Member Mitchell's input on it is because he said a lot of the things that he was thinking. He voted against seeking more information that night and in hindsight, he would have liked more information on this after reading back through it, looking through FEMA and seeing some general advice from town counsel. Whether that's procedural or misinterpretation of findings, he is not sure. He also doesn't want to harp on this if he's the only one that feels like they erred. Even on the request for rehearing, he's hearing that procedurally, everyone thinks they're okay. He thinks that he made an error in not asking for more information when FEMA and the town zoning fly in the face of each other. That's always a spot where it's a bit tricky for him and he wants to be as efficient as possible with these cases. He feels this is one where he probably should have voted the other way in seeking more information with that water level. He went back and looked at the decision. He went down through each of the bullet points. Not asking for more information on the east right steps, right overhang and the retaining wall from the side boundary were the ones where he should have asked for more information from the applicant or from the Board's own ability to go out and hire a professional to take a look.

Acting Chair Crapo stated that he made some notes in the request for rehearing. On page 9, they say the applicant has not satisfied the burden of showing substantial justice. There are some

varying interpretations of substantial justice. His interpretation of substantial justice is the zoning paints the broad brush, and then there's the application and the possibility for a variance creating a property's specific exception to try and achieve certain remedies. They're trying to renovate an old house or remove and replace basically. So, the justice is they're trying to get a home. Then they also have the FEMA regulations that are driving some of the changes. He thinks the substantial justice they have to show is the balance that they're trying to achieve between those. He thinks the argument here for rehearing is more that they're trying to say that you can't have one property accepting everybody else's water. In terms of the way it's worded, it's that the variances will cause diminution of surrounding property values. Again, that is subjective. They even quote from the Harborside Case that shows it's the Board's perspective. The Board is supposed to take their life experiences and apply that. The Board doesn't have to have appraisal experts. The abutter has just as much duty to show that there would be a diminution, just as the applicant has to show that there is not. In general, when someone upgrades their property, it's always intended to be viewed as a positive for the neighborhood.

Acting Chair Crapo continued that these people have to satisfy FEMA. They have to take certain steps. He doesn't know procedurally that the Board made an error. Also, any extra engineering wasn't going to tell the Board much more. Again, he thinks it would have been trumped by the fact that there's no laws yet that say you have to allow abutting waters or ocean waters to inundate your property.

Member Mitchell stated that he thinks part of what is being pointed out, and what was also discussed that evening, is that the discussion really focused on runoff. This base created by these three retaining walls is going to trap all the runoff from the house. He is bringing to this Board, his experience with water and water on property. He knows what it can do. So, he's not talking about the runoff so much from the house. He's talking about the marsh behind the property, as well as the ocean on the other side. He thinks it's a unique property because it is in a FEMA zone and it has water on both sides. He thinks it's an obvious thing that it's going to impact the two abutters on either side when there's any kind of rise in the water.

Member Piela asked if he would have the same concern if they had used stilts instead of fill?

Member Mitchell replied no because the water would be allowed to be shared through three properties, not just be pushed off onto the two others.

Acting Chair Crapo noted that the construction of the application is not before the Board. The Board really needs to focus on whether they think there's a procedural error or if there is evidence that has only arisen since the time of the hearing. Again, if it was something that could have existed before as a report and this was not shared, then this does not rise. He continued that he called for the vote as a package that night. He did not poll the Board as to whether or not they wanted to do that. He kind of made an executive decision. He didn't see that there was one part of it that could have been approved on its own standing. He felt it was a package. If the Board feels that procedurally it needed to be broken out, it can be decided that there should be a rehearing.

Member Piela stated that his comments were more centered on the fact that Rye allows fill and stilts in its zoning laws. The zoning laws allow both mechanisms to raise the structure to meet zoning, but that wasn't in front of the Board. The applicant chose this mechanism, It's an allowable mechanism. That's why he voted in favor. He doesn't think there was a procedural error that would cause the Board to change, unless someone says they shouldn't have voted as a block. But he agrees, given the fact that you can't approve the retaining wall without the structure or the setbacks, that it kind of makes sense to vote as a package.

Member Mitchell stated that he would like to point out that the Board took a vote on the question for more engineering information. Member Driscoll noted this evening that he should have voted in the affirmative. That would have changed the vote because it was 3 to 2 against. However, it would have changed it the other way and extra engineering information would have been required. He also felt the one abutter was given adequate notice. This was discussed that night.

Acting Chair Crapo explained the notice goes out about an upcoming hearing. That is the one notice. If it's continued, they are still on notice that there's going to be a hearing. Tonight, there were two applications that were withdrawn, which means they are not coming back again. If they do, there will be a reapplication with a new notice. It's the abutters duty to follow the continuation. That is not a failure of notice.

Member Mitchell commented that the notice was returned to the Town Hall by the post office because it was a registered notice. When the abutter went to pick up the mail, there was nothing there. They didn't receive the notice. That was information that the Board didn't have that evening.

Acting Chair Crapo stated that the notices go out and the proper procedure is followed. The abutter not forwarding their mail or pocketing a mail slip, does not mean they weren't given proper notice. They had opportunity to go to the post office and pick up the letter. He continued that the criteria is whether there was a procedural error in applying the zoning or new information has come to light that warrants a rehearing.

John Mitchell moved the grant the rehearing requested by Attorney Mark Beliveau on behalf of Peter and Patricia Brotchie. Seconded by Patrick Driscoll.

**Vote: Burt Dibble – No; Chris Piela – No; John Mitchell – Yes; Patrick Driscoll – Yes
Shawn Crapo – Yes**

Vote: 2-3 Motion failed.

Motion by Burt Dibble to deny the request for rehearing. Seconded by Chris Piela.

**Vote: Burt Dibble – Yes; Chris Piela – Yes; John Mitchell – No; Patrick Driscoll – No;
Shawn Crapo – Yes**

Vote: 3-2 Motion passed.

Note: Shawn Crapo left the meeting at 7:45 p.m. Patricia Weathersby recused herself from the following application. Patrick Driscoll stepped in as acting chair.

Sitting for application: *Patrick Driscoll, Chris Piela, Burt Dibble, Michael Brousseau and Sandra Chororos*

1. **Arthur G. Pierce Rev. Trust & Sharon Pierce Rev. Trust, Arthur & Sharon Pierce, Trustees of 24 Colony Cove Road, Durham, NH for property owned and located at 261-279 Pioneer Road, Tax Map 24, Lot 117** request variances from §190-5.3.C(2) for a condominium conversion of 4 units having 580sq.ft, 580s.ft, 530sq.ft, and 530sq.ft. where each is required to have a minimum of 600sq.ft. of floor area and from §190-5.3.C(7) as the amount of land designated as common area is less than 90% of the area of the parcel not designated for buildings and individual unit owner's vehicles and does not meet the minimum lot area and frontage requirements. **Property is in the Single Residence District. Case #34a-2021.**

Acting Chair Crapo noted that the application is a continuation from last month. He will have Attorney Pelech bring the Board up-to-speed on any new findings. He asked Attorney Pelech to also explain to the Board if they are going forward with the variances, as there was some discussion at the last meeting as to whether they were needed.

