

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

Wednesday, December 2, 2020

7:00 p.m. – via ZOOM

Meeting ID: 838 0039 3285

Password: 123456

Call-in Number: 646-558-8656

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Gregg Mikolaities, Patrick Driscoll and Chris Piela**

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

I. CALL TO ORDER

Chair Weathersby called the meeting to order at 7:00 p.m. via Zoom teleconferencing.

Statement by Patricia Weathersby:

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 #838-0039-3285 Password: 123456

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. Burt Dibble
3. Patrick Driscoll
4. Gregg Mikolaities
5. Chris Piela
6. Patricia Weathersby

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

II.

BUSINESS

- Approval of the November 4, 2020 Meeting Minutes

Motion by Burt Dibble to approve the minutes of November 4, 2020 as amended. Seconded by Shawn Crapo.

Roll Call: Shawn Crapo – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes; Gregg Mikolaities – Yes; Patricia Weathersby - Yes

Continuance Requests:

Motion by Patricia Weathersby to continue the application of Craig and Denise Benson of K&L Realty Trust to the January 2021 meeting. Seconded by Shawn Crapo.

Roll Call: Shawn Crapo – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes; Gregg Mikolaities – Yes; Patricia Weathersby – Yes

Chair Weathersby noted that the Board has received a request for rehearing and reconsideration for the Mason property at 4 Washington Road. The property owners also have an application request before the Board this evening. The applicant has said that they would prefer the Board to deal with the new application first. If that is granted, they will withdraw the request for rehearing and reconsideration.

Attorney Tim Phoenix noted that as long as there is not an appeal filed of this granting.

Chair Weathersby suggested that they move the rehearing request to the end of the agenda.

III.

APPLICATIONS

1. Request for rehearing and reconsideration, per NHRSA 677:2 by the Board of Adjustment of BOA's September 23, 2020 denial of variances for property located at 4 Washington Road, Tax Map 13, Lot 40. Case #35-2020.
Public hearing closed during Board discussion on the request.

(Moved to end of meeting. See below.)

2. **Craig & Denis Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18**, request variances from §190-3.1.H.2(a), (b), (g) for a new house with an eave 14.1', a wall 17', a septic system 66' and a pervious driveway 15' from the wetlands where 100' is required and from §190-3.1.H.2(e) for cutting trees greater than 4.5" in diameter within the wetland buffer; a special exception pursuant to §190-3.1.H.2(f) for driveway in the wetlands buffer in the wetlands buffer and relief from Building Code §35-14.B(2): D(1) for a septic system 66' from the wetlands where 75' is required. **Property is in the Single Residence District. Case #45-2020.**

- *Continued to the January 2021 meeting by request of applicant.*

3. **Jay Mason & Jacqueline Doherty of 77 Tyler Park, Lowell, MA for property owned and located at 4 Washington Road, Tax Map 13, Lot 40**, request variances from §190-3.1.H.2(a), (b), (g) for house/structure 78.5' from the tidal marsh wetlands where 100' is required and for a house/structure 42.1' from the fresh water wetlands where 75' is required; from §190-2.2.E for a septic tank 10.3' and a leachfield 11.4' from the side boundary where 20' is required; from §190-6.3.B for a house demolition and rebuild that is not more conforming and from Building Code §135-14.B(5) for a leachfield 11.4' from the left side boundary. **Property is in the General Residence, Coastal Overlay District. Case 346a-2020.**

4. **Jay Mason & Jacqueline Doherty of 77 Tyler Park, Lowell, MA for property owned and located at 4 Washington Road, Tax Map 13, Lot 40**, request a special exception from §190-3.1.H.2(f) and from §190-3.1.G(2) for a pervious driveway +/- 60sf in the wetlands buffer. **Property is in the General Residence, Coastal Overlay District. Case #46b-2020.**

Attorney Tim Phoenix, representing the applicants, presented to the Board. He explained that the intent of the applicants is to remove the existing building and build their forever home. This is the second time the property has been before the Board. It was before the Board back in September. The Board granted certain variances for the septic in this location, but denied the building location. The comments were primarily that it was too close to the front and left lot lines and it was too big for the lot. He introduced the applicants to the Board.

Jacqueline Doherty, applicant, stated she would first like to thank the Conservation Commission for the huge effort they put in supporting this project. They have visited the site a number of times. Their letters of support have meant a great deal. She would also like to thank this Board. She understands what a time commitment it is to serve on these boards. She continued that they are people who live their values, which means giving back to the community and being stewards of the environment. Jay is a LEED Certified Architect and his entire career has been focused on sustainable design. She continued that they realize there are challenges with this property. They believe they have come up with a solution that really responds to the concerns that the Board expressed back in September. It will really improve the neighborhood,

improve the protections of the environment and provide a beautiful forever home, which is what they are looking to do. She pointed out that they are not unfamiliar with the NH Seacoast. She has family in Hampton and siblings in Maine. They really look forward to being contributing members of the Rye community. Referring to the people who have objected to the project, she respects their right to express their opinion and values the input. She would like to correct a couple of inaccuracies that have been stated during this hearing process. First, they have never had any violation from the Town of Rye. They have never had a wedding at the property for 75 people. She pointed out that they did rent the house in the first five years, but only to six families per year because it was their personal home. She noted that Washington Road was never meant to be an income property. It was always an investment and their forever home. She explained that she would rent for five weeks in the summer and have one winter tenant. The home will not be rented further because they will be living there fulltime. While she does appreciate the input from the neighbors and the privilege to be able to hear it, it is also important to remember the overall best interest of the community and the environment. In addition, the improvements that have been made, since hearing from this Board, is really going to provide something of value for the entire community.

Jay Mason, applicant, stated he takes his responsibility as a designer seriously. He is open to feedback and comment. In fact, the design has been changed dramatically since the last time when a much larger (30%) footprint and a project that overextended the setback envelope was presented. Now, the project is completely inside the setback envelope and the 15% building coverage is being met.

