

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

**Wednesday, July 7, 2021
6:30PM Rye Public Library**

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

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

I. CALL TO ORDER

Chair Weathersby called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

II. BUSINESS

1. Approval of the June 2, 2021, Meeting Minutes

Motion by Shawn Crapo to approve the minutes of June 2, 2021 as amended. Seconded by Gregg Mikolaities. Vote: 4-0-1. Burt Dibble abstained.

2. RCL Survey

Chair Weathersby noted that Rye Civic League has conducted a survey of its members and others who chose to respond. A copy has been provided to board members, if they wish to review.

3. Alternates – Michael Brousseau and Sandra Chororos

Chair Weathersby announced that this is Dr. Dibble's last meeting as a full member of the Board of Adjustment. She thanked him for his years of service. He will be continuing with the Board as an alternate.

Member Dibble commented that it has been an extraordinarily interesting time for him. After ten years, he looks at his colleagues on the Board and takes great pride in what has happened with the properties that have come before the Board. He thinks the Board does a good job for the Town.

The Board thanked Dr. Dibble for his dedication to the Board.

Chair Weathersby asked Mr. Brousseau to introduce himself to the Board.

Michael Brousseau stated he has lived in Rye for ten years on Geremia Street. He is interested in participating with the Board in balancing what residents are trying to accomplish with the needs of the Town. He has a particular interest in ecological matters. He is looking forward to participating.

Sandra Chororos stated she is new to town and moved here from Sarasota Florida last year. She grew up in Wolfeboro, NH on Lake Winnepesaukee. She hopes that some of her previous writing experience and career can potentially bring an objective and new view to the Town. She is looking forward to the opportunity.

Motion by Patricia Weathersby to appoint Michael Brousseau and Sandra Chororos as alternates to the Rye Zoning Board of Adjustment. Seconded by Burt Dibble. All in favor.

The following applications requested continuances to the August 2021 meeting:

- Steven and Denise Manseau, 117 Wentworth Road
- Craig and Denise Benson, 2 Merrymeeting Lane
- John St. Cyr, 21 Vin Mar Court
- Aloha Properties, LLC, 63 Old Beach Road

Motion by Burt Dibble to continue the applications of 117 Wentworth Road, 2 Merrymeeting Lane, 21 Vin Mar Court and 63 Old Beach Road to the August meeting, as requested. Seconded by Shawn Crapo. All in favor.

III. APPLICATIONS

- 1. Steven & Denise Manseau for property owned and located at 117 Wentworth Road, Tax Map 24, Lot 36, request variances from §190-2.3.C(2) for a shed 2.6' from the side boundary where 20' is required, from §190-2.3.C(3) for a shed 20' from the S corner front boundary and 4.2' from the east corner front boundary where 40' is required; and from §190-2.3.C(5) for dwelling coverage of 19.04% where current is 15.35% and 15% is allowed and for lot coverage to exceed 30%. Property is in the Single Residence District. Case #21-2021.**

- 4. Continued to the August 4, 2021 meeting.**

- 2. Heidi Conley for property owned and located at 104 Alehson Street, Tax Map 15, Lot 25, requests a variance from §190-2.3.C(3) for a shed 6' from the left side boundary where 20' is required. Property is in the Single Residence District. Case #23-2021.**

Chair Weathersby noted that this application was continued at the last meeting, so the applicant could get more information about the drainage easement that runs along the property. She asked the applicant to present their application.

Alex Ross, Ross Engineering, stated that at the last meeting there was some confusion about the drainage easement that runs along the side of the property, as it is shown on the tax map. He continued that looking from the street towards the property, on the left side boundary, there is a 10ft wide drainage easement that straddles the property line, so each property owner gets 5ft. The shed is proposed to be 6ft from the property, so it will not be within the drainage easement. This area in town was subdivided in the 70's. Drainage easements were made on some of the side lines anticipating catch basins, roadways, ditches, and places for the stormwater to travel. Because of the way this was built and the elevations that are in that area, this is really not used for drainage at all. The stormwater hits the streets in the surrounding area and sheet flows off. Referring to the plan submitted to the Board, he noted that the drainage easement is in between the two driveways. There is a culvert in this area; however, the flow is so minimal that the culvert dead ends in a stone area, well short of where the shed is being proposed. In the location where the shed is being proposed, it's a flat, dry area. He does not see that this will have any impact to the drainage easement. He noted that he walked the property with the abutter, who is very aware of the project.

Heidi Conley, applicant, noted that an email was sent from the abutter, Joe Bartell, in support of the project.

Speaking to Mr. Ross, Chair Weathersby asked if he has seen the note from Public Works Director Dennis McCarthy.

Mr. Ross replied no.

Chair Weathersby noted that they had sent an inquiry to him because there was thought that this might be a Town of Rye easement. Mr. McCarthy confirmed that it is. Mr. McCarthy's letter states; *"the easement is occupied by a 12" diameter drain pipe, which daylights halfway to the rear of the property. The remaining length of the easement functions as flowage easement. I would say nothing should be located in or on the easement. Some minimal setback from the easement side line should be applied."* Chair Weathersby asked if the proposed location of the shed is part of where the 12" pipe is located.

Referring to the plans, Mr. Ross pointed out that the shed is located about halfway down the side line. The culvert ends about 45' in front of the shed, so it is closer to the street. He commented that the picture shows the stone area where it is located, next to the driveway.

Chair Weathersby questioned squares shown on the plan.

Mr. Ross noted that the squares reference a fence, which is in the middle of a drainage easement in a flat area. He commented that landowners and abutters are probably not even aware of the drainage easement because it is a flat dry area.

Vice-Chair Crapo asked how long the side property line is.

Mr. Ross replied 235'.

Chair Weathersby commented that her concern is the shed being so close in case they need to repair the pipe. However, it is not in the drainage easement and there is no pipe in that area.

Member Dibble asked how the opening of the pipe is protected.

Mr. Ross explained that there's gravel that covers the entire pipe. It's installed in such a manner that it's not hard packed gravel, so it has good void. When a little bit of water goes through, it infiltrates into the stone.

Vice-Chair Crapo pointed out that Mr. McCarthy is saying it daylights.

Mr. Ross replied it does not daylight, unless some stone is taken away.

Member Dibble asked if he is comfortable that what flows over the end of the pipe does not impede any drainage.

Mr. Ross stated that from his review from walking the site and the layout of the subdivision, with the sheetflow off the road, no drainage ditches and the fact that property owners have been there for decades, there is no impact. It doesn't seem to affect anything.

Vice-Chair Crapo commented the pipe is solid. It is not a perforated pipe. It's not meant to be a french drain. As he interprets this, the catch basin water would go underground and release midway on the property.

Mr. Ross stated that if the Town needed to maintain or put in a new pipe, the shed is further down the line and is out of the easement, so it wouldn't affect anything.

Member Dibble pointed out that people have been there for thirty years and it has never been a problem. The fact that it is an easement, says that if it needed to be maintained for some reason in the future, it could be.

Chair Weathersby asked if the shed could go 7' or 8' over, so there would be more room.

Mr. Ross explained the site is odd in there is a raised leachfield approaching the rear of the lot, so the flat area is limited.

Vice-Chair Crapo commented that it looks like there are more issues with the neighbors being right on the property line and potentially in the easement with the fence. Here, the proposal is 6' off the easement and the area, according to the plan, looks clear. He continued that properties do change hands. In this case, some unawareness of the easement may have come in to play. He wonders if there could be a small sign on the back of the shed that says "no digging to the east side due to easement" to alert people and keep them from going into the easement.

Member Mikolaities noted that the easement has been in place for forty-five years. People can plant on an easement and do whatever they want. The Town has the right to come in and replace

the culvert, so it doesn't matter what is put there for a sign. The applicant knows the easement is there and is staying out of it.

Vice-Chair Crapo stated that the other idea is to have a condition that the current deed be updated to list the easement.

Mr. Ross explained that the original deed, and all the deeds after, don't mention the easement. There is a subdivision plan dated 1974 that didn't show the easement. A couple of years later, the subdivision plan was revised and the easement never got put into the deeds.

Chair Weathersby stated the Conleys are now aware of this. When they convey that property, they will say that it is subject to the easement of record. Speaking to Town Administrator Reed, Chair Weathersby suggested this be brought to Attorney Donovan's attention. The easement is probably missing from the deeds of every property it goes through. Perhaps, town counsel should be asked if the title should be updated. However, she is not sure that is where this Board wants to go.

Alternate Mitchell stated that when he went to look at the property, his first thought was that this was something that was abandoned. It was an idea within the development that was never used. Because of the grading of the site, the catch basin doesn't do anything. It's not even draining.

Chair Weathersby agreed that it does not serve it's intended purpose.

Member Dibble stated that conditioning the application would seem to be an unnecessary hardship for the applicant.

Speaking to Mr. Ross, Vice-Chair Crapo asked if this is intended to be a shed on blocks.

Mr. Ross confirmed. He noted it will be above the grade.

Vice-Chair Crapo suggested a condition that no utilities (power cord) would not go through the easement area.

Chair Weathersby opened to the public for comments. Hearing no comments, she closed the public hearing at 7:09 p.m.

Vice-Chair Crapo noted that as long as there is a condition that no utilities go through the easement, he does not see an issue.

Chair Weathersby read a letter of support from Joseph Marttilla of 96 Alehson Street.

Member Piela pointed out that this is going to be on cinderblocks, so if it had to be moved it could be, as it is a semi-temporary structure.