Attorney Bernie Pelech, representing the applicants, stated that as he was not privy to Attorney Donovan's memo to the Board, he took it upon himself to do some research. He does not think the variances are needed at all. In 2007, in the case of the Town of Rye Board of Selectmen versus the Town of Rye Zoning Board, the Supreme Court said the 600sq.ft. requirement is preempted by the State statute and is not valid. In another case, Korn versus the Town of Henniker, the Supreme Court said that requiring the condominium to meet minimum lot size and frontage is likewise preempted. Both of those decisions were based primarily on the fact that there is no change whatsoever proposed for this property. The property is the same size and the units are the same. There are no external changes to the property. There are no internal changes proposed. There will be no changes to the site nor to the buildings. Based upon those two cases, he does not think the variances are necessary.

Acting Chair Driscoll suggested that the Board take a vote on the variances. He explained to the Board that there was discussion last month on whether it was necessary for them to have any variances for this application. The special exception is a whole different point. He asked the board members their thoughts on whether the variances are needed for this application.

Member Piela stated it is his opinion that they do not need variances.

Member Dibble commented this is his opinion as well.

Member Brousseau agreed based on the memo from town counsel.

Member Chororos agreed.

Motion by Chris Piela that the variances as advertised are not needed based upon guidance by town counsel. Seconded by Burt Dibble. Vote: 5-0. All in favor.

- 2. Arthur G. Pierce Rev. Trust & Sharon Pierce Rev. Trust, Arthur & Sharon Pierce, Trustees of 24 Colony Cover Road, Durham NH for property owned and located at 261-279 Pioneer Road, Tax Map 24, Lot 117 request a special exception per the Rye Zoning Ordinance §190-5.3.A for 8 apartments in existing 4 buildings. Property is in the Single Residence District. Case #34a-2021.**

Attorney Pelech stated that there are seven criteria for the special exception; two of which don't need to be met (600sq.ft., lot area and frontage). He reviewed the criteria for the special exception.

- The dwelling units subject to the request for condominium exist as legal dwelling units pursuant to the ordinances of the Town of Rye. The newest building was built in 1970. Attorney Pelech pointed out that he couldn't find any building permits in the building department dating back that far for those structures. The tax cards show they've been taxed and have been duplexes since their inception. There was no conversion of a single family to a duplex. The units meet the criteria for legal dwelling units.
- The off-street parking requirements are existing and that requirement has been met.
- The conversion does not adversely affect the values of surrounding properties. The buildings have been there for over forty years. Nothing is changing, except the form of ownership. The buildings are going to be the same and the site is going to be the same.
- The conversion is not injurious nor determinantal to the town, as nothing is changing except for the form of ownership.
- The septic system and/or private sewer system standards for NH DES and the Town of Rye existed as of the date must be met or exceeded by all systems used by the dwelling units associated with the condominium conversion. A certificate must be filed with the BOA based on review of town records by the building inspector or onsite inspection of systems and soil conditions by a professional engineer. Attorney Pelech noted that Alex Ross of Ross Engineering has also prepared a design for a replacement system.

The septic plans were submitted to the Board for review, along with the condominium plan and existing conditions plan.

Acting Chair Driscoll stated that at the last meeting they talked about getting this information and potentially reaching out to the Rye Conservation Commission because it's dealing with the septic.

Attorney Pelech replied that he met with them and a site walk was conducted.

Planning/Zoning Administrator Reed noted that she sent the Board correspondence from RCC in regards to this proposal.

Speaking to the Board, Acting Chair Driscoll asked if everyone has enough information to go through the submittals and the proposal.

The Board confirmed.

Attorney Pelech continued to review the details of the septic design prepared by Alex Ross. He noted that the application for the replacement systems is pending NH DES approval. The intent is to have the approval by the time the application goes before the Planning Board.

Acting Chair Driscoll asked if RCC went over the septic design.

Attorney Pelech replied that they did not have any questions. It was confirmed with them that all the septic would be outside the 100' buffer, which is different than what is there now. He pointed out that the existing septic systems were inspected by a licensed inspector and found to be functional. Attorney Pelech summarized it's a simple application in that nothing is changing and it's a true conversion. The only thing that changes is ownership. The building and site will stay the same. The Conservation Commission has made some recommendations they will try to meet. Everything that's on site is a pre-existing non-conforming use which predated the wetlands ordinance in Rye. Some of the buildings are actually in the buffer and have been, as is the dumpster, pavement and lawns. According to the ordinance, if they are pre-existing non-conforming, they're okay. However, the intent is to work with the Conservation Commission to try to make changes in accordance with their recommendations.

Referring to the Conservation Commission's letter, Chair Driscoll asked Attorney Pelech to go through RCC's points and explain what the applicant plans to abide by.

Attorney Pelech commented that he does not think his client will have a problem with the recommendation; "The first 50' of the 100' buffer should be left to grow without mowing or cutting to provide a vegetative strip to protect the marsh and estuary". His client can also mark the edge of the 50' vegetative strip. In regards to the three sheds that are in buffer being removed and relocated; Attorney Pelech noted this is where there was some difference of opinion. One of the sheds has been there since the applicant purchased the property in 1976 and it's in the buffer. One of the sheds, which was permitted, is not in the buffer. There is a canvas carport that will be moved out of the buffer. RCC wants the dumpster to be relocated outside the buffer; however, that has been there for 40+ years.

Attorney Pelech continued that #6 on the letter is not a problem at all. He explained that this property abuts the marsh. There is an area that is like an island of upland in the marsh. Apparently, whoever does the landscaping has been mowing a path from the lawn out to the island, but that will stop. In regards to the invasive bittersweet in the buffer being removed, there is a question as to whether it is on the applicant's property. It may be on the Conservation Commission's property, as they own the abutting property. However, the applicant will remove it.

Member Dibble asked if he heard that there is a shed preceding zoning that is in the buffer and will be staying.

Attorney Pelech noted that the owner has never received a notice of any violations from the town.

Referring to the shed in question, Member Piela asked what unit will own the shed.

Attorney Pelech replied it's proposed to be a limited common area for unit 8. The shed belongs to unit 8.

Member Piela asked if there is any reason the applicant would be opposed to moving the dumpster.

Attorney Pelech replied that he is going to recommend this to his client. There may not be a suitable place, but he thinks they can find one that's accessible by Waste Management.

Hearing no further comments, Acting Chair Driscoll opened to the public. No comments were heard. The public hearing was closed at 8:15 p.m.

Member Dibble stated that the requirements for the special exception have been addressed. He proposes that the conditions in the Conservation Commission's letter be abided by.

Acting Chair Driscoll noted that the recommendations of RCC that were in question were #3 and #5 (sheds and dumpster). He believes the Board should have a discussion as to whether they even have the ability to vote to have those removed as part of this application for a special exception.

Member Piela pointed out that one shed is technically fine, as it's outside the buffer. The canvas one is going to be removed. That leaves one shed that was original to the property and repaired in place.

Member Dibble commented that he thinks that's grandfathered.

Member Piela agreed.

Member Dibble stated that the other things like ceasing the mowing and getting rid of the pathway, and letting the natural habitat redevelop, should be done. He continued that he would like to see the dumpster outside the buffer.

Member Chororos agreed.

Member Piela also agreed.

Member Mitchell commented it sounds reasonable.

Member Brousseau asked if units 7 and 8 are in a position to cause collective insurance liability to the entire project because of where they sit.

Acting Chair Driscoll opened the public session for Attorney Pelech to answer.

Attorney Pelech stated that to the best of his knowledge, he doesn't think that his client has to pay for FEMA flood insurance for those units.

The public session was reclosed at 8:19 p.m.

Acting Chair Driscoll called for a vote on the special exception.

