

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

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

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

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

**I. CALL TO ORDER**

Chair Weathersby called the meeting to order at 7:02 p.m. via Zoom teleconferencing.

Statement by Patricia Weathersby:

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

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: [www.zoom.com](https://www.zoom.com) ID #812-7990-3049 Password: 234567

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

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

Roll call attendance of members:

1. Patrick Driscoll
2. Shawn Crapo
3. Gregg Mikolaities
4. Burt Dibble
5. Patricia Weathersby

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

**II. BUSINESS**

- **Appointment of Patrick Driscoll to fill the vacant seat of Charlie Hoyt who is no longer a resident of Rye.**

Patrick Driscoll noted that before moving to Rye he served on the Exeter Zoning Board, as an alternate then sitting member for four years. After moving to Rye, he served as an alternate on Rye's Zoning Board and then sat as a full member for one term. Now that Charlie has moved from town, he is happy to take his seat as a full member until the next election in March. He is a carpenter by trade and brings the perspective of a carpenter and builder to the meetings.

**Motion by Shawn Crapo to nominate Patrick Driscoll to fill the vacant seat. Seconded by Burt Dibble.**

**Roll Call: Burt Dibble – Yes; Shawn Crapo – Yes; Gregg Mikolaities – Yes; Patricia Weathersby - Yes**  
**Motion passed**

- **Approval of September 2 and September 23, 2020 Meeting Minutes**

**Motion by Shawn Crapo to approve the minutes of September 2, 2020 as amended. Seconded by Patrick Driscoll.**

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

**Vote: 3-0-2**

**Motion passed**

**Motion by Burt Dibble to approve the minutes of September 23, 2020 as amended. Seconded by Gregg Mikolaities.**

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

**Vote: 4-0-1**

**Motion passed**

**Continuances:**

**Motion by Patricia Weathersby to continue the application for property located at 1 and 3 Cable Road to the November meeting. Seconded by Burt Dibble.**

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

**Motion passed**

### III. APPLICATIONS

1. **Mary H. Murphy Westover for property owned and located at 9 Perkins Road, Tax Map 4.2, Lot 123**, requests variances from §190-2.4.C(1) for a rinsing station 12.6' from the rear boundary where 25' is required and from §190-6.3A for expansion of a non-conforming structure. **Property is in the General Residence, Coastal Overlay District. Case #38-2020.**

**Attorney Monica Kieser**, representing the applicants, presented to the Board. (Attorney Kieser presented the plan prepared by Henry Boyd, Millennium Engineering, on the screen for review.) She explained this property was reviewed by the Board last year in connection with a variance request for a tear down and rebuild. The Board made a decision in favor for the building that is now shown on the plan. What is new is the outdoor rinsing station, which was added during construction and that is what they will be addressing with the Board. The outdoor rinsing station is not enclosed and is uncovered. It is about 38 s.f. and is 12.5' from the rear lot line where 25' is required. It's inset within the previously approved garage, which is about 4.5' from the rear setback line. She noted that the criteria review for the variances is in the memorandum provided in the packets. She also noted that abutter support has been received from the Blaisdell Family, 5 Perkins Road, and Merrill and Sandy MacInnis, 13 Perkins Road. The Finneralls, 14 Brown Court, are also fine with the proposal; although, they have not written a letter of support. The monks at St. Anslem Abby, 12 Brown Court, have been very complimentary about the overall renovation. They did not speak up a year ago and did not offer anything now. However, the folks who are going to be looking at the rinsing stations have no objections. She pointed out that the rinsing stations are compliant with the right-side setback. The only request is for the rear and the expansion.

Chair Weathersby commented there are two rinsing stations. She asked if it is just the one nearest the boundary that needs relief.

Attorney Kieser replied that in looking at the plan, she would suspect that it is both. (She pointed out the location of the rear setback line on the plan.)

Chair Weathersby asked why two rinsing stations are needed.

Attorney Kieser pointed out that this is a family of seven. It is a fair request for something that is going to be used maybe three months out of the year. It seems reasonable given the proximity to the beach to have a couple of places for people to rinse off. The stations are not of enormous size either.