Chair Weathersby stated she was concerned that the pipe went all the way to the back and there wouldn't be room for repair. However, knowing the pipe does not go that far and there are really

no drainage issues that require the pipe, she is comfortable with the proposal. She also likes the condition that Vice-Chair Crapo proposed about utilities not entering the easement.

Member Dibble stated his concern was the details of the pipe and he is satisfied in that regard. His other concern was how the shed would impact the neighborhood. In looking around the neighborhood, there is plenty of space in the area.

Chair Weathersby called for a vote to the request for a variance from §190-2.3.C(3):

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes

Burt Dibble – Yes
Chris Piela - 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?**

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble - Yes
Chris Piela - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Heidi Conley for property owned and located at 104 Alehson Street, §190-2.3.C(3), for a shed 6' from the left side boundary, with the condition that any utilities that access the shed not enter the easement. Seconded by Chris Piela. All in favor.

- 3. 31 Perkins Road Trust, Mary Jo Houghton Trustee, of 210 Ledgewood Road, Manchester, NH** for property owned and located at 31 Perkins Road, Tax Map 5.2, Lot 142, requests variances from §190-2.4.C(1) for a shed 18' from the rear property line where 30' is required; from §190-2.4.C(5) and §190-3.4.E for lot coverage currently at 36% and requesting coverage of 38.18% where 30% is allowed; and from §190-3.4.E for impervious coverage greater than 30%; and from §190-2.4..C(2) for a shed 15' from the side property boundary where 20' is required. **Property is in the General Residence District and Coastal Overlay District. Case #28-2021.**

Chair Weathersby noted this is another continuance from last month, as the Board needed more information about lot coverage. She opened to the applicant to present.

Patrick Houghton, 31 Perkins Road, explained that they are proposing to build a 12'x16' shed on the property. The home was built in the 40's and there is very little storage space. There is no access to the attic and no basement. Relief is needed to build the shed 18' from the rear property line and 15' from the side property line. Relief is also need for the impervious surface, as 30% is allowed in the zone and the request is for 40%.

Vice-Chair Crapo noted that the original notice didn't have the percent and the notice that went out to the abutters had 38.18% and now it is up to 40%. He asked if the neighbors have been apprised of the changes in the numbers.

Mr. Houghton replied that the application was reconfigured and the abutters were notified.

Chair Weathersby explained that the abutters were sent a second notice. She asked Mr. Houghton where they get the 40%.

Mr. Houghton noted the impervious surface includes all structures on the property. There is also a large deck on the back of the property.

Member Piela commented the existing impervious surface is 36.5% without the shed. It goes up to 38.18% with the shed.

Chair Weathersby noted this is why she is trying to understand how it went from 38.2% to 40%.

Member Mikolaities stated he just checked the math and it is 38.2%.

Chair Weathersby asked if anything else is being added besides the shed.

Mr. Houghton replied he was just using round numbers.

Chair Weathersby asked why a shed is needed, given there is a pretty good size garage on the property.

Mr. Houghton explained that they use the garage in the winter for parking their car. It is tight with a one car garage.

Mary Jo Houghton, applicant, pointed out there is an oil tank in the garage, as well. Once the car is parked in the garage, nothing else can really fit.

Chair Weathersby opened to the public in support of the request. Hearing no comments, she opened to the public in opposition. She noted that a letter has been received from the abutters, John and Mary Elizabeth Daley, 29 Perkins Road, who are in opposition to the request. Some of their points are that is a small lot and they raise concerns about noise.

Speaking to Mr. Houghton, Member Mikolaities stated that it looks like an effort was made to offset it behind the garage.

Mr. Houghton confirmed. He explained that he maximized the space between the back lot line and the side lot line.

Member Mikolaities asked if the garage is closer to the abutter than the shed will be.

Mr. Houghton explained that the Daleys are on the east side.

Alternate Mitchell stated that he drove by the property and it looks like there is heavy vegetation between this property and the property to the east.

Mr. Houghton confirmed. He pointed out that they also have a shed.

Norm Hamell, Manchester, NH, stated that he has rented the abutters' cottage in the past (29 Perkins Road). He thinks the Houghtons are great neighbors and there were never any issues when he rented there. He does not see where there would be any problems.

Member Dibble asked if he would endorse the observation that the landscaping between the two properties lends a quality of privateness to each side.

Mr. Hamell confirmed.

Hearing no further comments, Chair Weathersby closed the public hearing at 7:25 p.m.

Member Dibble stated that he understands the need for people who want to take care of their property in a careful and prudent way, to have some space for the equipment to do that. There are a number of sheds in this neighborhood that lend credence to the notion that this applicant isn't the only person who experienced this particular hardship. Also, the vegetation really resolves in his mind that the shed, being placed close to the back of the garage, is not going to be an obtrusion on anybody. He pointed out there are fences around. So, in addition to the plantings, the fences will tend to quiet the visual impact to the shed, as well.

Member Piela commented that he puts a lot of weight on the abutters' letters, either for or against. In this particular case, the abutters' concerns about the request for the variance don't have to do with the variance itself. So, he does not have a problem with the application.

Vice-Chair Crapo stated that in the last two paragraphs of the abutters' letter, they say it is a residential district and should be kept that way. He does not see that a shed is an appurtenance that makes it non-residential. The more overwhelming issue in that neighborhood is the water and drainage. The lot coverage is what is more concerning to him. However, in this case, it is already disturbed land and they are going to add a shed upon it. He does not see that a 12'x16' shed is going to disturb the water tables or change the water patterns in such a way that it is going to drastically add or subtract from the neighborhood's water issues. He does not see that

the benefit to the public, in this case the abutters, as far as water and coverage, is outweighing the benefit to having a shed.

Member Mikolaities stated he does not have a problem with the shed. He looked at where they are placing it behind the garage. It is offset from the garage, so it is “tucked” back in there.

Chair Weathersby noted that she hates to see lot coverage creep up towards 40% and that was her issue. Hearing that they have no basement, no attic and a one car garage with an oil tank inside, she understands the need to put the mower, beach chairs and other items somewhere. She supports the request, as well. She agrees the gain to the public is not outweighed by any detriment to the applicant.

Chair Weathersby called for a vote on the request for a variances from 190-2.4.C(1), 190-2.4.C(5) and 190-3.4:

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - 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?**

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble - Yes
Chris Piela - Yes
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the application of Mary Jo Houghton Trustee for property at 31 Perkins Road for the construction of a shed as requested.
Seconded by Shawn Crapo. All in favor.**

4. **Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd., Tax Map 13, Lot 54, request variances from §190-6.3B for demolition and rebuild of structures; from §190-2.4.C(1) for a house 15.62' and a patio 12' +/- from the rear boundary where 30' is required; from §190-2.4.C(2) for a studio 13.27' and a patio 12' +/- from the left side boundary where 20' is required; from §190-2.4.C(2) for a house 5.20' from the right side boundary where 20' is required; and from §190-**

3.1.H(2)(a)-(g) for a driveway within 100' of wetlands. **Property is in the General Residence and Coastal Overlay Districts. SFHA Zone AO(3). Case #24a-2021.**

- 5. Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd., Tax Map 13, Lot 54,** request a special exception from §190-3.1G & §190-3.1.H(2)(f) for a driveway within 100' of wetlands. **Property is in the General Residence and Coastal Overlay Districts, SFHA Zone AO(3). Case #24b-2021.**

Attorney Tim Phoenix, representing the applicants, presented to the Board. He explained that at last month's meeting, there was an application for a property along the harbor. There was a discussion and it was determined that the harbor is not a defined wetland in the Town of Rye. This property abuts the ocean, which is also not a defined wetland in Rye. The reason the relief was requested is because the building inspector said it was needed. The driveway entrance is partially within the 100' highest observable tideline setback, which is a DES requirement. However, that has been there forever and is not changing. In any event, it's not a distance from a wetland. He does not believe they need those variances or special exception.

Chair Weathersby agreed. She explained the ocean is not a wetland. It's the marsh on the other side, which may or may not bring it into play. This is her understanding of the zoning ordinances.

Attorney Phoenix commented that he will proceed as if those are not needed. He continued this is a 29,738sf lot. The house is a 1928 home. It is not in good condition and does not meet today's living requirements. There is a second home on the lot, which is very small and is referred to as a bunkhouse. The driveway meanders between the two buildings with the homes located at the far right and left corners of the lot, and it runs to the back of the property for access to the property on the rear. Also, running through the middle of the lot is a water line. At the front of the lot, is an ancient septic system. The plan calls for razing the two buildings and putting a new home in the right corner, in fairly close proximity to the existing home. The proposal is to also tear down the small cottage and build a studio, which will be moved forward a bit on the lot. He noted that the applicants checked with the neighbor to the left in regards to their view to the ocean. The neighbor informed them that he has no problem with them moving the new building. The reason why the buildings are being proposed in these locations is because moving them to the middle of the lot would interfere with the driveway and/or the water line and the view. The closer the buildings move together, the more affect there would be on the neighbor's view and on the driveway and water line. A new septic system is being proposed, which is shown on the plan. A grading and utility plan has been provided, which will direct and infiltrate stormwater and improve existing conditions.

Referring to the relief chart, Attorney Phoenix stated that the requirement for the rear setback is 30ft. Today, the house is 6.17ft and the bunkhouse is 4.86ft from the rear. Those distances will be increased where the house will be just under 16ft and the studio will be moved to 34ft. Also, the patio is 12ft, which will be pervious. On the left side, the bunkhouse is 7.56ft to the side line and it will be moved to 13.27ft. The right side, where 20ft is required, the house is less than 4ft from the side line and it will be moved to 5.2ft. He pointed out that every variance requested is actually an improvement over the existing conditions. He continued that one neighbor supports

the project. He believes that the neighbor who is present at the meeting supports it. They are not sure about the neighbor to the right.