1) Is it neither injurious nor detrimental to the neighborhood?

Burt Dibble – Yes
 Sandra Chororos – Yes
 Chris Piela – Yes
 Michael Brousseau – Yes
 Patrick Driscoll – Yes

2) 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?

Burt Dibble – Yes
 Sandra Chororos – Yes
 Chris Piela – Yes
 Michael Brousseau – Yes
 Patrick Driscoll – Yes

Motion by Burt Dibble to approve the special exception application by Arthur G. Pierce Revocable Trust and Sharon Pierce Revocable Trust for property owned and located at 261-279 Pioneer Road as advertised and conditioned upon the recommendations of the Rye Conservation Commission's letter #'s 1, 2, 4, 5, 6 and 7. Seconded by Chris Piela.
Vote: 5-0. All in favor.

Note: Sandra Chororos and Michael Brousseau were unseated. Patrick Driscoll stepped down as acting chair and Patricia Weathersby was reseated.

Sitting for the remainder of the meeting: Patricia Weathersby, Chris Piela, Patrick Driscoll, Burt Dibble and John Mitchell

- 3. Charles M. and Lyndsay A. Beynon for property owned and located at 30 LaMer Drive, Tax Map 13, Lot 44 requests an Administrative Appeal from the Building Inspector's June 28, 2021 letter which refers to a swingset/play system as an accessory**

building pursuant to §190-3.1.H. **Property is in the Single Residence District. Case 335a-2021.**

- **Request a continuance to the November 3, 2021 meeting.**

- 4. Charles M. and Lyndsay A. Beynon for property owned and located at 30 LaMer Drive, Tax Map 13, Lot 44** request variances from §190-2.3.C(1) for a swingset/play system 10+/- from the rear property boundary where 30' is required and from §190-3.1.H(2)(g) for a swingset/play system in the 100' wetlands buffer. **Property is in the Single Residence District. Case #35b-2021.**

- **Request a continuance to the November 3, 2021 meeting.**

Motion by Burt Dibble to continue the applications by Charles M. and Lyndsay A. Beynon for 30 LaMer Drive. Seconded by Chris Piela.

Member Piela commented this is the third delay. He asked if there is a reason or if they are waiting for more information.

Planning/Zoning Administrator Reed explained they have hired a certified wetland scientist to determine the extent of the wetland impacts and they are waiting for those plans.

Vote: 5-0. All in favor.

- 5. Mario A. Ponte & Paula M. Parrish of 200 High Street, Exeter, NH for property owned and located at 1627 Ocean Blvd, Tax Map 13, Lot 23** request variances from §190-3.1.H for a septic tank 19.5', a generator pad 20.0', a residence 31.0', and septic tank 76.9' from the wetlands where 100' is required; from §190-2.4.C(2) for a house 9.4' from the NE side boundary and 10.6' from the SW side boundary where 20' is required; from §190-2.4.C(1) for a septic tank 9.5' and a generator pad 20.0' from the rear boundary where 30' is required; from §190-3.4.E for dwelling coverage of 22.2% where 15% is allowed and §190-3.4.D for a building height of 33.25' where 28' is required. **Property is in the General Residence, Coastal Overlay and SFHA, Zone AE. Case #37-2021.**

- **Withdrawn by applicant.**

- 6. Christopher & Melissa Snow for property owned and located at 1 Clark Road, Tax Map 19, Lot 90** request variances from §190-6.3.A for expansion of a non-conforming structure; from §190-2.3.C.3 for steps and a deck 29+/- from the front boundary where 34' is required; from §190-2.3.C.5 for a building area of 17+/-% where 15% is allowed; and from §190-3.1.H for steps and a deck 65' +/- from the wetlands where 75' is required. **Property is in the Single Residence District. Case #40-2021.**

Chris Snow, applicant, spoke to the Board. He explained they are looking to replace a set of hodgepodge steps leading into the house. On the front of the house, off to the left, are smaller 7'x5' precast concrete steps going into the left side of the house. Going into the right side, there

is another precast concrete stone arrangement. The steps are at least 30 to 40 years old. The one on the right is 8'x5'. Below the one on the right is a concrete footing that's 14'x6'. The proposal is to remove these three items and replace with a deck and steps into the home. The idea is to make the property more accessible and safer. The intent is to also connect the two doorways together, with a safe and attractive structure, in order to be able to walk from one to the other. The footprint will be enlarged by about 84sq.ft. It will be a safer and more attractive entrance into the home.

Hearing no questions from the board, Chair Weathersby opened to the public for comments.

Karen Oliver, RCC, noted that the Conservation Commission visited 1 Clark Road and felt that they did not have any involvement, as this is not within the buffer.

Chair Weathersby pointed out that the Board received a letter from RCC dated September 28th. The letter indicated that they did a site walk to evaluate the proposal. RCC has no objection to the project.

Mr. Snow noted that they have spoken with the neighbors. No one had any objections.

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

Member Mitchell stated this is making him smile because it's a very visible home at that intersection. He has driven by the home many times and thought about what he would do to try to fix that up. He really likes what is being done. The variances are not unreasonable at all.

Member Piela agreed. This is a very reasonable request and makes a lot of sense.

Member Driscoll stated that he always looks to see if the impact could be minimized or the amount that is in the setback. This one seems to be really well designed. It's not a massive front deck at 6' in front of the left side. On the right side, having those stairs recess really helps out. It looks like they tried to be as conforming as possible when drawing this up. It's going to be great.

Member Dibble stated that whenever lot coverage is exceeded, he likes to think about how it might impact the neighbors. There's a fair amount of open land around this house. He can't see how it would impact them in any way.

Chair Weathersby agreed. The lot coverage is going to 17% which is still very reasonable. The lot coverage isn't exceeded for the building area. There is plenty of open space and wooded areas around the home. There will still be a 29' front setback, so it's not imposing. She thinks it's a smart addition and makes sense for the use of the home.

Chair Weathersby called for a vote on the request for variances from 6.3.A; 2.3.C.3; 2.3.C.5; and 3.1.H:

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Christopher and Melissa Snow for property owned and located at 1 Clark Road for variances from §190-6.3.A for expansion of a non-conforming structure; from §190-2.3.C.3 for steps and a deck 29+/- from the front boundary where 34' is required; from §190-2.3.C.5 for a building area of 17+/-% where 15% is allowed; and from §190-3.1.H for steps and a deck 65' +/- from the wetlands where 75' is required.

Seconded by Chris Piela. Vote: 5-0. All in favor.