Mr. Mason presented his architectural plans on the screen for review. Mr. Mason pointed out that the Braun property is to the left and Anderson property is to the right. The lower level is for parking. The intent is to get the parking underneath the house where it will be out of sight and better protected. The first floor is the main living floor with a deck off the back and a small deck in the front. The house has a small second floor with two bedrooms and an office. The flat roof will be filled with solar panels. The front door will be to the right of the front of the house. The south side will have a green wall on the lower level supported between the piers, so plants will form a visual barrier. There will also be landscaping on the edge of the property, as well. (He reviewed the elevation drawings.)

Mr. Mason presented a wetlands comparison chart on the screen. He explained that the previous design had 1570sf of footprint inside the wetlands. The wetlands setback runs right through the middle of the property, which makes it extremely difficult to build anything on this site. He noted that they have essentially eliminated all the other requests, except that one request. The footprint in the wetlands was brought down to 1445sf. The house was moved into the areas that would take care of the dimensional setbacks. (He pointed out on the plan the current location of the septic system and leaching field.) He noted that the existing system is completely in the wetlands. If they were to build on the existing footprint of the existing house, the septic system would still be in the wetlands. The Conservation Commission has made it very clear that this is something that is highly undesirable. He has worked hard to craft a footprint that keeps the setbacks unencumbered, but also moves the entire septic system into an area where it is no longer in the buffer.

Attorney Phoenix stated there are two parts to this. One is the application itself and the other is that they are proceeding on a new application after an older application was partially denied. He asked if he should proceed with Fisher v. Dover first.

Chair Weathersby commented that he can proceed with Fisher v. Dover. She would like to address one issue first. There was an issue as to whether one board member has a conflict and should not be sitting on this. She explained that Ms. Braun the abutter has suggested that Shawn Crapo should recuse himself from this application. Ms. Braun wrote that there may be a potential conflict of interest as Shawn is listed as sales agent on the website of his mother's real estate and property management company. His mother, Deb Crapo, is the realtor who sold the current owners the property. Chair Weathersby noted that this was raised just after the September meeting. It was brought to her attention after the meeting that this was an objection by the Brauns. She pointed out that she called Shawn and asked if he should've voted on the application. Shawn indicated that he knew his mother had sold the property some years ago to Mr. Mason and his wife. He thought that they had represented the sellers. He also said that in no way did that influence his decision regarding the requested relief. He had no personal interest in the outcome of the case. He also said he did not have any pecuniary interest, nor was he prejudiced in any way for or against the requested relief or the parties, but based his decision solely on the merits of the application and the characteristics of the property. He does not feel, and she does not feel, that any violation has occurred. She asked Member Crapo if he would like to add anything.

Vice-Chair Crapo commented this pretty much summarizes everything. The minutes can be reviewed. He gave it the same zoning analysis that he gives any property in town. He noted that he has been introduced to the Masons; however, as far as any business or pecuniary relationship, he has none. He pointed out that his current real estate license is inactive, so he has nothing to gain from it.

Chair Weathersby clarified that he did not benefit in any way from the sale of the property to the Masons.

Vice-Chair Crapo confirmed.

Chair Weathersby asked Member Crapo if he feels as though he can be impartial for tonight and was in September.

Vice-Chair Crapo replied yes.

Chair Weathersby explained it is always up to the board member as to whether they should recuse themselves initially. If the Board has an issue, they can discuss it. She asked Member Crapo if he intends to recuse himself from the application.

Vice-Chair Crapo replied no.

Chair Weathersby asked the Board if they would like to have any further discussion on this. Hearing no comments from the Board, she noted that Member Crapo will continue to sit on this application. She asked Attorney Phoenix to continue his presentation.

Attorney Phoenix stated they have a 9,215sf site with 110' of frontage. There's a small three-bedroom home on the lot with a footprint of 1,106sf and 12% coverage. The current overall coverage is 19%. The existing home does not meet front and left setbacks. It is very close to the front lot line and closer yet to the left sideline and the Braun home. It is also served by an existing impermeable driveway. There is currently no stormwater management plan. There is a basement that sometimes floods and an older septic system. In September, the request was to build a home partially on the existing footprint, essentially maintaining the front and left setback violations, and building a house towards the building envelope. The leachfield was approved. Part of it was outside the wetland buffer and part was inside the buffer. There was a stormwater management plan and native plantings proposed. There was support from the Rye Conservation Commission based upon the betterments. He continued that the Masons have instituted a number of other environmental protections and betterments; including, solar heat, rainwater collection, heat pump, the green walls and parking out of the front setback and underneath the house.

Attorney Phoenix stated that the take he has from attending the meeting and reading the minutes is that the majority of the board members liked the design, liked the look and thought the original plan had some merit. However, the primary concerns that were expressed were the proximity to the front and left sideline and the size of the house compared to the size of the lot. He continued that they heard and heeded the comments of the zoning members. They are now going to build a two-story three-bedroom home that is completely within the building envelope. It does not need any height variances, despite being raised 9' off the existing ground. The cellar is gone, so there is no concern about flooding anymore. They have instituted similar stormwater management with native plantings and solar heat. The distances from the wetlands are roughly the same as they were before. He commented that the last time they were before the Board, they needed about fifteen types of relief. (He reviewed the relief currently being requested versus what was requested for the first application.)

Referring to Fisher v. Dover, Attorney Phoenix explained that the case held that once an applicant makes a request for variances and is denied, the ZBA can hear a new request under two circumstances. One, is if the new request differs materially in nature and degree from its predecessor. There were subsequent cases to Fisher v. Dover that say in addition to material changes, the restriction does not apply to a subsequent application implicitly invited by the ZBA and modified to address its concerns. He stated it is their view that this is a material change from the last application. They have remedied everything they reasonably could remedy to address the Board's concerns. He pointed out that about 70% of the lot is in the buffer. There is no place to put a house that is outside the buffer, except for in the spot the Board did not want. In retrospect, it is better to have the house more properly centered. He thinks this amply demonstrates that this is a material change from what was there before. Moreover, his memory, as well as the minutes of the meeting, reflect comments and concerns of the Board that have been addressed. He thinks those comments and concerns were either explicitly or implicitly invited, so that prong is met also. (Attorney Phoenix read from the minutes of September 23rd.) He stated this summarizes the comments and concerns of the Board. He believes they have addressed every one of them. All of

the location and size issues have been addressed, while maintaining approximately the same distance from the wetland, tidal and freshwater, as the original proposal. It is supported by an improved septic system completely outside the buffer, stormwater management, native plantings, rainwater collections, and solar electricity, etc. He hopes he has convinced the Board to let them proceed.