Chair Weathersby commented the stations are not enclosed, but they have three sides. She asked if there is any plan to put doors on the rinsing stations.

**Mary Westover, applicant**, stated that it is their understanding that doors are not allowed on rinsing stations in Rye.

Member Dibble asked what the arrangement is for the drainage of water below the stations.

Attorney Kieser explained there is a single stone under each station with some crushed stone around it to absorb the drainage.

Mrs. Westover explained that underneath the rinsing stations there is a ditch that is filled with crushed stone and on top of that is river rock with the two bluestone pads.

Attorney Tim Phoenix pointed out the garage is essentially in the same location as the pre-existing garage and is approximately the same dimensions.

Chair Weathersby noted that a letter of support has been received from Merrill and Sandy MacInnis, 13 Perkins Road.

Attorney Kieser stated that letters from the abutters on either side were submitted to the Planning Administrator when they were received; September 13<sup>th</sup> and September 30<sup>th</sup>. She also pointed out that there was a rinsing station on the previous structure.

**Matt Westover, applicant**, explained that the previous rinsing station was on the front side of the garage. (He pointed out the location on the plan for the Board.)

Chair Weathersby opened to the public for comments or questions. None were heard. She opened to Attorney Kieser for final comments.

**Attorney Kieser** stated that given the placement of the structure and the overall compliance with the right-side setback, compliance with coverage and the fact that it is inset within the existing approved garage, it is not contrary to the public interest and the spirit of the ordinance is observed. The stations are unenclosed and open to the sky. They are not going to alter the essential character of the locality or threaten the public health, safety or welfare. The appearance is not visible from the street. It is visible from the side and the rear. Given the compliance with the right-side setback, the distance from the rear setback and the condition they are in, there isn't any indication that the look of them, or brief time they are going to be used, is going to diminish the values of surrounding properties. The new house is well centered on the lot and all the elements are tucked up against it. There was a stormwater management plan that was looked at when the Board approved the original house. There is drainage around the house and a drywell for the sump pump. All of those things were well considered last time. Because of the small size of the lot, the size of the house and the way the house is centered on the lot, there really isn't any other place to put the rinsing stations without them needing some kind of relief. She pointed out that the rinsing stations were an afterthought in the construction process. Overall, the stations are reasonable, given the location of the house to the beach. She does not think there is any benefit to the public that would outweigh the hardship to the applicant if the proposal was denied.

Chair Weathersby closed the public hearing at 7:41 p.m.

Vice-Chair Crapo stated he does not see a problem with this. The stations are tucked away. The abutters, who can see them, have spoken through their letters. He commented that they may want to ask the Planning Board to give some guidance with defining what is and isn't a rinsing station for future applications.

Chair Weathersby agreed it would be a good idea to get clarification.

Vice-Chair Crapo continued he does not see that this proposal negatively effects any of the criteria or the neighborhood.

Member Dibble commented that this facility is so unobtrusive that he had to actually hunt it down. He thinks it has no impact on the neighbors and the neighborhood. To deny the application would harm the applicant and give no benefit to the Town.

Member Mikolaities stated it is tastefully done and there is abutter support. He does not have a problem with the application.

Member Driscoll commented that he has no issues.

Chair Weathersby did not have any issues with the request. She called for a vote for variances to §190-2.4.C(1) and §190-6.3.A:

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the request for variances by Mary H. Murphy Westover, for property owned and located at 9 Perkins Road, from §190-2.4.C(1) and §190-6.3.A for two rinsing stations. Seconded by Patrick Driscoll.**