7. **Barbara A. Miller Trust of 2007, Barbara Miller, Trustee for property owned and located at 22 Jenness Avenue, Tax Map 8.4, Lot 54 requests variances from §190-6.3.B to raze an existing structure and replace; from §190-2.4.C(1) for a patio 6.1' and house overhang 15.5' from the rear boundary where 25.4' is required; from §190-2.4.C(2) for an A/C unit 18.7' from the right boundary 20' is required; from §190-2.4.C(5) and §190-3.4.E for dwelling coverage of 24% where 15% is allowed. Property is in the General Residence and Coastal Overlay Districts. Case #41-2021.**

Attorney Monica Kieser, representing the applicants, presented the application. She introduced Corey Colwell, TF Moran, and Jake Sullivan, Gray Construction. The property is located at 22 Jenness Avenue. There is an existing small one-story house at a little more than

- The proposal is not going to change the character nor threaten the public health, safety or welfare. The side yard setback relief is only required for air conditioning units. Minimal front and rear yard relief maintains adequate sight lines and complies with overall coverage.
- Granting the variances will not diminish surrounding property values. It will be a nice new home with improvements in draining in the low area of the street. None of the abutters have expressed an objection.
- Denial of the variances will result in an unnecessary hardship. The lot is rather small, narrow and shallow. Application of yard setbacks constrains buildable area of the lot. Application of the coverage requirements reduces the buildable area specifically because of the way the area above the garage needs to be counted.
- No fair and substantial relationship exists between the purposes of the ordinance and its specific application. Some improvements are being made. Overall coverage is being complied with. The variances are not going to undermine sight lines. The open walkway and bit of garage overhang is not going to affect those sight lines. The garage itself is going to be 35' from the travelled portion of Jenness Avenue. The relief on the side is minor. The relief on the rear is primarily to accommodate the patio, which has the support of the abutters.
- The proposed use is reasonable, as it is a permitted use.
- Substantial justice will be done by granting the variances. The proposal provides a significant benefit to the public. Granting the variances is not going to harm the public, but denying would do substantial harm to the applicants.

Chair Weathersby stated that she struggles with the rear setback. She notices that there is a screened porch and a patio behind. She asked if there was any thought to tucking the patio in a bit or getting rid of the screened porch, in order to bring it in further from the property line. She is trying to understand why both are necessary.

Attorney Kieser stated there is going to be some outdoor cooking space on the permeable patio. The applicants still want the opportunity to have the screened porch. Given the drainage issues at the front of the property, everything slid back.

Jake Sullivan, Gray Construction, explained that a number of things were considered. If the patio was to be made wider, it would manipulate the grades and stormwater runoff. The southeast corner has water that flows through freely. If the patio was stretched to try to minimize the encroachment on the backyard, it would affect the grade and the way the water runs through the back of the property.

Chair Weathersby asked if there was some thought to having a smaller deck.

Mr. Sullivan stated that stepping outside the screened porch, there's a bar-b-q, a table and seating area. This is a standardized dining area with cooking space. That's how they came to the 16'x18' configuration.

Corey Colwell, TF Moran, stated that the patio is on grade. On the site now, it is backyard now right up to the property line. He reiterated the patio is on grade. It helps with stormwater management because it is pervious. It's not generating additional runoff. It actually helps infiltrate some of the runoff into the ground. In looking at the proposed conditions and stormwater conditions plans, the real driving force behind moving the building back away from the road is because the town requires the driveway to come off Jenness Avenue at a downward slope for drainage. It's about a 7.5% clip up the driveway, which is as steep as it should go. If it gets closer to the road, the grade starts climbing to 9% and 10%, which is too steep for a driveway. What is pushing it back is the proximity of the house to the grade in the front and trying not to make it too steep.

Chair Weathersby asked if fill is being brought in.

Mr. Colwell replied no. He noted that the stormwater management plan is a bit deceiving. The site is relatively flat. The garage is at elevation 8.3. The edge of pavement on Jenness Ave is 6.4, which is a little over an 18" drop in a short distance. It's the closeness to the road that creates the steepness in the driveway. He continued the house has to be slightly elevated because this is an AE Zone. It's being elevated about 7" or 8"; however, this creates a bit of a steep grading for the driveway. The house was pushed back as far as possible to maintain a safe slope to the driveway. Mr. Colwell continued that all stormwater is mimicking the same conditions that are there today. There is stormwater going in various directions and that's not being increased. The biggest problem on site is the puddle in front of the residence.

Chair Weathersby opened to the public for comments. She noted that the Board received a letter of support from the Tierneys at 20 Jenness Avenue. No public comments were heard.

Chair Weathersby asked for confirmation of the square footage.

Mr. Colwell noted that 2681sq.ft. is the footprint area, including porches, steps and overhang. The interior finished square footage is 2245sq.ft. for both stories.

Mr. Sullivan pointed out that this doesn't include the garage square footage.

Member Brousseau pointed out that the trees look pretty mature. He asked if it's clear to the abutters that those will be removed.

Barbara Miller, applicant, noted that the abutters want them removed. She pointed out that the trees are not in great shape.

Hearing no further comments, Chair Weathersby closed the public hearing at 9:03 p.m.

Chair Weathersby stated it's tastefully done. She likes the driveway being in the center and the home is lovely. She struggles with the patio being 6' away from the property line, as it's awfully close. She doesn't remember the Board ever approving a patio that close and there have been a

few that have asked. The size of the house is causing the patio to be there, she was struggling with how large the how was. A house of 2245sq.ft., not including the garage, is not that big. It's typical of what is being built in that area. She commented that she struggles with whether the house could be smaller and the patio could come back a bit or the patio could be smaller. Other than that, she likes what they are doing with the water. She likes the house and it's tastefully done.

Member Driscoll stated he has no problem with the size of the house. The rear yard setback might not be ideal. He commented they might be able to shrink it up or push it towards the dining room. In looking at the drainage plan, it doesn't seem like those contours being pushed out would be that big of a deal. It might actually help with the drainage plan. He continued that he thinks about people in the back. He thinks about them playing music and how that is going to travel. Is that going to change much? He is not sure, but it's not going to hurt it any more. The rest of the application he is fine with. It's a nice house and seems to make sense. He likes that they are working with the town to help with the drainage. It seems very reasonable.

Member Piela commented that he's less concerned about the patio, as it seems that the properties in this area have sheds and such up against their property lines. The lots are very small and things are close together. His concern is that the house is going from 15' to 28', but that's within the regulations. It's going right to the maximum height. That is going to be the most significant change for that structure; however, the height is within the allowable limits.

Member Mitchell stated that he is also concerned with the patio and the rear setback of 6'. He always puts a lot of weight on the opinion of the abutters. It's nice to hear that no one has a problem right now; however, who knows what will happen down the road with a patio only 6' from the property line. It seems like there's a way to reconfigure the patio to bring it back a few feet. The patio is really his biggest concern. Everything else is great.

Chair Weathersby reopened the public session to Attorney Kieser to address the rear patio.

Attorney Kieser stated that in terms of sound, the placement of the fence, depending on its height, is going to contain some of the sound. Also, it's an at grade patio. People have been known to party on other surfaces; such as, grass. She does not know that it's going to solve that problem. She continued that the applicants would be willing to compromise and bring the patio in a bit. She asked for the patio to be revised to an 8.1' setback with the same square footage.

Member Driscoll noted if they are going to be keeping the same square footage, it's going to be 18'x16'; 2' wider.

Chair Weathersby re-closed the public hearing at 9:12 p.m. She called for a vote on the variance request to 2.4.C(1) for the patio 8.1' from the rear property line:



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

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – No

2) The spirit of the ordinance is observed?

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – No

3) Substantial justice is done?

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – No

4) The values of surrounding properties are not diminished?

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – No

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

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

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

Burt Dibble – Yes
 Chris Piela – Yes

John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – No

7) The proposed use is a reasonable one?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – No

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – No

It was the consensus of the Board to vote on all other relief requested as a package.

Chair Weathersby called for a vote on the request for variances from 2.4.C(1) (for house setback of 1.5. '); 2.4.C(2); 2.4.C(3); 2.4.C(5); and 3.4.E

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Burt Dibble – Yes
Chris Piela – Yes

John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

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

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

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

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

7) The proposed use is a reasonable one?