Speaking to the Board, Chair Weathersby stated she will be polling each member on whether they feel the application is materially different in nature and degree from its predecessor, being the one in September, and the response on explicit/implicit invitation to make the changes. If it is felt the application meets that analysis, say “yes” and it will continue. If it is felt it is too similar, and/or the Board’s concerns were not taken into account, say “no” and they will discuss it from there.

Shawn Crapo – Yes (both parts); Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piel – Yes; Patricia Weathersby – Yes

The Board agreed the applicant could proceed with the application.

Attorney Phoenix asked Eric Weinrieb to review the plans.

Eric Weinrieb, Altus Engineering, presented the plans on the screen for review. He pointed out the Mason/Doherty property, the Braun property and the Anderson parcel to the north. He also pointed out the existing pond and the tidal wetland to the rear of the property. He explained that Ambit Engineering and Steve Riker did the existing conditions survey and wetlands mapping. They have also been working on the state permits. They have secured the Shoreland Permit for the denser development. They have submitted the wetlands and septic on the previous design, as well. They are waiting to resubmit, pending the outcome of this hearing. He continued that the lot is very much encumbered by the wetland buffer. (He pointed out the 100’ buffer and the 75’ buffer.) He noted that about 71% of the lot is within the buffer. To redevelop the lot, without impacting the buffer, leaves almost no area. Some sort of relief would be needed to redevelop the lot. There are no wetlands on the property. No natural areas are being disturbed. Any areas being disturbed are currently lawn or within the building envelope. The building coverage for the lot is compliant. The total lot coverage, which is allowed to be up to 30%, is 20.5%. Due to the proximity of the lot in relation to the resource area, wetlands and wetland buffer, the Masons are committed to implementing a turf and plant management system that will avoid the use of fertilizers on the property.

Mr. Weinrieb stated the proposal is to raze the antiquated house and construct a new code compliant house; as far as, floodplain, life safety and energy efficiency. The new house will be a 1,382sf three-bedroom house, which is the same number of bedrooms as the existing home. There will be a code compliant state-of-the-art AOS septic system. From a stormwater management standpoint, there will be stone drip edges in areas around the building. The runoff from the roof that drains off the east side will run around through a shallow swale around the site. No water from the developed portions of the site will drain towards the Braun property. There is a modest depression about 3” deep with a berm that has a low point elevation of 10.5 to discharge across into the natural area and into the wetland system. This is mimicking the pre-development conditions and where the water goes towards the resource area.

Vice-Chair Crapo asked if the stone drip edges also act like a french drain with a drain pipe underneath.

Mr. Weinrieb replied there are no drain pipes. He explained there is not a lot of elevation change, so there is no place for them to go. However, there was no infiltration included in the computations. The computations were very conservative. Due to the sandy nature of the soil, those drip edges, being stone with sand beneath, will infiltrate water. There will be less water running off the site or onto the surface than what is predicted in the model.

Vice-Chair Crapo clarified there is no pipe conducting the water from them to another part of the swale.

Mr. Weinrieb replied no. He stated there is absolutely no stormwater drainage pipe on this. Everything either infiltrates through the stone drip edge or through the lawn in the depressed area and then runs across the surface. In regards to the drainage study, Mr. Weinrieb explained they modeled from the 2-year storm event up to the 100-year storm event. The volume leaving the site is being decreased in every storm event analyzed. In all storm events modeled, the overall peak rate off runoff is being reduced. In the 100-year storm, to the west, there is a .01 cubic foot per second increase towards the marsh. However, overall, there is a reduction in the 100-year storm. He noted that the Masons are also intending to harvest runoff, which is not included in the analysis. There will be cisterns on the property for irrigation to discharge during low flow periods. Because the cisterns are very small and can't be operated during the winter season, none of that harvesting was included in the analysis. He noted that the basement is also being eliminated. This will provide more permeable soil underneath the foundation to absorb stormwater below the frost walls. It also eliminates the potential for the need for a sump pump, potential for flooding issues and eliminates the oil tank in the basement, which eliminates that potential contaminant. They are also providing a 2,000sf increase in natural buffer area. The area is now vegetated as lawn. The grass will be removed and natural plants will be planted and left to naturalize. At the Conservation Commission meeting, one of the members indicated that the owners may want to be open to actually increasing that area. That has not been committed to on plan; however, in reality that area might grow a bit larger.

Mr. Weinrieb noted that the new septic system is an AOS system. It will be located completely outside the 100' buffer. On the previous design, it was in the buffer and was approved by variance. By moving the house away from the Braun house and meeting the side yard setback, it allows for both the septic tank and the leachfield to be sited in the side yard area, which is compliant with all state design criteria, as it only needs to be 10' from the property line, and gets it out of the buffer. It also meets the 4' state design criteria for separation to seasonal highwater. It meets the State requirement for separation to ledge. It is probably also met for the Town but could not be documented because of the collapse in test pit. (Mr. Weinrieb reviewed the existing conditions versus proposed conditions.)

Mr. Weinrieb stated they went back to the Conservation Commission at their November meeting and then held a site walk. The Commission submitted a letter to the BOA dated November 30th. The Commission said that the building is about 26% larger than the existing. He clarified that the

building footprint is only about 3% larger than the existing footprint. It goes from about 12% building coverage to 15%, which is approximately 276sf. So, it is not the 26% indicated by the Commission. He noted the Commission made six recommendations and the Masons have no issue with those. It was also mentioned at the meeting and site walk that they wanted clarification on the fill material brought onto the site. The original application brought in about 50 cubic of fill. The fill for the current proposal is less than 20 cubic yards, which does not include soil that needs to be brought in to remove the volume of the basement. Mr. Weinrieb continued that at the site walk, the Andersons wanted everyone to visit their property, in order to clarify and understand their concerns. The Andersons' property is very beautiful. It looks out over the marsh and is close to the resources. He understands their property, but is not going to go into anything about that at this point, unless it comes up later in the meeting. He pointed out that a letter came in today from Ms. Braun. He would like to speak to that letter, if that is okay at this time

Chair Weathersby confirmed.