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

**Motion passed**

- 2. Lawrence L. Tierney & Mary R. Tierney Revocable Trusts, Lawrence & Mary Tierney, Trustees of 72 Mirona Road, Suite 4, Portsmouth NH for property owned and located 1 & 3 Cable Rd, Tax Map 5.3, Lots 43 and 44 request variances from §190-2.3.C(1)(3) for a house 3.9' from the rear boundary where 23' is required, for a house 16.2' from the side boundary where 20' is required and a porch 23.6' from the front boundary where 40' is required; from §190-2.3.C(5) & 3.4.D for dwelling coverage of 21.1% where 15% is required and lot coverage of 26.4% where 15% is required; from §190-3.4.D for a ridge height of 28.2' and cupola height of 33.29' where 30' is required (for Freeboard) and from §190-6.3.A and §190-6.3.B for replacing a non-conforming structure. **Property is in the Single Residence, Coastal Overlay District and SFHA, Zone AO+1. Case #36-2020.****
- Request a continuance to November 4, 2020.***

- **Continued to the November meeting (see motion above).**

3. **Brian K. & Carrie-Ann B. Carlson of 690 Lancaster Ave, Lunenburg, MA for property owned and located at 24 Glendale Rd, Tax Map 20.2, Lot 129**, request variances from §190-2.4.C(3) for a home 16.5', a deck 13.7' and a walkway +/- 3' from the front boundary; from §190-2.4.C(2) for a home 11.8' and an AC unit +/- 9.3' from the left side boundary and for the home 14.2' and deck 7.9' from the right side boundary; from §190-5.0.B for 2 parking spaces less than 10' from any lot boundary; §190-6.3.B for replacement of a non-conforming structure; and a waiver from the building code §35-14.B(5) for a septic system 10' from the side boundary where 20' is required. **Property is in the General Residence, Coastal Overlay District. Case #37-2020.**

**Attorney Tim Phoenix, representing the applicants**, spoke to the Board. He explained that in March of 2018, the Board unanimously approved the exact same variance request for the exact same project that is being requested tonight. Sometime after the March 2018 unanimous approval, Brian Carlson fell very ill with cancer. He has since recovered, but when they found his health good enough to move forward with the project, the two-year period for the variances had expired and an extension had not been submitted. Had this been before the Board a few short months before this application was submitted, this would have been an extension situation instead of a reapplication. He noted that the only real difference between this application and the last one is that the last one showed the air-conditioner about center front, but it was not noted as a request for variance. The Board didn't really address it and unanimously approved everything else.

Attorney Phoenix stated the lot is 6,658 s.f. and is a triangular shape. The Carlsons tried to design a tasteful house that is relatively modest, given beach values, and tried to center it on the lot. There is no way to build a home without some kind of relief. There are letters of support that have been received from;

- **Ocean Sands Condominium Association;**
- **Jack Derby, 1029 Ocean & 11 Manor Dr.;**
- **Matt Denneen, 18 Glendale Ave.;** and
- **James Shepperd, 1021 Ocean Blvd.**

Attorney Phoenix stated the minutes of the meeting from 2018 were submitted in the packets that show there were a number of questions that were asked relating to the septic system and stormwater management. The applicants have since obtained the shoreland permit and the septic permit from DES. The minutes explained why the choice was made to place the house where it is, which is primarily to keep it a bit away from the abutter to the rear, who is only 9' off the property line. In the front, there is well over 30' from the traveled portion of the road to the property line. Traditionally, the parking has been in the right-of-way, where it is not paved. There will now be two parking spaces on the property, but they are in the front setback and there is no other place to put them. (He presented the chart of relief being requested on the screen.) He noted that the relief that is being requested is identical to the relief that was requested last time. The only addition is for the a/c unit, which should have been included last time.

Attorney Phoenix stated that the Board found last time, and there is no reason to change, that the variances are not contrary to the public interest and the spirit of the ordinance is observed. These variances are not going to change the essential character of the locality. The existing structure is essentially unlivable and cannot be saved. Not only is the central character of the locality not being altered, as evidenced by the homes around it and the nearest neighbors' support, neither is it threatening the public health, safety or welfare. For the same reasons, property values are not going to be diminished. The septic system is being improved. There is a stormwater plan and DES approval has been received. The project has also received neighborhood approval. This property will be increased in value, so it will not decrease the value of other properties. Attorney Phoenix pointed out that this is a very small lot that

is triangular shaped. It is very hard to fit a decent size home on this lot, which is a very valuable piece of property. Given its size and various setbacks, there are special conditions. Since an aging building is being replaced with a better building that all the neighbors approve of, with DES approvals and a new septic system, there is no reason to apply all the setbacks and related requirements. The proposed use is reasonable. He noted that the Carlsons will be greatly harmed if the variances are denied because they will be left with a building with a poor ancient septic system and a nearly unlivable building; whereas, there is no harm to the public in granting these variances. The Board found that the last time, unanimously. The members who sat on this case the last time were Shawn Crapo, Patricia Weathersby, Burt Dibble, Patrick Driscoll and Tim Durkin. The only member who is seeing this for the first time is Gregg Mikolaities.