Robert Scarano, applicant, noted that they cannot see Mr. Appleyard's house.

Attorney Phoenix commented that it seems the only two neighbors that would be affected by the house location are in favor. The only other abutter does not appear to be affected in anyway. He continued there is going to be a slight change to the shape of the driveway. The entrance is going to remain in the same location; however, it will curve a little differently. He pointed out that the home that has been designed is an attractive home and certainly more attractive than what is there. In summary, relief is required because of the site conditions; the driveway, water line location, neighboring view corridors and the need to put in a septic system, which all limits where the buildings can be moved. He reviewed the criteria for the requested variances:

5. Granting the variances is not contrary to the public interest and the spirit of the ordinance is observed. The test is whether granting the variances would unduly and to marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. In virtually all instances, existing conditions are being improved and there will be a fully to-code home. Granting the variances will not alter the essential character of the locality. The setbacks, overall lot and septic are being made better and the view corridors and wishes of the neighbors are being preserved. The public health, safety and welfare is being made better by having a to code home with a new septic system, maintaining the view corridor and access for the neighbor to the rear.
6. Granting the variances will not diminish surrounding property values. The two neighbors who are affected don't object to the new home and other building, which is actually reducing the non-conformity by taking away a second home. There will be a new home that is better functioning, up to-code and new septic, which will increase property value. It will certainly not decrease surrounding property values.
7. Special conditions exist; size and slope of the lot. There is ledge on the lot and a driveway in the middle. There is also a water line through the middle of the lot. For all those reasons, there is a hardship.
8. The setback variances are to provide air and light, separation from neighbors and stormwater treatment. In this case, there will be little to no change on any of those things. Things are actually being made a little bit better and, in some cases, a lot better in terms of the setbacks. A new to-code home, while maintaining the driveway, water line location and views for the neighbors, leans towards there being no fair and substantial relationship between these limitations in the ordinance and their application now.
9. The proposed use is reasonable, as it is a permitted use.
10. The Scaranos' property rights will be harmed by denying these variances because there is no way to get compliance with setbacks all the way around. This is a good compromise to move things away from the property lines, while preserving the access and views. What is being done is very reasonable. There is no harm to the general public in granting these variances.

Paige Libbey, Jones and Beach Engineering, stated that the biggest issue with the septic is the ledge. The new septic will be located as far downhill as possible without getting into the 100' buffer. In order to get the sewage flow down to the septic, it makes sense to keep the house uphill from the septic as far as possible. This is the reason why the house was placed where it is proposed. In addition, the septic being proposed is an advanced system, so it provides additional treatment to the waste water, which is currently not being done.

Robert Scarano, applicant, noted that the water line is not in the easement. The water line is a separate line that runs adjacent to the easement for the driveway.

Vice-Chair Crapo asked if the water line is a common line that serves this property and the rear property.

Mr. Scarano explained it is not a common line. The water line only serves 1483 Ocean Blvd. His property has a separate water line, which is seasonal, and runs up the right side of the property line.

Referring to Sheet C-2, Member Mikolaities asked if the coverage listed is including both the main house and bunkhouse.

Ms. Libbey confirmed that this is counting the main house and bunkhouse. In the ordinance it says that the main structure should be 15% and all coverage is 30%.

Vice-Chair Crapo asked if the easement for the driveway allows enough latitude for the relocation. He also asked if there is a view easement.

Attorney Phoenix replied there is no recorded view easement. However, the Scaranos want to be good neighbors and do what they can to preserve the view. If the driveway easement was not there, things may be able to be moved around a bit, but it would diminish the rear neighbor's view. He commented that it is a metes and bounds easement.

Chair Weathersby stated that she understands the new house is 1650sf interior space. She asked the size of the existing house.

Attorney Phoenix explained the existing first floor is 910sf, second floor 740sf and the porches are 460sf.

Member Dibble asked the height of the existing building.

Ms. Libbey noted it is just slightly over 20'.

Attorney Phoenix pointed out that the new structure will be just under 28'.

Referring to the art studio, Chair Weathersby asked if it has a full or half bath.

Mr. Scarano stated that they are probably going to put a shower in the bath, so it would be a three-quarter bath.

Chair Weathersby asked if the studio is intended to be a separate residence.

Mr. Scarano replied no. The existing bunkhouse is being abandoned and the studio will be used just for extra room; such as, a gym or play room.

Alternate Mitchell asked the height of the existing bunkhouse, as compared to the height of the new studio.

Ms. Libbey explained it is actually going up a few feet; however, because it is being moved down slope, it is only going up roughly 2' in elevation. The new studio is a little over 5' taller than the existing bunkhouse; however, it will only be about a 2' difference.

Attorney Phoenix pointed out the height of the existing bunkhouse is 19.5'.

Mr. Scarano explained there is a net calculation from the deck in the rear of 9.72'. Once the building is moved downhill, there's a 9.72' difference in the view shed from the deck of 1483 Ocean Blvd. He also explained it is a one-story building with nothing above.

Joyce Rickliffs, 1483 Ocean Blvd, stated they have been working on this for a couple of years. The Scaranos have been very diligent about making sure the view corridor is not lost. She noted that she is only losing about 5' on one side and 6" on the upper side. The Scaranos have been very good about making sure the view shed is not blocked. She continued that she wishes they had decided to renovate; as her family used to own the property. She commented that she is sure it will be lovely and the Scaranos have been very kind about making sure everything worked.

Chair Weathersby opened to the public for other comments in favor or in opposition to the application. She noted that a letter has been received from the **Blanchards, 1487 Ocean Blvd**, who support the application. Speaking to the Board, she clarified that the special exception for the driveway is not needed, as it is not within 100' of wetlands. The Board will be voting on the variances for demolition and rebuild and setbacks. Speaking to Attorney Phoenix, she asked for confirmation that the septic is not in the wetlands.

Attorney Phoenix confirmed the septic meets all setbacks.

Ms. Libbey explained the State has approved a system for that location. However, they have decided to go with a different system with advanced treatment, so the new design will be submitted to the State for final approval.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:02 p.m.

Member Mikolaities stated it is a good size lot. They are well below lot coverage and building coverage. They are improving all the setbacks. The two neighbors who are most affected both support the proposal. He does not have a problem with the application.

Vice-Chair Crapo commented it is a very unique lot. If there is any property that satisfies the special conditions question, this lot would be a very good example and it really comes into play. The applicants have really worked within the parameters they have with the easement, view corridor, the slope and ledge on the property. He does not see how they could do anything differently on this property and have a modern home.

Chair Weathersby agreed. She commented it is a lovely design. The house will be bigger, but it is well situated and they have worked with the neighbors. The house is still reasonable. Her only concern with the application is the art studio becoming a dwelling unit. She would be in favor of a condition that says the art studio shall not be used as a dwelling unit.

Mr. and Mrs. Scarano gave their consent.

Vice-Chair Crapo pointed out the tax card says it is two units and the applicants are saying they are abandoning the one. He thinks adding the condition will help solidify that.

Member Dibble stated that this is a totally unique lot. There is a tendency in town about large lots like this resulting in very large houses being put on them. He is pleased with the notion that there have been some restraints on the size. He has some concerns about the height of the studio; however, moving it downgrade is an effective strategy. In looking at the house on the horizon line from Ms. Rickliff's property, it intrudes above the horizon line anyway. He does not think a little extra height is going to be a view scape issue. Also, he senses there is some acceptance of the increase in the width of the building. He does not have any opposition to this plan. He does have a concern about the studio being used as a dwelling.

Member Piela stated his biggest concern was addressed with the rear abutter's comments. He doesn't have any issues with the application.

Chair Weathersby opened the public hearing for a question.

Vice-Chair Crapo asked if the studio bathroom will be tied to the septic. He asked if the septic is designed for four bedrooms.

Ms. Libbey replied yes. It will add a certain amount of flow but not that of a dwelling unit, which would be 225 gallons per day for one bedroom. The septic is designed to handle the flow from the studio.

Member Dibble commented that the pipe is going to be under the driveway, which is probably the same as it is now. He asked if this is going to be replaced.

Ms. Libbey confirmed.

Member Piela pointed out that this is shown on Sheet C-3 of the plans.

Hearing no further comments, Chair Weathersby reclosed the public hearing at 8:09 p.m. and called for a vote on the variances to 190-6.3B, 190-2.4C(1), and 190-2.4C(2), with the condition that the studio not be used as a separate dwelling unit:

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

Referring to the notice, Vice-Chair Crapo questioned the distance of the patio off the studio to the left side boundary, as the notice says 12'+/- and Sheet C-2 shows 9.67'.

Chair Weathersby opened to Attorney Phoenix for clarification.

It was confirmed to be 9.67'.

Chair Weathersby noted that they will vote on the studio patio as being 9'+/- to the left side boundary. The Board confirmed that this does not change their votes taken thus far.

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

7) The proposed use is a reasonable one?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble - Yes
Chris Piela - Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to approve the application of Robert and Cynthia Scarano for property located at 1481 Ocean Boulevard, as requested and as presented, with the condition that the studio not become a separate dwelling unit, and town and state approvals of septic plans. Seconded by Burt Dibble. All in favor.