Mr. Weinrieb reviewed the letter:

- ***The proposed variance would place the septic tank and leachfield too close to my property and home.*** - He explained that both the septic tank and leachfield meet the State criteria to the property line setback. The septic system is over 15'. The disposal area to her foundation exceeds the State criteria to the property line. There should not be any concern for the septic system being too close to the property and her home.
- ***The slope of the land from the petitioners' proposed house to my property will cause water to drain onto my property.*** - Mr. Weinrieb commented that he demonstrated and discussed earlier that in fact, the way the site is graded, the swale around the site will divert water away from her property. There is a slight depression at the easterly corner near Washington Road that discharges the water away from her property as well. The reality is that the existing home is right up to her property and the roof pitches onto her driveway. By moving the house farther away and creating lawn adjacent to the property, he thinks they have satisfied Ms. Braun's concerns.
- ***My property has a basement entrance stairwell that faces the petitioners' property, which will facilitate basement flooding.*** - He commented that they are not directing any runoff towards her property. She mentioned concern of the use of a sump pump and concern with the drainage. Because the basement has been eliminated, there will be no opportunity and no need for sump pumps on this property. There is going to be no oil tanks in the basement. There is going to be a slab on grade with a garage that pitches away from this property and all the runoff is being made better.
- ***Seawater and marsh flooding are frequent along Washington Road in front of and into my property and that of 4 Washington Road.*** - Mr. Weinrieb explained that water has come up in the that area, but this is way above the seasonal highwater table.
- ***The proposed swale in the corner closest to my property has no drainage indicated.*** - Mr. Weinrieb commented he has explained this multiple times. The runoff is being reduced and surface water is being reduced towards the Braun property.

- ***The proposed septic would be directly adjacent to the southwest corner of the newly built house, not within the 20' requirement.*** - Mr. Weinrieb stated that is correct. They are asking for this variance to stay out of the 100' tidal wetland buffer, in order to protect the sensitive environmental resource and provide an adequate area for the septic system.
- ***In the event of a sale, I will need to disclose the closeness of the septic, which will decrease the value of my property.*** - Mr. Weinrieb pointed out that at the last hearing, Ms. Braun didn't say she was selling her home to an unknown party. She was going to be selling it to her daughter, so she would be aware of this. He does not think it is going to change the value of the property. Any buyer would be thrilled to know that an advanced waste water treatment system is located next to them and not an antiquated system that does not have advanced treatment that could potentially impact the resource area.
- ***The proposed swale for water catchment would be located toward the middle of the northeast side of the petitioners' property. It would be about 3' from my property. The bottom depth of the swale is 11 the top is 11.4 to 11.8. My property elevation is 10.8.*** - Mr. Weinrieb pointed out that her property elevation is 11 right along the property line. He also pointed out that there is a little bit of a berm to make sure the water does not run over.
- ***As noted above, we already have flooding issues cause by the petitioners trying to pour water from their basement onto the land and adjoining property.*** - Mr. Weinrieb commented they are no longer going to be pumping water runoff from the basement.
- ***The proposed swale is a mere foot from the proposed septic tank.*** - He noted that it is clearly 4' above the seasonal highwater table with the septic system. The swale is a method to convey surface water. It has nothing to do with groundwater conditions.

Mr. Weinrieb stated he would also like to talk about Ms. Braun's concern with the basement. In looking at the site, it looks like her finished floor of her house is close to the finished floor of the existing Mason/Doherty house, which is elevation 12.0 which is about 6" higher than the proposed garage slab. Ms. Braun has indicated that her basement floods. He is not surprised at all. If her finished floor is elevation 12 and there is a 6' clearance height in the basement, that is about 7' from the finished floor to the basement slab, which would put the slab around elevation 5. The elevation of the tidal marsh is elevation 6.7. He would guess that a lot of the basement flooding is caused not by surface water from the Mason/Doherty home or pumping, but more from groundwater conditions due to the proximity of the tidal marsh from the Atlantic Ocean.

- ***In the event of a failure of the septic system, there is no obvious route to repair and replace the system other than using my property.*** - He is not sure why a site work contractor couldn't come in from Washington Road, across the depression, through the Masons' lawn area to replace the system and back their way out. There is absolutely no reason that they would need to go onto the Braun property to replace the system.

Chair Weathersby asked if the swales could be recreated relatively easily, if they were damaged in that process.

Mr. Weinrieb confirmed. The site would have to be restored.

Chair Weathersby asked if there is any maintenance that needs to be done to the swales so they retain their configuration.

Mr. Weinrieb explained it would need normal mowing. The berm area should be weed whacked and raked out once or twice a year to make sure it doesn't become clogged with organic matter, leaves and branches, so if the water ponds up it has a conveyance to get out. He pointed out there is an overflow option at elevation 10.9, so if it became inundated for some reason, it would run around to the front.

Referring to the Conservation Commission's letter, Vice-Chair Crapo stated that they recommended no use of fertilizer on the lawn. He does not know of any landscape that can be established without using nitrogen and phosphorus at first to get it going. He asked if there is some special turf that is being brought in that does not need fertilizer to get it going.

Mr. Weinrieb commented that every time he meets with the Conservation Commission, he tells them he would really like to use fertilizer to get it going and established quickly; however, the Commission feels otherwise. He pointed out it is a recommendation and not a requirement. If this Board gets to that point, there could be a recommendation to allow for the landscaping to be hit with fertilizer once to get it established.

No other questions were heard from the Board.

Attorney Phoenix stated that he would like to address items 6, 7 and 8 from Ms. Braun's letter regarding the septic system. The AOS system aerates waste and the eventual dispersal into dispersal field is much less and cleaner than a standard septic system. That is why it is environmentally superior, and generally endorsed and appreciated by the Conservation Commission and BOA. Additionally, the existing septic system is already in the sideline. This Board already approved last time the tank in the sideline in approximately the same location. He noted that he scaled that off and it is about 11', not to mention the access to it. Now with the building moved over, there is an area to install it and care for it; whereas, if the house is close to the left lot line, they will have to be going significantly in and through the wetland buffer in order to install, maintain and replace it in the future, none of which is environmentally positive.