**Corey Colwell, TF Moran Engineering**, pointed out that there is a very slight modification of the plan from the last one. The parking spaces that were shown on the old plan were about 5' south of where they are shown today. The reason is because they line up much better. As a result, the proposed walk from the parking spaces to the building was shortened. He further explained the parking spaces now line up better with the existing gravel driveway.

Chair Weathersby commented that it appears from Mr. Bodette's letter that he has been provided with the stormwater management plan. She is guessing that it has not changed because of this minor modification. She asked if the stormwater management plan changed and if the Ocean Sands Condominium Association was provided the plan.

Mr. Coldwell replied that the stormwater management plan has not changed. The condominium association was provided the plan a couple of years ago.

Chair Weathersby opened to the public. She noted the Board has copies of the letters that were mentioned by Attorney Phoenix.

**Susan Shepcaro, Conservation Commission Member**, stated that the commission saw this proposal with Mr. Colwell a couple of years ago. The commission supported the project then and they continue to support it for the same reasons; the stormwater management plan, the drip edge, new septic and the general improvement to the property. The commission's one thing they are interested in preserving, if possible, is the large willow tree. The tree looked like it might be in precarious condition, so if it cannot be saved the commission had asked for a replacement tree of a good size be replanted. She pointed out that this is in the recommendation letter from the commission.

Attorney Kieser pointed out the location of the willow tree on the plan before the Board. She commented that it looks like it is right on the property line.

Mr. Colwell stated the tree is right on the property line. The majority of the stem is on the property to the south. If the tree comes down, it would have to be by joint consent between the Carlsons and the abutters to the south.

Chair Weathersby noted that the minutes of the March 2018 meeting say that the willow tree is on the condominium association's property. It sounds like the crown of the tree goes over this property. This was a concern of Jan Olmstead, who represented the condominium association across the street. Ms. Olmstead was concerned about the health of the willow tree. The willow tree was planted there to help with the management of water in that location.



Attorney Kieser stated that the Carlsons have said the willow tree is dead. They would be happy to plant a new tree in conjunction with the condominium association.

**Brain Carlson, applicant,** stated that they have had discussions with the condo association. Everybody wants the tree down because it is half dead and will be completely dead shortly. The plan is to take the tree down. The condo association has asked for a new tree to be replanted to replace the tree. Mr. Carlson commented that they have no problem with replacing the tree.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:10 p.m.

Vice-Chair Crapo stated that he remembers sitting on this case. The Board found everything to be pretty reasonable. There is a very unique shape to the lot that drives a lot of the setbacks. In regards to the tree, he thinks if this is a condition, it should be that they just work with the neighbors. He does not think they should dictate a certain tree. The relief, as before, is reasonable. He does not think the small changes are negative to the relief previously granted or are a detraction from any relief.

Member Mikolaities stated he is all set with seeing the proposal for the first time. It's a two-bedroom house and it fits the scale. He is fine with the proposal.

Member Driscoll commented that in reading through the minutes, it seems like the large concerns from the condo association were the stormwater management and the septic; however, it sounds like that has been rectified. Everything else seems the same. His take on the project has not changed. He is in favor of the application with or without a condition.

Chair Weathersby stated she is in favor as well. Her position from last time has not changed just because of the change of the a/c unit and parking spaces. She likes that they are working with the condominium association on those issues that come up. The location of the septic system appears to be in the front yard of this property. As for the condition, she likes the condition suggested by Vice-Chair Crapo to work with the condo association to take down the dying willow tree and plant a replacement.