- 6. Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18, requests variances from §190-2.2E for a leach field 14.5' from the side boundary where 20' is required; from §190-2.3.C(2) for a soffit 17' from the side boundary where 20' is required; from §190-2.3.C(3) for a soffit 23' from the front boundary where 40' is required; from §190-3.1.H(2)(a),(b),(g) for a generator 19.9', a soffit 28', a foundation 30', a leachfield 86', a septic tank 77', a porous drive 25', from wetland A where 100' is required; from**

§190-3.1.H(2)(a),(b), (g) for a septic tank 83', for soffits 86' and 88' and a porous drive 75' from the wetland across the street where 100' is required; from 190-3.1.E for 79 trees to be cut that are >4" in diameter and relief from Building Code §35-14.B(5) for a septic system 14.5' from the side boundary where 20' is required. **Property is in the Single Residence District. Case #25a-2021.**

11. Continued to the August 4, 2021 meeting.

- 7. Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18, request a special exception from §190-3.1.G & 190-3.1.H(2)(f) for a pervious driveway 25' from wetland A. Property is in the Single Residence District. Case #25b-2021.**

12. Continued to the August 4, 2021 meeting.

- 8. Christopher Griffin for Brackett Road Realty, LLC for property owned and located at 245 Brackett Road, Tax Map 19, Lot 96, requests a special exception from §190-3.1.G & §190-3.1.H(2)(f) for a proposed driveway in the 75' wetland buffer. Property is in the Single Residence District. Case #27a-2021.**
- 9. Christopher Griffin for Brackett Road Realty, LLC for property owned and located at 245 Brackett Road, Tax Map 19, Lot 96, request variances from §190-6.1.A for a building on a non-conforming lot from §190-3.1.H(1)(a) and §190-3.1.H(2)(b) for fill, leachfield and site improvements in the 75' and 100' wetland buffers. Property is in the Single Residence District. Case #27b-2021.**

Attorney Chris Mulligan, representing the applicant, spoke to the Board. He explained that Mr. Griffin is a resident of North Hampton. He is proposing to build a single-family home for himself and two teenage daughters on the currently undeveloped lot at 245 Brackett Road. The lot was created in 1956 by a subdivision that was recorded at the Rockingham County Registry of Deeds, so it is a pre-existing lot of record. The lot is a very unique and challenging lot. Mr. Griffin has prepared a couple of renderings of the home he proposes to erect on this lot. The home will be about 1800sf with parking under. All the side and front yard setbacks will be respected and it will meet the height requirements. All the general dimensional requirements, in terms of lot coverage, building coverage and setbacks, will be maintained and respected. The property is significant in that it is on Brackett Road. Brackett Road separates the property from the wetlands across the street, which drives much of the relief being requested. Through the course of this application, Mr. Griffin's wetland scientist has consulted and cooperated with the wetland scientist that has been retained by TF Moran, who is representing a number of the neighbors. Essentially, the scientists have collaborated to delineate the wetlands. (He submitted a memorandum from Wetland Scientist Chris Archer.) He commented that this is in anticipation of a comment that might be made by Corey Colwell of TF Moran, who voiced his concern there may be a problem with the wetlands' delineation.

Attorney Mulligan stated that they all acknowledge the entire frontage of the property is within a wetlands buffer. In addition, Brackett Road, which is in front of this property, is within the

wetlands buffer. The relief needed is driven by the fact that the entire frontage of the property is impacted by its proximity to the wetlands. He continued that the proposal is to site a single-family dwelling in the limited building envelope, while respecting the setbacks. The Board should have received a recommendation from the Conservation Commission. The takeaway from the RCC's letter is that they feel the wetlands impact will be minimal. RCC has made a number of recommendations that Mr. Griffin intends to implement if the project moves forward.

Attorney Mulligan stated that because what is being proposed requires a driveway within the buffer, a special exception is needed. He noted that the driveway is approximately 840sf of impact in the wetlands buffer. In addition, fill is being proposed to support the leachfield, which will have a temporary impact of 1570sf. The reason it is called a temporary impact is because it will be regraded, revegetated and a number of conditions made by the RCC will be complied with. The criteria for a special exception under 3.1G(2) is that the proposal must be essential to the productive use of the property. He pointed out that there is no possible access to this property without going through a portion of the buffer. He reiterated that Brackett Road itself is wholly within this buffer. If they are not able to access the property through a driveway located in the buffer, the property cannot be accessed, so its productive use is essentially zero. The location for the proposed driveway has the least detrimental impact. It has been designed to cross the wetland at its narrowest point and gravel is proposed to be within the buffer, which is what Public Works prefers. There will be a gravel paver system outside of it and it's only 840sf of impact.

Attorney Mulligan noted that the third criteria for a special exception is that there is no alternative feasible route or area that doesn't cross or alter a wetland. He is not sure that even applies here because the driveway does not cross or alter a wetland itself. It crosses and alters the wetland buffer. He reiterated this is being done at the narrowest point and there is no alternative available. There is simply no other way to access this property but from Brackett Road, which is wholly within the buffer. He continued that the proposed use is not injurious nor detrimental to the neighborhood. What is being proposed is a single-family residence in a single-family zone on an existing lot. No use of this property could be possible without this relief. The use is allowed by right. It is not injurious nor detrimental to site a single-family residence in a single-family zone on this lot. He stated that the proposed use must also be in harmony with the purpose and intent of the zoning ordinance. The use is permitted by right in this zone. It is consistent with the health, safety and welfare of the community, as expressed by the zoning ordinance. What is being proposed will meet all the general setbacks, height requirements and dimensional requirements. It will not increase congestion in the area. It will not promote or increase fire, panic or other dangers. There will be no decrease to adequate light and air. There will be no overcrowding of land and no undue concentration of population as a result of this project. He reiterated it's a single-family dwelling within a single-family zone. The other goal of zoning is for adequate provisions of municipal services and proper use of natural resources. He does not believe any of those are implicated, as a single dwelling does not change those goals.

Attorney Mulligan stated that they have requested variances to 6.1A to permit a dwelling on a pre-existing lot of record. Relief is also needed from 3.1H to site improvements within the 100' tidal marsh buffer. What is being proposed is 1570sf of sloping fill for the leachfield. That is all

that will be impacted within the buffer. The area will be revegetated, per the RCC requirement, so it will not be a permanent impact.

Referring to the comment that the fill is “temporary and not permanent”, Vice-Chair Crapo asked if it is coming out after construction.

Attorney Mulligan replied no.

Vice-Chair Crapo noted it is permanent.

Attorney Mulligan stated that leachfield and septic systems themselves are outside the buffer. This is a state-of-the-art new system that will provide the least possible impact to the adjacent wetlands that the buffer is meant to protect. Relief is needed to put in that minimal amount of fill, which will then be revegetated. He reviewed the criteria for granting the variances:

13. The variances are not contrary to the public interest nor is it contrary to the spirit of the ordinance. This is the introduction of a modest amount of fill that will subsequently be revegetated. It will not alter the essential character of the neighborhood or harm the health, safety and welfare of the public. This will remain a primarily residential neighborhood, should the relief be granted. The fill will be graded so as to promote and protect the buffer, according to the wishes of the RCC. A couple of grade ratios were presented to RCC and they preferred the gentler slope, which would have a slightly larger impact.
14. Substantial justice is done. The loss to the applicant must be weighed against the gain to the public if strict compliance with the zoning ordinance is required. In this case, strict compliance with the zoning ordinance would render the entire property completely unusable. There is no way the property could be developed in such a manner that identical relief would not be required.
15. The values of surrounding properties are not diminished. This is a relatively small site, but it is a tastefully designed home that will respect all the requirements, other than the 100’ tidal marsh setback. That encroachment is really de minimis. The public right-of-way already has a much greater impact on the effected wetlands that the buffer is intended to protect. The values of surrounding properties will not be diminished by introducing fill into this small portion of the property.
16. There are special conditions of the property that distinguish it from other properties in the area. It’s a very small lot with an irregular triangular shape, which limits the available building envelope. The entire frontage of the property is within the wetland buffer. The purpose of the wetlands buffer is to protect the wetlands. This intrusion in the buffer is minimal and is necessary for the installation of the septic, which will actually protect the wetlands to a greater degree than existing septic systems on nearby properties. The existing public right-of-way already affects the wetland much more than what is being proposed.
17. The proposed use a reasonable one. This is a proposed residential use in a single residential use in a single residential zone.
18. Literal enforcement of the ordinance results in an unnecessary hardship. Without the relief, this lot would not be developable at all. There is no promotion of protection of the wetlands by denying what is being proposed.

In addition to the criteria for the special exception, Attorney Mulligan believes it meets all the criteria for the variances.

Referring to the 1570sf of “temporary impacts with grading”, as shown on the plan, Vice-Chair Crapo stated that he understands that might be the disturbance area. He asked how many yards of fill will be coming in.

Paige Libbey, Jones and Beach Engineering, replied that it has been estimated at roughly 84 cubic yards, as it is being brought up about 3’ in some areas.

Referring to the square footage that is “temporary impact that is going to be revegetated”, Vice-Chair Crapo asked if that is simply the access area with the fill being outside of that area.

Ms. Libbey explained that the fill is the impact within the buffer for the square foot footprint of that area. The reason it is listed as “temporary” is because that is how it is done for State permitting.

Vice-Chair Crapo asked how much is going to be staying within the buffer.

Ms. Libbey replied 1570sf.

Vice-Chair Crapo commented the plans are misleading by saying “temporary”. He continued that it has also been said that this “is a permitted use because it exists”. However, it is a permitted use if it doesn’t need other variances. Once it needs other variances in order to be there, that is when it comes before the Board and it is up to the criteria of whether or not it should be permitted.

Chair Weathersby noted that she has the same question. She would like further explanation of the 6.1 analysis and how it is felt that the Board can grant relief.