Referring to the proposed conditions plan, Attorney Phoenix noted that the northwesterly corner of the driveway just sneaks inside the wetlands buffer. Chair Weathersby caught this, so it was added to the application. It is about 60sf. The home is between it and the wetland. There is really no danger for a pervious driveway to create any problems for the wetland given those factors.

Attorney Phoenix reviewed the Special Exception requirements.

- ***The proposed use is not injurious nor detrimental to the neighborhood.*** Obviously, this is not, on an overall basis, including, replacing an impermeable driveway with a permeable driveway, conditions will be improved. That together with the stormwater treatment, native plantings and AOS system, certainly demonstrate that the neighborhood is not going to be injured by having 60sf of driveway to allow the cars to get out of the setback and into the garage.
- ***The proposed use is in harmony with the general purpose and intent of the ordinance and in accordance with the general and specific rules therein.*** The purpose of the ordinance is to protect the wetland. With all the betterments to existing conditions that is proposed, this driveway which is sheltered from the wetland by the house, is in such harmony.
- ***Due to existing conditions, no alternative route is feasible.*** The primary concerns of this Board last time were the size of the house and the proximity to the front and side lot lines. The house has been moved. If there is going to be a garage, the vehicle has to get to it and this is the most logical location for that to happen. There is no real alternative route. When that is coupled with the fact that it is not harming anything because of its location and permeability, it should not be a problem.
- ***The use has to be essential to the productive use of the land not so zoned.*** This is a replacement residence on a previously developed residential lot in a residential zone that has no wetland protections whatsoever. There is an older septic system. They are not saving rainwater and not using solar heat. There is an existing basement and an oil tank in the basement. This is part of a driveway that is outside land so zoned. Land outside the wetland buffer is being used for part of this house, so it is so required.
- ***To a maximum extent practicable, the construction will have the least possible detrimental impact on the wetland.*** For the reasons stated; stormwater management, native plantings, and the required permanent maintenance for the septic system, this is the least possible detrimental impact on the wetland, even compared to existing conditions.
- ***No alternative feasible route exists which does not cross or alter a wetland.*** It does not.
- ***Economic advantage alone is not sufficient reason.*** Here, it is not solely economic advantage. It's to have a home in this beautiful area that meets the requirements of the zoning ordinance as required by this Board. While it is believed the home will be more valuable than its existing conditions, it is not the only reason.

Attorney Phoenix reviewed the criteria for granting the variances:

- ***The variances are not contrary to the public interest and the spirit of the ordinance is observed. Will granting the variances unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives?*** The purpose of the ordinance is to lessen congestion in the street, and secure safety from fire, panic and

other dangers. This will be a single family to code home with an advanced onsite solutions septic system that's superior to existing conditions. The stormwater treatment and native plantings will also help. Promote health and the general welfare; for the same reasons, that test is met. Promote adequate light and air; this proposal is creating additional light and air in the front and to the left. There is plenty of light and air to the right side and to the rear of the property already and as proposed. Prevent the overcrowding of land; this will be a single-family home. Avoid undue concentration of population. Facilitate provision of transportation, solid waste, water, sewage, school and recreation facilities; there will be no change except a betterment environmentally, particularly with the septic system. Ensure proper use of natural resources and other public requirements; the natural resource will be protected better than what exists today.

- ***Will granting the variances alter the essential character of the locality or threaten the public health, safety or welfare.*** For the reasons stated, this house and this proposal meets the character of the locality. It certainly will better and not threaten the public health, safety or welfare.
- ***It will not diminish surrounding property values.*** This property is going to be significantly more valuable. It's an old overgrown site. The home on the site just can't be saved. This property will be made more valuable, both by the building in its new location and the environmental protections that have been implemented. Since this property will increase in value, it is not going to decrease other property values.
- ***Special conditions exist that distinguish the property from others in the area.*** It's a small lot with an existing home that is very close to the front and left side setbacks. It has a septic system that is partly in the wetland buffer, which is not an advanced treatment system. There is no stormwater protection. It has a basement which can create flooding in the basement. The wetland is fairly close in proximity for both freshwater and marsh. Those things combined create special conditions.
- ***There is no fair and substantial relationship between the general public purposes of the ordinance and its application in this instance.*** The primary issue is the wetland buffer relief. There is also the septic system relief but since the existing system is as close to the Braun property as what is being proposed, since it is an advanced treatment system, and since there are native plantings for the stormwater system, there is no reason to apply the requirements of either the setback or the wetland buffer. In all respects it is being made better and the applicants have responded positively to the comments and concerns expressed by the Board last time.
- ***The proposed use is reasonable.*** It is a residential use in a residential zone. It addresses the concerns about the wetland and is making that better, so it is reasonable.
- ***Substantial justice is done.*** This proposal is much better than the last proposal and is much better than what is there today. It protects the environment and protects the interest of the neighbors. There is no harm to the neighbors in granting these variances. Denial of these variances means the building will stay where it is and the site will stay as it is, at the

loss of all the benefits that are being added; such as, stormwater management, and new septic system. Considering variances and the effect on the public, has to be weighed against the constitutional property rights to own and operate properties. The law is that the right to use and enjoy one's property is a fundamental right, protected by both the State and Federal Constitutions. The Constitution limits the police power of the State, including zoning boards, to weighing the bundle of property rights against the harm to the public. For the reasons stated, the harm to the public from granting any of the relief is negligible, while the harm to the applicants is significant.

Chair Weathersby asked for a clarification on the notice. She asked for the actual distance of the house from the tidal wetland.

Eric Weinrieb presented the plan on the screen and it was noted that the distance is 79.1' to tidal wetlands.

There were no further questions from the Board at this time.

Chair Weathersby opened to the public for comments. She noted that the Board received a letter from the Rye Conservation Commission which was in support of the application. She asked the chair of the Commission if she would like to speak to the proposal.