Member Dibble asked if the discussion about the tree will occur with the neighbor to the south or with the condo association.

Chair Weathersby clarified the neighbor to the south is the condominium association. She is not sure they even need that condition, as they have agreed to this on record.

Vice-Chair Crapo commented he would be in favor of leaving the condition off, in case the parties decide on some other remedy. These folks should not be held up on their variances because of some interest of the condominium association.

Chair Weathersby pointed out that she is also concerned on how it would be shown that it is satisfied. She agrees that the condition is not needed. She polled the rest of the Board on whether they want the condition.

Burt Dibble – No; Gregg Mikolaities – No; Patrick Driscoll – No

**Chair Weathersby called for a vote for variances to §190-2.4.C(3), §190-2.4.C(2), §190-5.0.B. and §190-6.3.B;**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**Chair Weathersby called for a vote on Building Code relief to §35-14.B(5);**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to grant Brian K. and Carrie-Ann B. Carlson, owners of the property located at 24 Glendale Road, variances and a waiver from the Rye Building Code as applied for. Seconded by Shawn Crapo.**

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

**Motion passed**

4. **Lindsay & Evan Gray for property owned and located at 9 Acorn Acres, Tax Map 16, Lot 102, request a variance from §190-2.4.C.(2) for an eave on the southeast corner 19.5' from the side boundary where 20' is required. Property is in the Single Residence District. Case #40-2020.**

**Lindsay Gray, applicant,** explained that they are working with Gray Construction to add a bedroom to their existing two-bedroom home. The initial permit was submitted in March and was denied. The building inspector requested that an official survey be done, due to the fact that the southeast corner of the house was close to the property setback. The survey was done by Ambit Engineering and they found that the overhang eave was about 6" over the setback. In order to keep the project moving forward, the application was resubmitted with the corner eave cut at an angle so it did not extend over the setback. She noted that they would prefer to have the angle be normal instead of having to be cut off, so that is the reason for the request for the variance. (Mrs. Gray showed a photo of the existing house and pointed out the eave that would need to be cut off.)

Mrs. Gray reviewed the criteria for granting the variances:

- The variance is not contrary to the public interest. Having the property squared off with the eave is actually in the best interest of the public, as the house will look complete and conform with regular architectural styles seen in the rest of the neighborhood and the Town of Rye. The spirit of the ordinance is observed because there is still the 20' setback along the ground. The useability and integrity of the side yard is maintained despite the overhead eave being 6" over the setback. There is a ditch and some trees between this property and the abutter on the side, so visually, the aesthetic should not be impacted by 6".
- Substantial justice will be done because the variance will allow the construction project to move forward. The point is to add a third bedroom for a second child who is expected in December. The timing of the variance will allow for the bedroom to be completed before the baby is born. It will also allow for a fully squared off eave, ensuring that the corner of the house is properly protected from rain water.
- The values of surrounding properties will not be diminished because the majority of the span of the side yard is still at 20', except for that little section. It does not change the visual aesthetic and allows for a normal looking house.
- In regards to special conditions of the property, this is a residential cul-de-sac and the majority of the homes are three plus bedrooms. This house was built as a two-bedroom and this bedroom is being built to make it a three-bedroom.
- This will allow for the completion of the construction project and will allow for a home that is properly guarded from rain water and snow melt damage. The proposed use is reasonable.
- Literal enforcement of the ordinance would result in unnecessary hardship because if the eave is cutback there is a higher chance that rain or snow melt could enter the structure of the house and lead to water damage. Having a house that looks normal would actually increase the property value.

Member Mikolaities asked if there is a revised septic plan for the additional bedroom.

Mrs. Gray confirmed.

Chair Weathersby opened to the public.

**Kimberly Reed, 437 Washington Road, speaking as a member of the public,** stated that she is an abutter and supports the request.

Speaking to Mrs. Gray, Chair Weathersby asked if they have spoken with the neighbors.

Mrs. Gray confirmed.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:28 p.m.