Attorney Mulligan read from §190-6.1.A; *“in any district in which single-family or two family dwellings are permitted, a dwelling and customary accessory buildings may be erected, as a variance obtained pursuant to Article VII, on any lot which was a lot of record on the effective date of this chapter, even though such lot fails to meet the district requirements for area or frontage or depth.”* He noted that the lot doesn’t meet area or frontage requirements.

Chair Weathersby noted it wasn’t a lot of record on the effective date of this chapter, as the lot was created in 1956 and the chapter was created in 1953. She commented that when she was going through this, she was having trouble getting through A and B to see how this Board could give relief for a lot that didn’t exist when zoning was put into place.

Attorney Mulligan stated that the building inspector didn’t flag any of these when he denied the building permit. He continued that his understanding was the zoning ordinance changed sometime in 1998 and 1999. The lot in question was an existing lot when the zoning ordinance changed. His interpretation is that the effective date is when the last revision was prepared.

Vice-Chair Crapo commented the effective date would have been the original creation date.

Attorney Mulligan replied that he does not agree. However, he does not know if the then existing zoning ordinance had this provision in it. If it did, he might agree. His interpretation of this chapter is that the effective date meant the date of the revision.

Chair Weathersby pointed out that 6.1.A hasn't been revised; however, 6.1.B was revised in 1999.

Hearing no further questions from the Board, Chair Weathersby opened to the public in favor of the application. Hearing no comments, she opened to anyone who would like to speak against the application.

Mark Epply, 267 Brackett Road, provided some history and reasons why 245 Brackett Road should not be a buildable lot. In the late 1980's this lot was inherited by Lydia Sperry and her siblings upon the passing of their mother. They assumed this was a grandfathered buildable lot and listed it for sale at the then market rate. They were then notified by the building inspector that it was not a buildable lot. Mrs. Sperry called him and offered the land for \$2,000. Mr. Epply continued that he completed the purchase of the lot in 1993. He was also told by the building inspector that the lot could not have any structures on it and the assessment stated the land was unbuildable. In 2006, he asked an abutter to the lot, Donald Perreault, if he was interested in buying the lot. Mr. Perreault was interested in the lot to prevent any future development adjacent to his lot. Mr. Perreault purchased the lot in 2006.

Mr. Epply continued that currently, the town assesses the lot at \$19,000 for property tax purposes. In addition to the fact that this lot has been turned down twice by the Town of Rye as a buildable lot, other reasons the lot should not be built on include the following: The lot is less than a quarter of an acre at 10,850sf when the Town requires 66,000sf; the lot has only 100ft of road frontage where 200ft is required; the proposed lot is not consistent with surrounding properties, as those properties are well over 1-acre in size; the town tax record indicates the land is unbuildable; and the lot was sold to the Perreaults with the full understanding it was to create a buffer from any future development of the neighboring properties. He continued that it is a lot of record. However, in Rockingham County, NH, a lot or record is defined as a "*lot described in a deed which has been lawfully recorded in the Registry of Deeds in the County of Rockingham*". The definition does not mention that a lot of record is buildable. The word "buildable" does not appear anywhere in the definition of a lot of record. The lot has been turned down as a buildable lot twice by the Town. Two separate requests for building permits have now been denied by the Rye Building Inspector's office.

He pointed out that the Rye Conservation Commission has had two meetings on this lot and have done two site walks on this property. The RCC's letter included several concerns regarding the lot and four recommendations to prevent impact on the wetland. The determination of the septic system being within the 100ft wetland buffer zone is pending the wetland delineation by the wetland scientist. The septic design has changed three times in an effort to get the septic outside the 100ft buffer. The lot sits on ledge, which is part of the NH Coast ledge system. The ledge is so close to the ground's surface that the real estate sign can't stand up. He does not think the

whole aspect of the ledge has been investigated thoroughly. Mr. Epply continued that septic runoff from the leachfield will likely find its way into the catch basin directly in front of the lot. The catch basin runs directly into the marsh across the street. There is no hardship for this lot, as it was sold for \$19,000. If the contract for the current buyer falls through, the neighbors have expressed an interest in purchasing the property to prevent any future development considerations of this tiny lot. Allowing development on this property will set a precedent for future Rye development, which could greatly impact the resources available in Rye. The project is an attempt to “shoehorn” a house into a lot with a pond in the back, marsh, wetlands and shoreline in the front, within the Parson’s Creek Watershed. There is not enough room to construct a house that is in keeping with the neighborhood and it would adversely impact the essential character of the neighborhood. Any house that could be constructed on this small lot would likely decrease property values of the neighboring properties. This is a non-conforming property that never should have been marketed or given consideration by the Town as buildable. Rye residents rely on the Rye Zoning Board of Adjustment to uphold reasonable zoning put into place by Rye voters.

Speaking to Mr. Epply, Vice-Chair Crapo commented that it was said that the lot has been turned down as a buildable lot by the Town of Rye twice. He asked what fashion of requests he is referring to.

Mr. Epply explained that Lydia Sperry and her siblings were trying to sell the lot as a buildable lot in the late 80’s. The building inspector said it was not a buildable lot. Lydia Sperry then called him, as an abutter, and asked if he would like to purchase the lot for \$2,000.

Vice-Chair Crapo asked if someone applied to do something with the lot.

Mr. Epply replied there was no application. They were just told that they could not build on it. He continued that it was the same situation for him when he asked if any kind of structure could be put on the lot. The building inspector said that nothing could not be put on the lot. There were never any applications to build.

Vice-Chair Crapo asked if this lot is the same as when it was purchased or if there have been any changes.

Mr. Epply replied there have been no changes. It is the same as when he purchased it.

Chair Weathersby noted for full disclosure that when this lot went on the market, Mr. Epply gave her a phone call and asked how the lot could be sold, as it is not supposed to be buildable. Her response was that she did not know and maybe it predates zoning. She suggested he talk to Building Inspector Chuck Marsden and Planning Administrator Kim Reed to get more information. She also noted that she was copied on an email, until she asked to be taken off the email chain. Chair Weathersby stated that she and Mr. Epply did not have any substantive exchange. She asked for further comments from the public.

Vicky Howard, 261 Brackett Road, stated that she and her husband purchased their home four years ago. The first sentence in the property listing mentioned the word “privacy”. The second

sentence emphasized “birds and wildlife seen from every window”. The third sentence again supported the privacy; “the house is tucked in behind a granite outcropping and is set back from the road”. Those are things that made them fall in love with their house. How will a house and a garage that is “shoehorned” on a .4-acre tiny lot, wedged between the homes, affect things on their property? It will have a significant impact. It will eliminate features that are so important for the joy experienced every single day. She continued that the proposed home is basically a three-level home and is on a grade of about 13.5ft. The house is going to tower over her home and there will be no privacy in her front or back yard. She pointed out that the deck for the proposed home is directly across from her master bedroom. Because the deck is so high, it is going to look down into her master bedroom and is going to look into a portion of her living room and front porch. The rear deck and the rear of the proposed house will look directly onto her house and back yard. She stated that what is also important to her is the wildlife. Her backyard is like a mini-Audubon Society. The increase in noise, lights and movement by having another home, is going to increase the predatory behaviors of the wildlife and even domestic pets. The elimination of these sources of joy will also diminish the value of her house. She noted that Realtor Diane Wyman conducted a site review and as a result, wrote a letter on how the proposed home will have a significant devaluation of the surrounding properties. Ms. Howard noted that she has a petition that shows evidence that Rye Citizens think that development on tiny lots is a bad idea.

Chair Weathersby commented that the petition can be submitted to the Board. However, unless those people have standing, their opinion cannot come in to play here because they don’t have standing in this case.

Ms. Howard requested that the ZBA look at the big picture and consider how development of these tiny lots will affect the Town and the citizens of Rye. She asked the Board to help preserve the semi-rural character of their neighborhood, district and beautiful Town of Rye. (She submitted her letter, along with the petition, to the Board.)

Vice-Chair Crapo commented that he does not think the Board takes jurisdiction over the petition. The Board has to take tonight’s zoning and apply it to tonight’s application.

Chair Weathersby noted that Ms. Howard has materials that she is submitting and the Board gives it weight or not.

Karen Rolecek, 233 Brackett Road, stated that in 2016, she and her husband purchased their home from Don and Lee Perreault, who are the current owners of the small lot in question. At the time of the purchase, the lot was presented and appeared unbuildable per tax assessment. After living in the home for the past six years, she can attest that peace and tranquility currently exists. Not only that, there is a lot of wildlife activity to enjoy. The proposed construction of an oversized house, relative to the size of a non-conforming lot, will have a huge impact and be detrimental to the value of her home. She noted that her patio and sunroom are approximately 40ft from the proposed deck. The proposed house will have a direct view into her dining room, kitchen, sunroom and patio. She and her husband would not have considered purchasing their home if there was a neighbor so close. Being so close by will interfere with any peace and tranquility. The added light, noise and building will disrupt the natural setting and disturb the

natural wildlife in the area. She does not believe that building this house will enhance the neighborhood. Most lots are an acre plus and not just a quarter of an acre. “Squeezing” a home onto this lot will look out of place with the rest of the neighborhood.

Anneliese Fisher, 281 Brackett Road, stated that there is a safety issue. Brackett Road is on the NH Greenway. Going down the street at any time, people can be seen walking, walking their dogs and babies in strollers, and walking to the beach. This happens all the time. In having another house, there will be more cars and more people, and it will change the neighborhood. The houses in the neighborhood are spaced out and have very big yards. She would like the Board to take into consideration the safety issues and the character of the neighborhood.