Suzanne McFarland, RCC Chair, stated the Commission has been out to the site for four different plans. It has been over a year. The BOA did not see the first couple of reiterations of the project. One of the key components for them changing the plan was that the applicants attended Conservation's Water Resource Protection Workshop last year. The applicants have now incorporated a lot of the water concerns into this new design because of that workshop. She asked if the Board had an opportunity to look at this property on the Water Resource Protection Maps that the Town now uses. She continued that the Commission's concern the entire time, has been the area of the lot (the area to be planted with native plantings) that is shown on the maps to be in the high restoration priority. She noted the Commission had an opportunity to walk with the neighbors at the November 16th site walk. They talked about sea water and storms, which is one of the reasons why the house is up on stilts. The Commission spoke openly with the neighbors about things they could also do on their own properties to help mitigate some of the water issues in that corner. She continued that there was a question about fertilizer on the lawn, which is addressed in #4 of RCC's recommendations. She noted that their recommendations usually read "once established do not use fertilizers on lawn". That is what is normally said at a site walk. She also noted that the permeable driveway also needs to have proper maintenance. This is one other recommendation that is usually in their letters.

Referring to the RCC letter, Vice-Chair Crapo stated that in #2 it says that RCC believes an 85% or greater survival rate is adequate, in relation to the native plants. He asked what that means and if they need to pick certain plants. In order for the plants to survive and thrive they somehow need to be fed. He is wondering how they can guarantee 85%.

Mrs. McFarland explained that when there is a planting plan, RCC is asked by the Building Department to go back a year later to see if things have taken and whether the plants are

established enough. The reason they are being asked to plant is for protection and to soak up water. If the plants are left to die, it will not accomplish anything. With a couple of wetland scientists, it was determined that about 85% needs to survive within that first year.

Vice-Chair Crapo stated that it sounds like RCC would be amendable to an amendment to #4 to say “once established”. He asked if this allows them to feed the plants in the buffer zone, as well.

Mrs. McFarland confirmed.

Referring to #2 in the letter, Chair Weathersby asked if RCC is saying; “RCC believes an 85% or greater survival rate after the first year is adequate”.

Mrs. McFarland confirmed.

Attorney Phoenix commented that those changes and amendments are perfectly acceptable.

Chair Weathersby noted that the Board received other letters in support of the proposal.

- **Mary Keenan, 1497 Ocean Blvd;**
- **Gerry Clinton, 1535 Ocean Blvd;**
- **Cynthia Scarano, 1481 Ocean Blvd;**
- **Dawn & Bob Blanchard, 1487 Ocean Blvd;**
- **Shawn Lohnes, 1493 Ocean Blvd;**
- **Brenan Sullivan, 1611 Ocean Blvd;**
- **Peter Aikens, 1323 Ocean Blvd;**
- **Philip Nunez, 160 Perkins Road;**
- **Joe Wilson, 25 Cable Road; and**
- **Allen Kazanjian, 2595 Ocean Blvd.**

She noted that it is her opinion that Aikens, Nunez, Wilson and Kazanjian probably don’t have a standing to be commenting on the application (due to the distance of their property to the property in question).

Chair Weathersby asked for comments from the public in favor of the application. No comments were heard. She opened to the public who are opposed to the proposal. She noted the Board received the letter from Ms. Braun, which they have gone into detail about. A letter was also received from Melody Mueller and Earl Sheesley, 22 Washington Road.

Lucy Braun, 1505 Ocean Blvd, presented a plan on the screen showing a closer look of the proposed septic location and leachfield. She stated that her concern is that the septic system and leachfield are very close to her property line. Her house is also very close to the property line. Under Section 35-14.B(3) of the Rye Codes it says; “effluent disposal systems shall be set back 20’ from side and rear lot boundaries and 10’ from the front boundaries”. When Mr. Weinrieb talked about the State being 10’ that is fine; however, this is Rye and the code is 20’. The distance between the corner of the house and the property line is 20’. The septic and the leachfield and both well within that. Because of the size, the septic and leachfield will be within 6’ of her property line. The whole plan hinges on taking something from her to give to them. She appreciates that they have moved into the allowable zone. (She pointed out on the plan the area

that is in the swale system.) She noted that the swale is going to run along the edge of her property. She continued there is no basement or sump pump now. However, that does not address the issue of a lot of water coming off this property towards her property because the Mason property is somewhat higher. She stated she has an issue with the swale in that area because it is next to her property. It is close to the new septic and leachfield. If there should be any overflow in this area of any sort, whether it be ocean water or rainwater, this system will get overwhelmed and there will be septic, and a lot of other water, in her basement.

Ms. Braun commented that Attorney Phoenix said there is a constitutional right to use the property. She understands and is sympathetic with these petitioners and their desire to convert the property. What they bought was a cottage and they are trying to convert it into a much larger dwelling. It violates the wetland restrictions and its likely to do damage to her property because of the closeness that comes nowhere near the 20' setback that they have to have from her property, let alone their building. Without these exceptions, their lot is not buildable. However, the conditions have not changed since they bought this cottage and these limitations were almost certainly "baked" in to their purchase price. It is neither fair nor right for her property to be burdened and lose value because they now want to improve their situation. One of the petitioners is a professional architect, who had to be fully aware of the buildable issues. The fairest way to resolve this is to allow them to rebuild in the current footprint. There has never been a discussion about just rebuilding in the current footprint. It would be the least obtrusive event for the wetlands. Under the Rye Code, this lot would not be buildable, let alone expandable, but for the fact it was grandfathered under the code. These petitioners knew that when they bought the property and should not be allowed to ignore the limitations by building a larger building in violation of wetland protections and town code designed to protect neighboring properties from unfair burdens. (She presented photos on the screen showing the amount of water in the area.)

Mike Anderson, 10 Washington Road, stated that the constitutional right to do whatever someone wants with their land has been superseded by federal rules, regulations and wetland acts. Nobody has the right to do what they want, when they want. As real estate becomes scarce and prices skyrocket, it has become very difficult to follow these regulations. Regulations are in affect to protect the environment. Rolling back these wetland regulations will put undue stress on this delicate ecosystem. His land is going to be negatively impacted by the abutters because 70% of that project is going to be built in the wetlands buffer. The reason there is a wetlands buffer is to have no trespassing and no development. Every speck of dirt beyond the footprint is in wetlands and should be protected. (Photos were presented showing the pond on his property and wildlife habitat in the area.) He commented that if the regulations are maintained it gives hope for a brighter future, one that can be experienced by future generations and wildlife. This ecosystem is unique and gives Rye special character. He would like to think that a better understanding of the need to protect the environment would far outweigh the need to build bigger and closer to this pond. He pointed out that nitrogen is poison to freshwater. He speaks to the environment. He requests that the regulations that are already in place are adhered to preventing irreparable harm to a protected, delicate, fragile and unique part of the Town's character. He asked if there is any contingency plan for when things go wrong.