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

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

Burt Dibble – Yes
 Chris Piela – Yes
 John Mitchell - Yes
 Patrick Driscoll – Yes
 Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Barbara A. Miller Trust of 2007 for property owned and located at 22 Jenness Avenue as advertised with the exception that the rear patio shall be 8.1' from the rear lot line. Seconded by Patrick Driscoll.

Vote: 5-0. All in favor.

8. **Harold Kennedy of 1417 Ocean Blvd, Tax Map 17.4, Lot 8** request an appeal of administrative decision from the building inspector's decision of August 12, 2021 that property located at 1419 Ocean Blvd, Tax Map 17.4, Lot 8 is a pre-existing, non-conforming lot that has two separate living areas in two respective buildings. **Property is in the Single and General Residence Districts, Coastal Overlay District.**

Case #42-2021.

- **Withdrawn by applicant**

Patricia Weathersby moved to continue the applications of The Sagamore Group, LLC and BSL Rye Investors, LLC to the November meeting. Seconded by Chris Piela. All in favor.

9. **Craig & Jennifer Thompson of Pocasset, MA for property owned and located at 166 Sagamore Road, Tax Map 22, Lot 40** request a variance from §190-2.3.C(3) for an addition of a mudroom 35' from the front boundary where 40' is required. **Property is in the Single Residence District. Case #43-2021.**

Craig Thompson, applicant, spoke to the Board in regards to the proposal for a small addition to improve the side entry into the house, which will become a mudroom. The existing home is set back 33' from the road. The new addition will be 2' back from the main house and will be 35' from the road. Nothing is being changed with the main portion of the house. He feels the request is within the spirit of the zoning.

Chair Weathersby asked how far away the garage would be from the new addition.

Mr. Thompson explained the garage is a separate structure. The mudroom will be taken out to the same location on the south extremity of the house as existing and it's 2' back from the main structure. The mudroom will be the same distance from the garage as the existing house. He noted that the area of the addition is currently part of the asphalt driveway. The grading does not change.

Chair Weathersby opened to the public. No comments were heard. Speaking to the applicant, she asked if he has spoken to the neighbors.

Mr. Thompson replied a few, but not all. There are no objections.

Hearing no further comments, the public session was closed at 9:31 p.m.

The Board had no issues or concerns.

Chair Weathersby called for a vote on the request for a variance from 2.3.C(3):

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes

Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the variance request of Craig and Jennifer Thompson for property owned and located at 166 Sagamore Road as advertised.
Seconded by Chris Piela. Vote: 5-0. All in favor.**

- 10. Richard Enders for property owned and located at 17 Alder Ave, Tax Map 8.1, Lot 62 and 0 Alder Ave, Tax Map 8.1, Lot 62-01 requests variances from §190-6.1.A for expansion of a non-conforming lot for a lot line adjustment resulting in lot 62 becoming more non-conforming with area reduced from 37,956sq.ft. to 33,320sq.ft.; from §190-2.4.C(3) for a lot that does not have 30ft of depth; from §190-2.4.C(6) for a lot less than 44,000sq.ft. and frontage less than 150ft. **Property is in the General Residence District. Case #44-2021.****

Richard Ender, applicant, spoke to the Board. He explained that the request is for a lot line adjustment which involves giving land from 17 Alder Ave to 0 Alder Ave. This would allow 0 Alder Ave to have more road frontage; therefore, allowing for reasonable use of the property. Lot 0 had road frontage on Davis Avenue, many years ago. Lot 0 is 15,886sq.ft. and the variance would change 20,522sq.ft. It would change 17 Alder Ave from 37,956sq.ft. to

33,320sq.ft. He continued that it will not alter the characteristics of the neighborhood nor diminish the value of neighborhood properties. It will also not threaten the public health, safety or welfare. He pointed out that the land is part of Myrica by the Sea. Lot 0 had 97' of frontage on Davis Ave at one time and almost 3' on Alder. He would like to extend the road frontage on Alder and add another 13' to have better access to 0 Alder Ave.

Chair Weathersby noted that the lot will be increased, but will still be too small to be a building lot. She asked what the intent is for the property.

Mr. Alder replied that he'd like to put something on it at some point.

Chair Weathersby clarified to make it be a building lot.

Mr. Alder confirmed.

Chair Weathersby noted that if approval is granted for the lot line adjustment, it doesn't mean that the lot will be buildable.

Planning/Zoning Administrator Reed explained that Mr. Enders went to the building inspector for a denial. At that time, it was determined that Mr. Enders should go to the planning board to get their opinion, which was that variances were needed first. Mr. Enders was never given the opportunity of a denial from the building inspector.

Chair Weathersby clarified that the ask is for the small lot to be expanded, which is non-conforming, and to reduce the size of the non-conforming bigger lot, which would make it more non-conforming. There is also a request for the new lot to have less than 30' of depth.

Planning/Zoning Administrator Reed stated that when this was brought to the planning board and when the town administrator talked to her about this, there was never any consideration for whether it was a buildable lot or not.

Chair Weathersby stated that if this were to be granted, the smaller lot would still have to come back if it is intended for it to be a buildable lot. She prefers to address everything at once. The Board can also keep going and if it's denied it doesn't have to come back. She reiterated that if the intent is to make the lot on the left a building lot, it should be added to the request. She asked if the Board agrees that it should be continued to clean up the requests.

Member Driscoll asked if they can just look at this based on its merit, if they know that approval would not guarantee a building lot.

Chair Weathersby stated they can move forward and if it's approved, it can be made clear that it doesn't make it a building lot. When someone gets a building permit, it will be denied because the lot is insufficient in size. It will then come back to the BOA.

It was the consensus of the Board to go forward.

Speaking to the applicant, Chair Weathersby asked if these are two separate lots right now that are taxed separately.

Mr. Enders confirmed.

The Board reviewed the notice.

Chair Weathersby asked the frontage on Alder Ave for each lot, if this were to be granted.

Mr. Enders replied it would be 16' and 16' along Alder Ave.

Chair Weathersby noted there will be 16' where 150' is required. The depth is not an issue. Presently, the vacant lot has 2.9' of frontage.

Hearing no further comments, Chair Weathersby opened to the public.

Lori Carbajal, 18 Tower Ave, stated that it's not objectionable for someone to move their lot line. A lot line adjustment is done if someone wants to put two houses on them. The house that is there now is uninhabitable, so it will probably be demolished. The concern she has is the safety of that neighborhood with it being as congested as it is. It basically has one lane in and one lane out. When there was a fire there in 2016, all the trucks from North Hampton and Portsmouth came and were lined up behind the first truck. Had the neighbor not called in the fire, the entire wooded area, including her property, would've been in peril. There's no way to get to the property. She noted that when the back deck collapsed, the ambulance came through her yard to get to the back part of Mr. Ender's property. If there are two houses, there won't be trees everywhere, so it will be more open space. The concern she has is that once two buildable lots are created, there will then be the issue of setbacks. Once there are two structures, if there is another catastrophic loss or fire, there are two houses to contend with the same entry and exit for fire apparatus. That is the concern she has. Building two houses, if it were not for the safety issue, would be an improvement versus what's there now. As it stands now, it's not a benefit to her property. It's very close to her side yard. She reiterated that her concern is the safety issue of the neighboring properties.