Corey Colwell, TF Moran Engineering, stated he has been retained by the abutters to review the plans for this application and how it complies to the Rye Zoning Ordinance. He noted that he has attended two Conservation Commission site walks, spoken with abutters and been to the property many times. Although, he has not had the opportunity to review final submitted plans to the Board, he has been provided plans by the applicant throughout the process that were submitted to the Conservation Commission. He continued there are a couple of sections in the zoning ordinance that he is not sure this application has complied with. Specifically, under 190-2.2.M, upland soils, which reads *“all lots shall have at least 44,000sf of upland soils”*. This lot has 10,850sf of total lot area; of which, some is exposed ledge. It doesn’t comply. The applicant may argue that this was a lot of record prior to this. However, this threshold was adopted by the Citizens of Rye because they felt anything less than 44,000sf of upland soils was not suitable for lot development. He continued that 190-2.2.N, access, *“a lot shall not be considered for suitable for development unless it is accessed by a driveway from frontage which meets the minimum frontage requirements of this chapter”*. The minimum requirement under 190.2.3 for the single residence district is 200ft of frontage. This lot contains 100ft of frontage, which is half of that frontage requirement.

Regarding the wetlands, Mr. Colwell stated that it is true that TF Moran’s wetland scientist has met on site with the applicant’s wetland scientist. They have agreed on the edge of wetland. However, the edge of the line from which the buffers were measured, which is shown on the plans, has not been fully delineated. There are flags in the field on the edge of the freshwater wetlands. However, there are no flags in the field along the freshwater marsh. This prevents him from locating the flags to determine if the setbacks shown on the plan are correct. He pointed out that he was handed a letter that states the applicant’s soil scientist has met with TF Moran’s soil scientist and they have agreed on the line; however, flags could not be hung due to a lack of vegetation. Mr. Colwell commented that they could stick a wire in the ground with a flag on it. He would not come before this Board, nor the Conservation Commission, knowing that they do site walks and want to see the delineated line. He wants to see the delineated line because he wants to measure and check to be sure the buffer is accurate on the plan. He continued that 190-3.1, delineation of wetlands, says *“precise location of wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, etc.”* There should be a line clearly delineated in the field from which a surveyor can locate flags to apply the appropriate buffer. He reiterated that he has not seen that for the 100’ buffer from the freshwater marsh and 75’ buffer for jurisdictional wetlands.

Referring to 190-5.0.B, Mr. Colwell noted that it says “*the number of parking spaces required by the minimum off-street parking requirements shall be provided for any new building, structure or land use*”. He understands it is a drive under garage and he believes two spaces are afforded in that garage. However, those spaces are always shown and delineated on the plans to prove to the Board that two cars can fit on the lot. In this case, they are not shown on the plan. Also, if this is a drive-in garage, there is no provision for a turnaround. Cars would have to back out all the way into the street, which presents an unsafe situation. Under 190-5.0.B(1), “*all parking shall be on the same lot or abutting lot, when abutting lot under common ownership. Parking spaces shall have adequate and safe driveways and means of circulation*”. Under 190-5.7.D, stormwater management, “*the building inspector may require submission of a detailed stormwater management plan*”. He does not know if that plan was submitted, as he has not been forwarded a copy. Mr. Colwell pointed out that in his latest conversation with the building inspector, a stormwater management plan is now being required on all lots. With adding stormwater measures to the site, the house, driveway and everything that is trying to be fit on this lot, he is not sure adequate stormwater measures can fit. Under 190-5.7.B, drainage onto adjacent properties, it says; “*no use of land, construction, reconstruction or alteration can cause water or drainage onto another’s property*”. The only way to prove that is with the stormwater management plan and drainage analysis.

Mr. Colwell stated that he heard the applicant say the leachfield is out of the buffer. However, the notice shows that a variance was requested for fill and leachfield within the buffer. He is not sure if they are seeking a variance for the leachfield in the buffer or not. He pointed out that the 100’ setback is right on the edge of the leachfield. However, the State and most towns consider the leachfield, pipes and fill extension. The leachfield can’t exist without the fill extension. This would put the fill extension of the leachfield within the 100’ buffer. If it has not been applied for, he believes a variance for the leachfield is necessary in this case.

Vice-Chair Crapo asked if the fill extension is the soil beyond the stone. He noted that the drawing shows three pipes and a little bit of the perimeter with a dash line, which he assumes is the gravel the pipes are in. He asked if they measure the solid fill around that to the slope.

Mr. Colwell replied that he always has because it is part of the leachfield. It is necessary for the leachfield to function properly. He pointed out there is no definition of septic system in the town ordinance nor in the NH DES rules. However, DES does define effluent disposal area; “*the bed of an individual septic system and any required fill extension*”. The State considers it to be part of the leachfield. He believes it should be considered part of the leachfield in all situations.

Attorney Tom Hildreth, representing the abutters, stated that he thinks Mr. Colwell is suggesting, by listing the other provisions of the ordinance by which this lot and application don’t comply, how very constrained this site is. He does not think they can start with the proposition that every lot, whenever it was created, has a right to be developed. That goes with the discussion the Chair raised about whether this is a pre-1953 lot. He was working from the presumption that in 1956, when this lot was created by subdivision, the lot must have been lawful at that time and it must have become unlawful by some subsequent change of the zoning ordinance. Attorney Hildreth stated he has been listening for the applicant to say why he’s entitled to a variance to build on this substandard size lot. Nothing has been heard about what it

means to build a house on a lot that is 10,000sf where 66,000sf is required. The application that was submitted has a couple of false claims. In the special exception application, the first page says *“deficient as to frontage and lot area but exempt per section 190-6.1.B”*. He pointed out it is not exempt, as it didn’t meet the standards in play as of 1998. He continued that the special exception application also says; *“the property is in the single residence zone and meets the requirements of 190-6.1.B as a non-conforming lot. The project otherwise requires no variances from the dimensional requirements of that zone”*. He commented this is untrue, as it requires all kinds of relief.

He stated that the statute says that in order to prove hardship, the applicant must show that there is no fair and substantial relationship between the general purpose of the ordinance and the specific application of that provision to this property. He suggests that there is absolutely a fair and substantial relationship between the ordinance provisions that require 66,000sf and 200ft of frontage. The purpose of that ordinance is to provide light, air, privacy, safety and a sense of neighborhood. When applying it to this lot, it’s for the purpose of protecting adjacent lots. Not every lot of record is created equal. This is a case where there are two long established substantial homes that have this odd legacy triangle that has stood for sixty-five years in its present form that has provided a buffer, light, space and privacy for the adjacent homes. There is a definite relationship between the provisions of the ordinance they need relief from and the application for this specific lot. The purpose of that ordinance is entirely to protect the rights of the Roleceks and the Howards.

Attorney Hildreth submitted data to the Board showing the frontage and depth requirements in the town for 1956, 1998 and the current requirements. He noted that the Town has been increasing the requirements over time. That is a reflective of public interest. The public’s interest is embodied in the zoning ordinance. In looking at the degrees of deviation, from what the lot has from what is required, the area only meets 16%. The frontage only has half of what is required. He continued the Perreaults bought 233 Brackett Road in 1996. They bought the triangle in 2006 and sold the main home in 2015. Referring to the data sheets, he commented the numbers are important. Not only do they show what is required, but they also show the public’s interest. For the same reason it doesn’t meet the public interest test, it also doesn’t pass the spirit of the ordinance test.

Attorney Hildreth read three sentences from the case of *Hill v. Town of Chester*; “A person who purchases land with knowledge, actual or constructive, of the zoning restrictions which are in affect at that time, is said to have created for himself whatever hardship such restrictions entail.” He pointed out that when Don Perreault purchased this little triangle in 1996, he knew what the limitations of the ordinance were and he’s a lawyer. He’s deemed to have knowledge. He continued to read; “land owners are deemed to have constructive notice of the zoning restrictions applicable to their property.” He pointed out that the special exception application was signed by Mr. Perreault. He wrote a letter to Mr. Perreault in August of 2020 pointing out the provision of the Rye Zoning Ordinance that says a variance is needed to do this because the lot didn’t meet the dimensional requirements in affect in 1998. Attorney Hildreth noted this is a ruling he reviewed with Kim Reed and she confirmed it with Attorney Michael Donovan (town counsel). He read; *“When the hardship is self-inflicted, the applicant for the variance bears a heavier burden in demonstrating the variance is justified”*. Attorney Hildreth stated there is no doubt

that Don Perreault knew that the lot was non-buildable. Mark Epply would not have sold a buildable lot in 2006 to a neighbor for \$19,000. Mr. Epply owned the lot since 1993. He knew it to be unbuildable and the tax records noted it that way. Don Perreault purchased the parcel for a buffer and that is all it was useful for. Mr. Perreault had purchased the lot as he felt it would add \$19,000 to the value of his property. If that triangular lot is taken away, this would diminish the value of the Rolecek property by at least \$19,000. This is testimony about what the parties to the transaction believed would be the impact on the value and it undercuts the claim today there is an entitlement to a variance that wouldn't have diminishing values on surrounding properties. For all these reasons, he requests that the Board deny the application.

Susan Shepcaro, Rye Conservation Commission Member, stated that the Commission has great concern about the affect on the large trees that are on Dr. Howard's lot. There is a very large tree close to the edge of the property and with any disturbance on the smaller property, it will probably affect the roots. The Commission is also concerned about runoff. The runoff is going to go straight through the catch basin and out to the marsh. She commented that if the home were to be built, the Commission would want strong adherence to their conditions and a formal planting plan.