Hearing no further comments from the public, Chair Weathersby asked the applicants if they would like to address any of the comments made by the public.

Mr. Weinrieb brought the aerial photo back up on the screen. He noted that at the Conservation Commission site walk there was an opportunity to visit the Anderson property. They got to understand Mr. Anderson's property and his concerns. (He pointed out the location of the pond in the aerial photo.) Mr. Weinrieb continued that it was found out at the Conservation Commission meeting, and through Mr. Anderson, that this is not a natural pond. The pond has been dredged. They did not receive a wetland permit to dredge that pond in the past. He commented it is a beautiful pond, but it has been dredged and maintained. The Andersons existing driveway is somewhere between 8' and 12' from the wetland boundary and probably 20' from the surface water. When some research was done, it was found that the Andersons received a variance from the wetland buffers to expand their home. The Masons are asking for a similar request. They respect the environment. Not only are they expanding and building in the buffer, they are actually creating mitigation. The Andersons plans did not require mitigation. The Andersons have a septic system that received relief and is 57.7' to the wetlands. The Masons septic is over 100' away. It's disingenuous for anyone to say what is being proposed is not environmentally sound when it's exceeding all the requirements and other people, who are speaking in opposition to the project, are not. He feels that a conventional system 57.7' away from the resource is not protecting the environment, where a septic system 100' away is. He understands the Andersons concerns. However, he wants to be very clear, the lot is being made better than the abutters. The comments that have been made are not honest and are very disingenuous.

Attorney Phoenix noted that they have addressed Ms. Braun's comments at the outset. He understands her concern and respects the respectful nature of both neighbors and how they presented this. However, they have no legitimate concerns and Mr. Weinrieb has demonstrated that admirably.

Chair Weathersby asked the Board for further questions. Hearing no questions or comments, she closed the public hearing at 9:20 p.m. and opened to the Board for deliberations.

Member Mikolaities stated he is pleased with the changes they have made. They have made a lot of changes. The building has been centered on the lot. They meet the dwelling coverage and are below the lot coverage. Also, there will be a brand-new septic system. He thinks there are so many positives to building a new 2021 house, as opposed to trying to renovate and put a band-aid on a 1930's house with an older septic system. He pointed out they have worked with Conservation four times, there will be plantings and no basement. He is very pleased with the changes that have been made since the Board saw this application last time.

Member Driscoll commented he agrees with Member Mikolaities. He was not on the first application; however, he read through it thoroughly. He can see how many changes have been made. He gives credit to the abutters. They have brought up some legitimate concerns and it is really nice to see them so vested into the wetlands, especially with one of them saying they would prefer to have the house built closer to them to protect the wetlands. It is nice to have neighbors looking out for the Town, wetlands and resources. He continued that he really appreciates Mrs. McFarland's take on the application. Clearly, it was well thought out and a lot of time was spent on it from the RCC. For him, it is helpful to know they have had that much involvement on the applications. The lack of a basement really helps out his thoughts for being in favor of this application. With the way it is situated and what they are doing with grading, it seems reasonable

to him. He thinks it is important that they abide by everything recommended by the RCC. It is close for him and it is a tough one. However, based on what they have presented, he thinks they have made a good effort. He sees himself in favor of the application.

Vice-Chair Crapo noted he was in favor of the last plan. However, this plan has taken the abutters' concerns into consideration and they have made some adjustments. The previous version was slightly larger. It comes down to the runoff. The engineering that is being put into the swales and with the plantings, he did not see plus/minus a small amount of square footage really varying with that. With the basement coming out, it obviously mitigates the need for pumping. He pointed out that Mrs. Braun referred to it as "her lawn". It is not her lawn. In fact, they have the benefit of an easement onto some of this property. He does not know whose water goes where. The photos showing the water from the storms, he does not know the applicant can be faulted for that. Given the engineering plans, the swales and everything like that, a lot of that is not in the buffer, as the part of the swale is in the front yard to control water. The applicant can almost do anything they want to with the grading there. They have come up with a comprehensive plan to deal with the runoff. There was mention of seawater. He does not know that any of these three properties could be responsible for seawater coming onto their property because that can't be anticipated. He is in even more support for the new application because it has taken in a lot of the concerns of the rest of the Board and has even more of an engineering approach for dealing with a lot of the compliance issues.

Member Piela stated he has given this a lot of thought. He also sat on the last application. He really appreciates the fact that they "right sized" the house for the lot and that they are in compliance with all the side yard setbacks. The number one thing he is focusing on and weighing in his head, is the 42.1' from freshwater. This is pretty close in his mind. He is weighing what he sees as a significant ask, when the rule is 75', against the Conservation Commission because they are experts in this. They are saying they do not object to the project as proposed with the recommendations that have been discussed. He thinks this is a much better and positively changed application, compared to the previous one. He noted that he took a harder stance on the 42' concern before Mr. Weinrieb's last comments. He was not aware of that information, so that is going to impact his decision.

Speaking to Member Dibble, Chair Weathersby asked if he did not sit on this application because he had a conflict or if it was because he did not sit on the last application?

Member Dibble explained he chose not to sit because he did not attend the previous hearing. He thought it would be desirable to have people who did sit on the previous case to sit on this application. He shares some of the conflict about this. He did not hear the discussion previously, so he does not have a lot to add. He will rely on his board colleagues who have seen both proposals.

Speaking to the applicants, Chair Weathersby asked how the septic system tank is sealed and whether it is anchored. Does it need any kind of special maintenance, given its location?

Mr. Weinrieb explained that the septic tank is above the seasonal highwater table, so there is no concern of any flotation issues if it becomes inundated. They may look at whether or not the tank

needs flotation for an empty tank situation, in the case where it may be pumped right before a storm event. He continued this is above the 100-year flood elevation. The finished grade over the septic tank is going to be somewhere between 11.5 and 12. He does not anticipate seeing it flood to elevation 12, which would be about 6" over the slab of the new garage and about even with the Braun finished floor. The covers are sealed but they are not waterproofed sealed. If it makes a huge difference to the Board, they would consider putting waterproof sealant on the covers; however, he does not see a need for it.