Don Doney stated that he is involved because he may purchase the property from Mr. Ender. He understands the concerns. The idea is to get two buildable lots. The intent is to improve the area, not destroy. It's 1.2-acres with the two lots together. He is not sure it would make anything more or less congested. If there is a house on fire on Alder Ave, there will be the same issues as there are on that street now. The roads are all small in this area. The way the property is currently, there is a house that is not livable. It will have to be razed and replaced. There's significant space in that area to manage any setback issues. It's just a matter of the Rye Zoning on buildable lot size. It's already known that town sewer and town water is available. He

commented they are just trying to get through this process to be able to make the purchase from the Enders. It will be over the next couple of years that the homes will be built.

Patricia Smith, 47 Pine Street, stated that the two lots at the end of Alder Ave were merged into one lot several years ago. The owner then elected to have those lots unmerged, as it was his right to do so. This voluntary action has brought this request for variances on the smaller of the two lots. This is a self-created hardship by the property owner. The merged lots created one piece of property that was conforming to Rye's Zoning Ordinance, with the exception of road frontage. The merged lot was about 58,000sq.ft., which is more than the 44,000sq.ft. required. In January of 2016, the Rye Selectman sent a letter to the property owner advising that the lot line as proposed by the owner, which is the same as it is tonight, would make it larger than it should be and give it frontage that it should not have. These two lots are in common ownership and have been vacant for at least four years. The home on the larger lot had a fire over three years ago. It's essentially abandoned and not lived in. When the lot was purchased by the Enders, it was known that the smaller lot was not buildable and had no road frontage. It enhances the value of 17 Alder Ave by common ownership and provides boundary protection for that lot. Alder Avenue is a very narrow dead-end road. By splitting the frontage between the two lots, they would have only 16' of frontage. They are still two non-conforming lots and the lot line does not serve any public good. There are six direct abutters to the smaller lot, who will see their property value diminish if a structure is constructed there. Each of those families now back up to a non-conforming, non-buildable lot. It's a densely populated area and there are five direct abutters to the larger lot. This is 58,000sq.ft. of land with eleven abutters. That's how congested that area is. She continued that zoning ordinances exist to protect many things and serve many objectives. Among them is to encourage the most appropriate use of land to prevent overcrowding of land and prevent undue concentration of people. Approving this variance request is contrary to the public interest and serves no purpose. It creates a fire danger by the overcrowding of structures and increases congestion in the area. The value of surrounding properties would be diminished, as it is detrimental to the neighborhood. There is no special condition which exists for this lot. A street listed on paper, which was proposed for a development that never materialized, is not a street and never was. It's not a special condition. It did not exist and then get removed. It never existed. This land still has reasonable use for the purpose of any of the abutting properties. It had productive use when it was merged into one lot. Amending the lot line for this property, creates a dangerous precedent for the town. It is not a benefit to the public and should not be granted, as it's a conceived and self-inflicted hardship of the property owner.

Diana Pearson, 51 Pine Street, stated that the rear of her property abuts the applicant. She cannot comprehend how anyone could build on a lot with only 16' or 17' of frontage on a road.

Chair Weathersby noted that a letter has been received from Kristen Hoyt, Oak Avenue, who is a direct abutter and is not in favor. A letter has also been received from David Winn, 39 Pine Street, who is also opposed given the history of the property.

Mr. Doney stated that 0 Alder is a landlocked piece of property. It's a recognized lot that has been taxed as such. It does abut the back of the properties on Pine. It's a deep property of a

significant size. He doesn't know how a hardship would be created for the abutters if there were two lots.

Mrs. Pearson stated the hardship is that there is only one buildable lot. There are not two buildable lots.

Member Mitchell stated that the issue of concern for him is reducing the required access to a landlocked lot.

Chair Weathersby closed the public hearing at 10:06 p.m.

Member Mitchell continued that's an issue of importance for the Town of Rye because there's a lot of landlocked properties. Establishing a 16' wide access is troublesome to him. He doesn't want to hinder the use of someone's property, but that issue is a big one.

Member Chororos agreed.

Member Piela stated there was a similar situation in July on Brackett Road and that was an unbuildable lot. His perspective on this is no different than his perspective on that. Even with the new proposed lot line, he would be very challenged to allow a house on a 20,000sq.ft. lot where 44,000sq.ft. is required and with only 16' of frontage where 150' is required. The lot has significant issues. The 5,000sq.ft. modification does not influence his opinion. In doing the math, the total lot is 53,842sq.ft. combined for both lots. This seems like a reasonable size to put a singular house. He would allow the variance for the frontage because of the unique nature of the lot being at the end of a dead-end.

Member Dibble commented that he is thinking of a recent case on Washington Road where the Board struggled with 25'. He continued that he was pressed as he drove into the neighborhood with a congested feeling. He has a mixed feeling because the Board is not being asked to approve an unbuildable lot. He thinks they are being asked to move a lot line. They don't get to the unbuildable phase until there is a request to the building inspector. The applicant is then entitled to due process.

Member Piela asked if moving the lot line would effectively create two unbuildable lots.

Chair Weathersby noted that the Board would be giving them permission to go forward with a house on the big portion with 16' of frontage on Alder Ave on a 33,320sq.ft. lot.

Member Piela commented he struggles with that.

Chair Weathersby noted that in the driveway regulations, the driveway has to be 10' from the lot line. The setbacks are bigger than the driveway.

Member Piela stated it's creating a rat's nest of variances for doing anything on Lot 62. If it's approved, it could be making the problem worse.

Chair Weathersby commented there are all kinds of issues here. This is the largest lot in the area and she does have some sympathy for them for wanting to carve it up into two. She struggles with creating a new lot that's only 20,000sq.ft. and taking one that is conforming and making it less conforming. Going with 16' of frontage, when 150' is required, and creating what is intended to be a building lot, with only 20,000sq.ft. when the town says at least an acre, she can't really get behind.

Member Dibble stated that creating two driveways where neither one is even close on the frontage, is just not in accordance with the spirit of the ordinance. He is not so troubled by making one lot a little smaller and the other lot a little bigger. However, to do what is proposed here is not in keeping with the spirit of the ordinance.

Chair Weathersby commented the issue for her is frontage, more so than lot size. She struggles with the concern about fire. If this were a new subdivision, there would be a hammerhead and a place to turnaround. This is a narrow road that would split into two driveways. It's not setup for emergency services the way that it should be.

Member Brousseau agreed; particularly, in light of the Washington Road driveway. That was even larger and the Board didn't feel comfortable. This is taking what was not large enough and dividing it in half.

Chair Weathersby commented a lot with 32' of frontage would not be approved today.

Member Mitchell stated that he is looking at what causes the most hardship, if it is approved or not approved. It seems that if it's approved, it causes more hardship for the existing building lot.

The Board agreed.

Chair Weathersby noted that the applicant also has the remedy of merging them as one lot and asking for two buildings on one lot. It could be organized in a nice, neat manner with proper access. She has no idea if it would be approved, but there may be other ways. She just can't get beyond the 16' of frontage.

Member Driscoll stated he was trying to sketch something to see if there would be anything that could be salvageable and safe to access the two lots. His hope in bringing this forward was to leave the building portion and only deal with the lot line. However, it was really good to have the discussion to give the applicant some insight to what's going on and to have the transparency of the plan. This is helpful on both ends. He continued that he could not sketch anything that would be a safe way to access the two lots. He does not see a benefit in approving it.

Chair Weathersby called for a vote on the request for a variance from 6.1.A and 2.4.C(6) (it was agreed that a variance is not need for 2.4.C(3) for a lot with less than 30' of depth):

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

Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

2) The spirit of the ordinance is observed?

Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

3) Substantial justice is done?

Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

4) The values of surrounding properties are not diminished?

Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

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

Burt Dibble – Yes
Chris Piela – Yes
John Mitchell - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

- Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

- Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

- Burt Dibble – No
Chris Piela – No
John Mitchell - No
Patrick Driscoll – No
Patricia Weathersby – No

Seconded by Chris Piela. Vote: 5-0. All in favor to deny.

- Continued to the November meeting

12. BSL Rye Investors, LLC d/b/a Benchmark Senior Living for property owned and located at 295 Lafayette Road, Tax Map 10, Lot 3 request an administrative appeal from the building inspector's September 7, 2021 decision that a bioretention pond is structure requiring for relief from §190-2.11.C(3); and from the building inspector's measurement of grade. Property is in the Commercial Resident District and the Aquifer Wellhead District. Case #46a-2021.

- Continued to the November meeting

13. BSL Rye Investors, LLC d/b/a Benchmark Senior Living for property owned and located at 295 Lafayette Road, Tax Map 10, Lot 3 requests variances from §190-2.11.C(3) for a bioretention pond <60; from the front boundary; from §1902.11.C(7) for a height of <37.03' – 42.03' where 35' is required. Property is in the Commercial Resident District and the Aquifer Wellhead District. Case #46b-2021.

- Continued to the November meeting.

IV. OTHER BUSINESS

The Board discussed whether they wanted to keep the meetings at the library or move them back to the Town Hall. The advantage of moving back to the Town Hall is the availability of participating by teleconference. However, the Town Hall is a much smaller room and not as comfortable. It was agreed that the Board would continue to meet at the library for now.

Adjournment

Motion by Patricia Weathersby to adjourn at 10:36 p.m. Seconded by Chris Piela. All in favor.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Attorney Mark E. Beliveau on behalf of Peter and Patricia Brothie for property located at 63 Old Beach Road, Tax Map 8.4, Lot 134

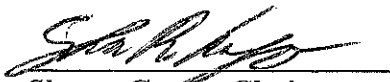
Owner: Aloha Properties, LLC, 159 Main Street, Suite 100, Nashua NH

Property: 63 Old Beach Road, Tax Map 8.4, Lot 134
Property is in the General Residence, Coastal Overlay District and SFHA Zone AE(13)

Application and case# Request for rehearing and reconsideration, per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment's August 4, 2021 of variances and special exception by Attorney Mark E. Beliveau on behalf of Peter and Patricia Brothie Cases #31a-2021 and 31b-2021.

Date of decision: 10-4-2021

Decision: The applicant's request for a rehearing with respect to Variances and Special Exception approved by the Board on August 4, 2021 pursuant to RSA 677:2 **was denied in a 3 to 2 vote.**


Shawn Crapo, Chair

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: Arthur G. Pierce Rev. Trust & Sharon Pierce Rev. Trust, Arthur & Sharon Pierce, Trustees of 24 Colony Cove Road, Durham NH

Property: 261-279 Pioneer Road, Tax Map 24, Lot 117
Property is in the Single Residence District

Application case: Case #34a and 34b-2021

Date of decision: October 4, 2021

Decision: The Board voted 5-0 that the variances requested from §190-5.3.C(2) for a condominium conversion of 4 units having 580sq.ft, 580 sq.ft, 530 sq.ft, and 530 sq.ft where each is required to have a minimum of 600 sq ft. of floor area and from §190-5.3.C(7) as the amount of land designated as common area is less than 90% of the area of the parcel not designated for buildings and individual unit owner's vehicles and does not meet the minimum lot area and frontage requirements were not necessary.

The Board voted 5-0 to approve a special exception per Rye Zoning Ordinance Section 190-5.3A for 8 apartments in existing 4 buildings to become condominiums with conditions from the Rye Conservation Commission's October 5, 2021, letter:

- The first fifty feet of the 100-foot buffer should be left to grow without mowing or cutting to provide a vegetative strip to protect the marsh and estuary.
- The wetland buffer should be marked at the edge of the 50-foot vegetative strip with the "Wetland Buffer-No Not Disturb" signs available at the Rye Building Department. These signs will inform the residents of the buffer boundary thereby decreasing the likelihood of future violations. The Conservation Commission will mark the town conservation land with their boundary signs.
- There should be no dumping of material or debris in the wetland and existing material should be removed.
- The dumpster should be relocated outside the buffer.
- The path on conservation property should be left to grow back to its natural state.
- The invasive bittersweet in the buffer should be removed.

Kimberly M. Reed, for
Patrick Driscoll, 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:

Richard Enders

Properties:

17 Alder Ave, Tax Map 8.1, Lot 62
0 Alder Ave, Tax Map 8.1, Lot 62-1
Properties is in the General Residence District

Application case:

Case #44-2020

Date of decision:

October 4, 2021

Decision:

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

- §190-6.1.A to expand a non-conforming lot for a lot line adjustment.
- §190-6.1.A to make a non-conforming lot less conforming.
- §190-2.4.C(6) for a lot to be less than 44,000sq.ft and to have only 16' of frontage.

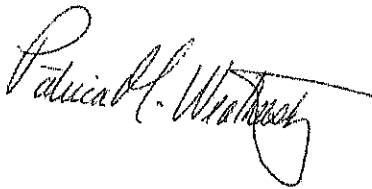
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The reasons the variances were denied include:

1. The Zoning Ordinance requires buildable lots in this district to have a minimum of 44,000sf with 150' of road frontage and the proposed lot sizes and frontages post lot line adjustment were unreasonably inadequate.
2. Sixteen feet of road frontage is inadequate to support a driveway meeting the Town's driveway regulations.
3. Creating lots with sixteen feet of road frontage could endanger the delivery of emergency services (Fire, EMT, etc.)
4. Creating a 20,522 sq. ft. lot on which the owner intends to build a home where 44,000 sq. ft. is required will diminish the value of surrounding properties.
5. Taking an almost conforming lot of 37956 sq. ft. and deliberately making it more non-conforming (33,320 sq. ft.) to try and create a second, also inadequately size building lot is not in the spirit and intent of the ordinance and is contrary to the public interest.

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.

6. Taking Lot 62's woefully inadequate existing road frontage and deliberately reducing the frontage by almost 14 feet is not in the spirit and intent of the ordinance and is contrary to the public interest.
7. There is no unnecessary hardship to the applicant in denying the variances. Economic advantage or personal desire is not a reason to grant variances.
8. The proposed project and its impacts do not promote the health and general welfare of the community.



Patricia Weathersby, Chairman

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



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

October 5, 2021

RE: 261-279 Pioneer Road, Tax Map 24 Lot 117 Owners: Arthur and Sharon Pierce

The Rye Conservation Commission (RCC) conducted a site walk on October 4, 2021 at 261-279 Pioneer Road to evaluate a project to convert rental units to condominiums on a property that abuts the marsh at Berry's Brook/Seavey Creek. Almost all of the lawn, much of the paved driveway and most of one building are in the 100 foot wetland buffer that the Rye wetland ordinances require for Berry's Brook. There are also 3 sheds and a dumpster in the buffer. The marsh that abuts the subject property is owned by the Town of Rye and managed by the Conservation Commission. This is the first opportunity that the RCC has had to visit the lot.