Chris Griffin, applicant, stated that there have been a lot of compelling objections, which he truly respects. He appreciates both the sentiment and the rationale arguments that relate to the code. He continued that he pursued this project because he grew up in this area and loved the lot when he saw it. It was marketed as having an approved septic design, just not a building permit. He does not want to waste time going through all the points that were made. There are many that have a polar opposite side that he could make some cases for. He would really like to; however, when there is enough community dissent, what is going on has to be respected. When he got involved with this project, everywhere he turned there was a challenge. It's a "shoehorn" operation and that is the most accurate description. He takes issue with terms; such as, "towering" and "over use of square footage". He thought that the building, by complying with all the setbacks, warranted the effort to try and see if it was acceptable for a variance. A point was brought up very early on that it may not even be available for variance. This is something that he was not aware of. He continued that many of the points were brought up as perhaps, deceptive. There have been no deceptions. Literally, the plan has been revised on a weekly basis, as he tried his best to comprehend all the of the code, setbacks and options. At this point, he feels he has done everything he can. He noted that he is not the owner of the lot. He is under contract, but at some point, it becomes a burden on him to prove it one way or the other. He reiterated that he grew up in the area. He cares about the wetlands and impacts to wildlife. He noted that his team has gone through a lot to make this as low of an impact as possible.

Attorney Mulligan stated there were a couple of items that were mentioned. One of the issues Mr. Colwell raised was is in regards to the fill and leachfield. In looking at the notice, it specifically calls out the leachfield so he does not think that is a problem. With respect to the other items Mr. Colwell pointed out as being non-conforming, the building inspector never pointed those out when the building permit was denied. Attorney Mulligan stated that from his perspective, they are getting a variance to build on a pre-existing non-conforming lot. There was never any question that it didn't have sufficient lot area and frontage to meet requirements. He thinks Attorney Hildreth misstated the law when he cited the Chester case regarding granting a

variance can't unduly and to a marked degree conflict with the zoning. In fact, the case law is that granting a variance can't unduly and to a marked degree conflict with basic zoning objectives. He pointed out that every request for a variance conflicts with zoning as it exists. He does not see that this project, unduly and to a marked degree, conflicts with the Town's objectives.

Attorney Mulligan stated that Attorney Hildreth represented that the size of the lot and the increasing requirements for sizes of lots are to protect and provide light, air, privacy, safety and open space. To the extent that's accurate, what is being proposed complies with all the side yard and front yard setbacks; typically, that's what a zoning ordinance is there to promote. He thinks compliance with all of those goes a fairly long way in addressing some of the concerns heard from the neighbors. If the property is complying with the side yard setbacks, the concern of someone on a neighboring lot is going to be looking into your yard is really an illusory concern. There is no right to keep a property undeveloped indefinitely when the property can be employed in such a manner that respects the setbacks, which would respect privacy and light, etc. He continued there has been some talk about precedent. Zoning boards don't set precedents in the normal sense. Boards take every application on its own merits and it doesn't set precedent for other properties and other lots.

Mr. Griffin stated that he studied the tax maps in the area and highlighted the non-conforming lots; including, both lots developed and not developed. It was done specifically to establish that this is not out of character for this neighborhood. In fact, two doors down, in both directions, are quarter acre lots. (He submitted that information to the Board.)

Vice-Chair Crapo asked the distance of the edge of the property to the proposed driveway. He also asked if the proposed driveway has been reviewed and approved by Public Works.

Ms. Libbey replied it is 10ft to the property line. She does not believe it has been reviewed by Public Works.

Mr. Griffin stated it was approved initially. It has not been reviewed again since the issues of the wetland came in to play.

Ms. Libbey pointed out the driveway has not changed locations.

Vice-Chair Crapo asked the square footage of each floor.

Mr. Griffin replied 871sf. The total square footage is 1742sf.

Vice-Chair Crapo asked about the garage elevation.

Mr. Griffin explained it gradually drops from the edge of the street at a 10ft elevation to 15ft, which is naturally existing at the back of the lot. The home would be cut into the hillside and it would be built up with berm around that.

Referring to Sheet C-2, Vice-Chair Crapo commented he is trying to see where there is enough width for two cars to turn into the garage, given the driveway layout and the fact that the building shows 29ft, but it also comes back a few feet to the stairs. It doesn't look like there is more than 15ft.

Ms. Libbey stated the plan is a bit deceiving. The triangle shape shown off the building on the plan is actually a deck over part of the driveway.

Vice-Chair Crapo commented the driveway actually comes to a bottleneck at the staircase and the angle to the garage. He wonders how there can be two parking spaces in the garage to satisfy the parking.

Mr. Griffin explained the post that would support the corner of the deck is in 2ft, so it improves the turning radius enough for one car at a time to turn. He pointed out it is a 16ft garage door.

Vice-Chair Crapo showed the applicant on the plan the area he is referring to and expressed his concerns that the area is too tight for cars to make a turn into the garage.

Note: Chair Weathersby paused the discussion on the application, as it is after 10:00 p.m. and there are two applications still remaining. She does not believe the Board will get to the Truslow application; however, they may get to the next one regarding a shed. The applicants for the shed application agreed to wait to see if their application can be heard.

Motion by Shawn Crapo to continue the application for 1065 Washington Road to the August 4, 2021 meeting. Seconded by Burt Dibble. All in favor.

Chair Weathersby asked if there were any further questions in regards to the Griffin plan. Hearing none, she closed the public hearing at 10:06 p.m.

Chair Weathersby commented they should address some of the technicalities of the zoning ordinance. Mr. Colwell brought up Section 2.2 that this application doesn't meet the upland soils. It's her understanding this has always been when the lot is being divided; it has to have that many upland feet. She thinks 'N' may be a different story based on its language. She thinks they should've asked for a variance for that and for access to the lot; *"In order to be considered suitable for development access to a lot shall be by a driveway from frontage which meets the minimum frontage requirements of this chapter."* She commented this is certainly guidance. She takes the wording of that to mean that if a lot isn't developed, they either need to comply or seek a variance. She knows it wasn't in the building inspector's letter, but to her this is one problem. She commented that she really wishes that Attorney Perreault or the real estate agent had done this analysis. She feels that Mr. Griffin has been "strung along" in this process. With both of those professions, she is rather embarrassed and ashamed for their lack of doing this. She continued that the Board should go through the **6.1 analysis**;

- A. *"In any district in which single-family or two-family dwellings are permitted, a dwelling and customary accessory buildings may be erected, as a variance obtained pursuant to Article VII, on any lot which was a lot of record on the effective date of*

this chapter, earlier variations thereof, or future amendments thereto, even though such lot fails to meet the district requirements for area or frontage or depth.

Chair Weathersby pointed out that the chapter is 190; Zoning, and that was started in 1953. Right now, in her opinion, this lot did not exist until 1956 and does not fit Section A and therefore, is unbuildable. Assuming it does fit that and they move on to 'B';

B. The following lots are considered buildable lots which are exempt from the variance requirements of this section, provided all other requirements are met:

(1) Lots of record which met the requirements of this chapter for area, frontage and depth which were in effect on November 20, 1998.

Chair Weathersby pointed out that in 1998, in the single residence district, lots had to be 44,000sf. It doesn't seem to meet 6.1B(1) and also maybe 6.1B(2);

(2) Lots which were delineated on a plan which was accepted for subdivision review by the Planning Board prior to November 20, 1998, and subsequently approved and which met the requirement for area, frontage and depth which were in effect on November 20, 1998.

Chair Weathersby noted it was a plan. It was approved by the Planning Board and recorded in 1956, but it didn't meet the requirements in effect on November 20, 1998. Between not having the frontage and not having a way through 6.1, she does not think it can be a buildable lot, even though it is a lot of record, aside from all the wetland issues.

Vice-Chair Crapo stated that his analysis varies slightly in that Chapter 190 only became a reference when the zoning was codified. He does not see anything that says Article VI was amended or changed after the creation of the apparent zoning, which would still go back to 1953. He commented that he thinks this chapter refers to Article VI.

Chair Weathersby asked why it would not say "Article" like it does in 6.1A.

Vice-Chair Crapo noted 190 only cropped up when it became one big town book.

Chair Weathersby commented that if they can get through this, what else can they look through for guidance? She noted the Coastal Overlay District allows the development of lots over 7,000sf if certain things are allowed. She read from **3.4C(2)**:

For lots 7,000 square feet in area or larger, the lot shall not be materially smaller than developed lots in the surrounding area. In making this determination, the Board shall first consider abutting lots. If there are an insufficient number of such lots to make a determination, the Board shall then consider the size of developed lots within the same block. If there still are in insufficient number of developed lots, the Board shall consider the size of developed lots in the neighborhood.

In looking at Mr. Griffin's map and knowing the neighborhood, almost all the lots are significantly larger than 10,000sf. Even if the Board can get through 6.1, the guidance of the ordinance is saying it is too small to be developed, in her opinion.

Member Piela stated that there was a recent case that had a somewhat similar undeveloped lot and the comment was made by Chair Weathersby "*it is the risk of not improving a lot*". He keeps revisiting that phrase in his head with this case. Even if this was a buildable lot in 1956 and they put a house on it, the Board would have something to work with. Since this is an unimproved lot and the ordinance has changed dramatically in the last sixty years, he keeps coming back to that conclusion that there is a risk in not improving a lot.

Vice-Chair Crapo commented that when the Perreaults purchased the lot, he thinks there is a potential it would have been merged with the larger lot, unless proactive steps were taken to unmerge it.