Speaking to Mrs. McFarland, Vice-Chair Crapo stated that Member Piela mentioned his concern about the distance from the freshwater and Mr. Weinrieb was saying that was a dug pond. Obviously, the marsh has freshwater coming from inland and seawater mixed. When referring to the freshwater setback, is it only from that pond or from the other wetlands? In a natural state, would this pond exist or would the water all flow into the marsh? Is it a natural occurrence to have the separate pond?

Mrs. McFarland replied that Mr. Weinrieb is the one who did the research and found out the pond was dug. She believes Mr. Anderson told them this also on site.

Mr. Weinrieb presented the plan on the screen. He showed the limits of the pond and the wetlands that extend beyond. He also pointed out the tidal wetlands. He pointed out the freshwater wetlands and the pond.

Mrs. McFarland explained that sometimes things increase with torrential rains, so that is freshwater. With storms, the saltwater intrudes also. It is sort of a give and take on what is happening with the climate.

Vice-Chair Crapo asked if someone got a permit to have a pond on their property, would this make it so the next-door neighbor would have to have a setback from the pond?

Mr. Weinrieb explained they are accepting that it is a pond, whether natural or man-made. It was probably some sort of pond years ago; however, it has been dredged and refreshed, so that there is a freshwater body in there. During tidal surges it becomes inundated with saltwater. It is primarily freshwater and becomes saltwater at times when there is surge. He is convinced that in looking at the salinity of the water it would not be conducive for freshwater aquatic life.

Chair Weathersby stated this proposal is a vast improvement over the last one. She loves that the house is now compliant with the dimensional requirements of the setback relief and the dwelling coverage is great. She likes that it is moved away from the Braun property. Environmentally, to her it is much improved. Getting the septic entirely out of the wetland buffer, to her is a big one. She understands Ms. Braun's concern about the proximity of the septic system to her home. However, the science of it is that there is not going to be seepage of any septage onto her property and there will be ample area to work on the property. Regarding the drainage for stormwater, she is impressed that stormwater management is improved from present conditions and from the last proposal, to the point where the Braun property will definitely have less water flowing onto it than it does now, as demonstrated by the stormwater management plan. She is very pleased that there is no basement, sump pump or oil tank. The house is a much more

modest size. It does not overwhelm the lot nor look down upon the neighbors, as the last one seemed to be. She can get behind this proposal. She does not think it is going to impact the wetlands. The conditions she would propose would be the recommendations from the RCC letter, with the changes as discussed to #2 and #4. In addition, she would add that the pervious pavers are installed and maintained as to remain pervious. Also, the swales to be maintained so they don't get clogged with organic or other matter, so they continue to be in the form and function as intended.

There was some discussion on the maintenance of the swale.

Chair Weathersby asked Mr. Weinrieb for clarification.

Mr. Weinrieb explained that the area that he was saying would expand the natural area is in the front part of the lot (on the main entrance side of the house). It would be fully their intent to make sure the swale coming around the site is maintained. There could be a note added to the plan that the low area of the berm is to be maintained to allow that conveyance. Branches and leaves should be taken out of that area. He will also make sure the owners receive a maintenance manual on how to vacuum and sweep periodically the permeable pavement.

Chair Weathersby called for a vote on variances to §190-3.1.H.2(a), (b), (g):

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

7) The purposed use is a reasonable one?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote for variances to §190-2.2.E and §190-6.3.B:

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on requested relief to Building Code §135-14.B(5):

- Would enforcement of that section do manifest injustice and be contrary to the spirit and purpose of the building code and the public interest?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on the Special Exception request to §190-3.1.H.2(f) and from §190-3.1.G(2):

- **Due to existing conditions, no alternative route is feasible?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

- **It is neither injurious nor detrimental to the neighborhood?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – 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?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Patrick Driscoll - Yes
Chris Piela – Yes
Patricia Weathersby – Yes

Motion by Patricia Weathersby to approve the applications of Jay Mason and Jacqueline Doherty for property located at 4 Washington Road for variances to §190-.3.1.H(a), (b) and (g) for a house 79.1’ from the tidal wetlands and 42.1’ from the freshwater wetlands; §190-2.2. E for a septic tank 10.3’ and a leachfield 11.4’ from the left side boundary; and §190-6.3B for demolition and rebuild of a non-conforming structure; and relief from Building Code§35-14. B (5) for a leachfield 11.4’ from the left side boundary; and a special exception pursuant to §190-3.1 G (2) of the Rye Zoning Ordinance to allow for a pervious driveway +/- 60 s.f. in the wetlands buffer; with the following conditions;

- 1. More native plants and grasses are added to the planting plan for the buffer restoration area;**
- 2. A border of native plants is established along the lawn/vegetative buffer to a depth of 5 feet. An 85% or greater survival rate after the first year is adequate;**
- 3. Rye Conservation Commission (RCC) approval of the final planting plan for the buffer restoration area. The RCC may revisit the site after plan implementation;**

4. Once established, there shall be no use of fertilizer on the lawn;
5. Some shrubs or trees are planted in the southwest corner of the lot beyond the new leachfield to mitigate the effects of frequent flooding;
6. Best practices for sediment control be followed during the demolition and construction phases to ensure that the wetland is not impacted;
7. The pervious pavers are installed and maintained per the manufacturer's instructions so as to always remain pervious; and
8. Site conditions depicted on the plan identified as Zoning Board of Adjustment Stormwater Management Plan (Sheet C-2) dated November 12, 2020 shall be maintained.

Seconded by Gregg Mikolaities.

Roll call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

Request for reconsideration and rehearing for the Mason/Doherty property at 4 Washington Road:

Motion by Patricia Weathersby to continue the request for rehearing and reconsideration of Mr. Mason and Ms. Doherty to the January meeting. Seconded by Shawn Crapo.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

Adjournment

Motion by Patricia Weathersby to adjourn at 10:05 p.m. Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

Respectfully Submitted,
Dyana F. Ledger