Attorney Bernie Pelech presented the project to the RCC members. He noted that the property has existed in this configuration for at least forty years. He said that the canvas shed would be removed but that he believed the shed nearest the marsh should be grandfathered. The commission noted another shed in the buffer that was against the building which houses units #7 and #8. The RCC noticed that there has been dumping of material in the wetland on the west side of the lot. The owners or tenants have also mowed a six foot path a couple of hundred feet across the marsh into Berry's Brook. The path is entirely on Rye conservation property.

As previously noted, almost all of the lawn is in the buffer. It appears to be unfertilized and consists mainly of grass, clover and wild strawberry yet it is still a prohibited use in the buffer. The commission recognizes the historic use of the lawn but strongly believes that some mitigation is required to protect the marsh and estuary. Rather than recommend a 10 foot native planting strip along the entire edge of the property bordering the marsh, the commission believes a far more economical and effective solution would be to have the first 50 feet of the buffer return to its natural, unmown state. This 50 foot vegetative strip would provide filtration of runoff and potential contaminants before they get to Berry's Brook/Seavey Creek. It would allow the tenants use of part of the lawn that is in the buffer while also providing a protective barrier along the edge of the marsh. If the current or future owners of the property wished to plant native plants along the fifty foot buffer lawn edge for esthetic reasons, the RCC would not object.

Correcting ordinance violations is routinely done when new projects appear before the Zoning Board of Adjustment (ZBA) asking for relief. This project should be no exception. There are numerous wetland violations on the site and now is the time to address them. The RCC believes there is no justification for letting these violations, however old, be overlooked or "grandfathered". The wooden shed in the buffer is small and could be easily moved to a location

out of the wetland buffer as could the canvas shed and the composite shed by the building. Similarly, the dumpster is portable and can be moved out of the buffer.

The Berry's Brook watershed has been given the special protection of a 100 foot buffer because of problems with water quality in the watershed. The subject property is a sensitive area that abuts the estuary. Sections of the lot have been identified as a protection priority zone (see attached water resource map). To help protect this watershed, the Conservation Commission recommends:

- 1) The first fifty feet of the 100 foot buffer should be left to grow without mowing or cutting to provide a vegetative strip to protect the marsh and estuary.
- 2) The wetland buffer should be marked at the edge of the 50 foot vegetative strip with the "Wetland Buffer – Do Not Disturb" signs available at the Rye Building Department. These signs will inform the residents of the buffer boundary thereby decreasing the likelihood of future violations. The Conservation Commission will mark the town conservation land with our boundary signs.
- 3) The three sheds that are in the buffer should be removed and relocated outside the buffer. Should the ZBA not agree, the RCC recommends that any remaining sheds be restricted from having any petroleum products, pesticides, chemicals, fertilizer or other contaminants stored within.
- 4) There should be no dumping of material or debris in the wetland and existing material should be removed.
- 5) The dumpster should be relocated outside the buffer.
- 6) The path on conservation property should be left to grow back to its natural state.
- 7) The invasive bittersweet in the buffer should be removed.

Sincerely,



Francis P. (Mike) Garvan II, Clerk

NH DES Native Plants:

<https://www.des.nh.gov/organization/divisions/water/wetlands/cspa/documents/native-shoreland-plants.pdf>

MA salt tolerant plant lists:

<https://www.mass.gov/service-details/coastal-landscaping-in-massachusetts-plant-highlights-and-images>

<https://www.mass.gov/info-details/coastal-landscaping-in-massachusetts-shrubs-and-groundcovers#beach-heather->

<https://www.mass.gov/info-details/coastal-landscaping-in-massachusetts-grasses-and-perennials>

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

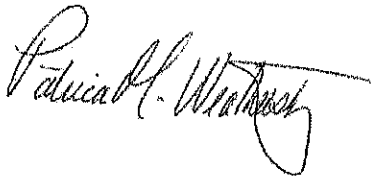
Applicant/Owner: Charles M. and Lyndsay A. Benyon

Property: 30 LaMer Drive, Tax Map 13, Lot 44
Property is in the Single Residence District

Application case: Cases #35a and 35b-2021

Date of decision: October 4, 2021

Decision: The Board voted 5-0 to continue the application to the November 3, 2021, meeting.



Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Christopher & Melissa Snow

Property:

1 Clark Road, Tax Map 19, Lot 90
Property is in the Single Residence District

Application case:

Case #40-2021

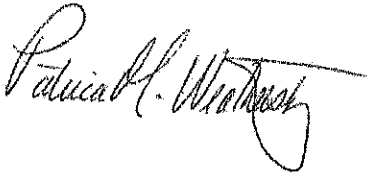
Date of decision:

10-4-2021

Decision:

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

- §190-6-3. A for expansion of a non-conforming structure;
- §190-2.3.C(5) for a building coverage area of 17 +/-%; and
- §190-3.1. H for steps and a deck 65' +/- from the wetlands.



Patricia Weathersby, Chair

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:

Barbara A. Miller Trust of 2007, Barbara Miller, Trustee

Property:

22 Jenness Ave., Tax Map 8.4, Lot 54

Property is in the General Residence and Coastal Overlay Districts

Application case:

Cases #41-2021

Date of decision:

10-4-2021

Decision:

The Board voted 4-1 to grant the following variance from the Rye Zoning Ordinance:

- §190-2.4C(1) for a patio 8.1' from the rear boundary.

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

- §190-6.3B to raze an existing structure and replace with new.
- §190-2.4C(1) for a house overhang 15.5' from the rear boundary.
- §190-2.4.C(2) for an A/C unit 18.7' from the right side boundary.
- §190-2.4.C(3) for a walkway 17.3' from the front boundary.
- §190-2.4.C(3) for a house overhang 21.2' from the front boundary.
- §190-2.4.C(5) and §190-3.4.E for dwelling coverage of 24%.



Patricia Weathersby, Chair

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:

Craig & Jennifer Thompson

Property:

166 Sagamore Road, Tax Map 22, Lot 40
Property is in the Single Residence District

Application case:

Case #43-2021

Date of decision:

10-4-2021

Decision:

The Board voted 5-0 to grant a variance from the following section of the Rye Zoning Ordinance:

- §190-2.4.C(3) for an addition 35' from the front boundary.



Patricia Weathersby, Chair

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: The Sagamore Group, LLC

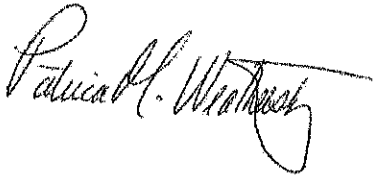
Owner: Split Rock Cove Family Trust of 2019, JP & Gail Nadeau Trustees, 507 State Street, Portsmouth NH

Property: 15 Sagamore Road, tax Map 24, Lot 22
Property is in the Commercial District

Application case: Case #45-2021

Date of decision: October 4, 2021

Decision: The Board voted 5-0 to continue the application to the November 3, 2021, meeting.



Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

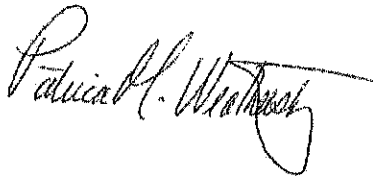
Applicant/Owner: BSL Rye Investors, LLC d/b/a Benchmark Senior Living

Property: 295 Lafayette Road, Tax Map 10, Lot 3
Property is in the Commercial District and Aquifer and Wellhead Protection District.

Application case: Cases #46a and 46b-2021

Date of decision: October 4, 2021

Decision: The Board voted 5-0 to continue the application to the November 3, 2021, meeting.



Patricia Weathersby, Chairman

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