Chair Weathersby pointed out it was never merged. She continued that another concept that came out of the first application for Benson is if something is undevelopable whether it would still have value. Her thought process in that case was "yes" it still has value as conservation land or it could be bought by the abutters. This adds value to the neighborhood and somebody will pay something for it.

Vice-Chair Crapo asked if she is saying that procedurally, the Board might not even have jurisdiction to vote on the application.

Chair Weathersby noted they can deny the variance from 6.1. She continued that she thinks the lot is non-buildable and it would be put on the notice of decision as a reason for denial.

Member Mikolaities stated he is in full agreement. He asked what they would be voting on because based on 6.1 it is a non-buildable lot. The applicant submitted for 6.1, so is the application correct? He would like to understand the procedure.

Chair Weathersby explained they can deny the variance because it is not a lot of record on the effective date of this chapter.

Vice-Chair Crapo noted that if it qualified under 6.1, a variance would not be needed.

Chair Weathersby opened to Attorney Mulligan for an explanation.

Attorney Mulligan explained the only way to read this is if it qualifies under 6.1A, a variance can be granted. If it qualifies under 6.1B, no variance is needed. He thinks everyone is in agreement that it did not meet the requirements that were in effect in 1998 and wasn't approved at the Planning Board in 1998. It doesn't meet the requirements for 'B', so 'A' is what is in play. He thinks the Board needs to determine if the applicant is entitled to a variance from 6.1A or not. He does not think the Board needs to worry about whether they have jurisdiction over the zoning ordinance.

Chair Weathersby stated that she thinks they can deny the variance to 6.1A because it was not a lot of record as of 1953. The Board can say it is unclear and the variance can be denied based on the fact it doesn't meet the criteria for granting a variance on the merits because of all the reasons discussed and based on it being a non-buildable lot.

Vice-Chair Crapo stated he leans more towards dismissing the application and not voting on it.

Chair Weathersby replied no. There needs to be a decision. They have asked for a variance to 6.1. The Board needs to either grant or deny the variance. If the Board denies the variance the reasons listed would be, it was not a lot of record in 1953, it does not have enough frontage based on 2.2N.

Member Piela commented the lot was created in 1956. It was clearly created after the chapter was originated in 1953. He thinks this gives a definitive way out of 6.1. It's a cut and dry defensible opinion.

Referring to the notice, Vice-Chair Crapo commented there are two sections to the notice. If after the analysis and polling, 6.1A is denied, does the Board vote on the rest?

Chair Weathersby commented that the applicant can withdraw them. She called for a poll of the Board in regards to 6.1A and whether they feel a variance can be granted based on it not being a lot of record as of 1953:

Gregg Mikolaities – No, as it was not a lot of record as of 1953

Shawn Crapo – Agreed with Member Mikolaities

Patricia Weathersby – Agreed

Burt Dibble – Agreed

Chris Piela – Agreed

The Board was unanimous in their findings that a variance could not be granted to 6.1A, as it was not a lot of record as of 1953.

Chair Weathersby called for a vote on the variance request to 6.1A:

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

Gregg Mikolaities – No

Shawn Crapo – No

Burt Dibble – No

Chris Piela – No

Patricia Weathersby – No

2) The spirit of the ordinance is observed?

Gregg Mikolaities – No

Shawn Crapo – No

Burt Dibble – No

Chris Piela – No

Patricia Weathersby – No

3) Substantial justice is done?

Gregg Mikolaities – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela - No
Patricia Weathersby – No

4) The values of surrounding properties are not diminished?

Gregg Mikolaities – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby – No

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

Gregg Mikolaities – No
Shawn Crapo – No
Burt Dibble – Yes
Chris Piela - No
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?

Gregg Mikolaities – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela - No
Patricia Weathersby – No

7) The proposed use is a reasonable one?

Gregg Mikolaities – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela - No
Patricia Weathersby – No

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

Gregg Mikolaities – No
Shawn Crapo – No

Burt Dibble - No
Chris Piela - No
Patricia Weathersby – No

**Motion by Patricia Weathersby to deny the request for a variance to 6.1A submitted by Christopher Griffin for property located at 245 Brackett Road.
Seconded by Shawn Crapo. All in favor.**

Mr. Griffin withdrew his other variance requests and the request for a special exception.

- 10. Peter & Denise Terwilliger for property owned and located at 710 Long John Road, Tax Map 16, Lot 151, request a variance from §190-2.3.C(2) for a shed 2' from the side boundary where 20' is required. Property is in the Single Residence District. Case #29-2021.**

Peter Terwilliger, applicant, presented his application for a shed 2ft from the side boundary. He explained their house is 860sf that was built in the 1940's with no attic, no basement and no garage. He noted they are paying about \$300 per month for storage. The request is for a shed on the property. The lot is long, narrow lot at 60ft wide and roughly 460ft long. Kevin and Roseanne Clark, abutters, have provided a letter of support. The shed will be about 250ft back from the road. The shed will be on blocks. It is a pre-fab shed and is very fine quality. He commented that they are going to do everything they can to make sure it blends. It will have the same color and roof scheme as the main house. It will be a big improvement to the neighborhood as the lawn tractor does not look that great underneath a blue tarp. It will look better in the shed that matches the color of the house and is in keeping with the neighborhood. Also, the shed will house all the lawn furniture.

Denise Terwilliger commented that they have to pile up the lawn furniture in the yard and put a tarp over it for the winter. The grill is on the deck with a tarp over it for the winter.

Mr. Terwilliger noted that they were before the Board several years ago and the property was in pretty rough shape. They have turned the property around and made it a nice part of the neighborhood. One of the last things they want to do is to get the shed in place and put the things that are outside under cover.

Chair Weathersby noted that when this property was before the Board for the house expansion, relief was also requested for a shed. She asked if that shed was in the same place.

Mrs. Terwilliger explained that was for an existing shed that was dilapidated. That shed was replaced in kind because the other shed was falling apart.

Mr. Terwilliger noted this will be a second shed.

Mrs. Terwilliger explained the existing shed has tools in it. The lawn tractor, deck furniture and grill all get piled in the yard and covered with a tarp because it can't fit in the shed that is there.

Vice-Chair Crapo clarified the shed that is at the front of the property, near the house, is existing and also happens to be 2ft off the property line.

Mr. Terwilliger confirmed.

Member Mikolaities asked the height of the shed.

Mr. Terwilliger replied it's approximately 12ft.

Chair Weathersby opened to the public for comments. Hearing none, she closed the public hearing at 10:43 p.m. Hearing no further questions from the Board, she called for a vote for a variance to 2.3C(2):

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - 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?**

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela - Yes
Patricia Weathersby – Yes

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

Gregg Mikolaities – Yes
Shawn Crapo – Yes
Burt Dibble - Yes
Chris Piela - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Peter and Denise Terwilliger for property owned and located at 710 Long John Road for a variance to §190-2.3C(2) to construct a shed 2' from the side boundary where 20' is required.

Seconded by Shawn Crapo. All in favor.

11. **John St. Cyr, Trustee, Saint Realty Trust for property owned and located at 21 Vin Mar Court, Tax Map 8.4, Lot 34, requests variances from §190-2.2.A.D(1) for two family homes on one lot; and from §190-2.3.A for two family homes on one lot. Property is in the Single Residence and Coastal Overlay Districts. Case #30-2021.**

19. Continued to the August 4, 2021 meeting.

12. Aloha Properties, LLC, 159 Main Street, Suite 100, Nashua, NH for property owned and located at 63 Old Beach Road, Tax Map 8.4, Lot 134, requests variances from §190-2.4.C(1) for a retaining wall 2.1', a generator 9.8', a rinsing station 17.5', a house 19.2' and a pervious patio 8.1' from the rear boundary where 28.3' is required; from §190-2.4.C(2) for east/right steps 7.0', right overhang 6.5', a condenser 7.3'/8.4' and a retaining wall 1.0' from the side boundary where 20' is required; and from §190-2.4.C(3) for a retaining wall 4.9' from the front boundary where 21' is required; from §190-2.4.C(5) and §190-3.4.E for dwelling coverage of 21.4% where 15% is allowed; and for lot coverage of 33.4% where 30% is allowed; from §290-6.3.B for destruction and rebuild of a non-conforming structure. Property is in the General Residence Coastal Overlay District and SFHA Zone AE(13). Case #31a-2021.

20. Continued to the August 4, 2021 meeting.

13. Aloha Properties, LLC, 159 Main Street, Nashua, NH for property owned and located at 63 Old Beach Road, Tax Map 8.4, Lot 134, requests a special exception from §190-3.1.G(2), §190-3.1.H(2)(f) and §190-7.1.A(3) for a driveway in the wetland buffer. Property is in the General Residence, Coastal Overlay District and SFHA Zone AE(13). Case #31b-2021.

21. Continued to the August 4, 2021 meeting.

14. Danna B. Truslow Rev. Trust and Edward William Truslow Rev. Trust for property owned and located at 1065 Washington Road, Tax Map 10, Lot 49r, request variances from §190-2.3.C(2) for the creation of a lot for subdivision which would have a left side boundary of +/- 17' where 20' is required; and from §190-2.3.C(6) for the creation of a lot for subdivision which would take an existing lot with 141' of frontage and split the frontage to +/- 116' lot 1 and +/- 25' lot 2 frontage where 200' is required for each lot. Property is in the Single Residence District and Rye Wellhead Protection District. Case #32-2021.

22. Continued to the August 4, 2021 meeting.

No further business before the Board.

ADJOURNMENT

Motion by Patricia Weathersby to adjourn at 10:45 p.m. Seconded by Shawn Crapo. All in favor.

Respectfully Submitted,
Dyana F. Ledger