Vice-Chair Crapo stated that he has no issue with the request. It is really only a portion of the drip edge. The spirit is the overall space between neighbors. This little triangle that would have to be shaved off if the relief was not granted, is really just an injustice to the structure and would really go against the spirit of what the ordinance is in place for.

Member Dibble commented that he is observing the completeness of the packet the applicants have provided for a very minimal request.

The Board did not have any issues with the request.

Chair Weathersby called for a vote for variances to §190-2.4.C(2):

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes

Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the variance application by Lindsay and Evan Gray for property owned and located at 9 Acorn Acres as advertised. Seconded by Shawn Crapo.**

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

**Motion passed**

- 5. Mark & Nancy Frechette for property owned and located at 136 Perkins Road, Tax Map 5.2, Lot 185,** request variances from §190-6.3.B to tear down existing structure and replace with new; from §190-2.4.C(2) for a new garage with a master bedroom above 11.8' from the side boundary where 20' is required. **Property is in the General Residence District. Case #41-2020.**

**Mark Frechette, applicant,** spoke to the Board. He explained the request is to tear down the existing garage and build a new garage with a master bedroom above. The garage will be in the same location where it currently sits; however, they are requesting to add 8' to the depth of the garage in order to provide more storage area. This will be along the same 11' from the neighbor's fence. There are several reasons for the improvements. The existing cinder block garage foundation is crumbling. There is a constant infestation of mice and chipmunks. It is becoming a health and safety hazard. Given the dimensions of the lot, it is the only place where a garage can be constructed. He noted that letters have been provided to the Board from all four abutters; including, Mel and Jane Master who live on the side that is most impacted by the non-conformance.

Mr. Frechette reviewed the criteria for the variances:

- This request will improve the health and safety of the residents and the neighborhood, by replacing a hazardous structure with a much better alternative. The character of the neighborhood will be improved. Since many houses on Perkins Road have gone through significant renovations, this improvement will align with what has been happening on Perkins Road for many years. This will also help to maintain property values. There is no harm to the public with these improvements and will make the house a more enjoyable home.
- The proposed use is reasonable because it is a residential use in a residential zone. The health and safety issues concerning the garage foundation would make this a hardship going forward if this project was not able to be completed.

Referring to the email in the packets from Marc Jacobs (wetland scientist), Vice-Chair Crapo commented that all it really states is that there are no wetlands on this property. In reality, what needs to be known is how far the structure is from the edge of any wetlands. The buffer could extend into the property. He asked Mr. Frechette if that analysis was done.

Mr. Frechette explained that he spoke with Mr. Jacobs about this. Mr. Jacobs did not go back into the woods and do a wetland analysis. The way this was approached was to measure the length of this property from the front road all the way to the steps off the back deck, which turns out to be 100'. The property line is 220' long to the back. If the wetlands came right up to the property line, there would still be 120' to work with, which would be outside the buffer zone.

Chair Weathersby asked if there are any wetlands on the properties on either side.

Mr. Frechette noted there are no wetlands on either property.

Referring to the plot plan, Member Dibble commented that it looks like this property abuts two different lots in the rear.

Mr. Frechette confirmed. He commented that he does not think these properties are buildable.

Vice-Chair Crapo asked if the paper street has been extinguished.

Mr. Frechette noted that they were granted the extra 20' behind his property.

Chair Weathersby asked if permission has been received from the sewer department to add another bedroom.

Mr. Frechette explained that he spoke with Lee Arthur. She said that as long as they are tapping into the stack within the house, this would be okay.

Chair Weathersby opened to the public. She noted that letters of support have been received from;

- **Steven Hesser and Kathleen Mackey, 2 McLaughlin Drive;**
- **Tom and Mary Jane Keane, 135 Perkins Road;**
- **Joseph Wahl, 146 Perkins Road; and**
- **Jane Master, 130 Perkins Road**

**Thomas and Mary Jane Keane, 135 Perkins Road,** confirmed their support of the project.

**Joseph Wahl, 146 Perkins Road,** expressed his support of the renovations.

**Susan Shepcaro, RCC,** stated that this is the first the commission has heard of this application. The commission's reservation would be that there be more exact knowledge of where the wetlands are located. Hearing they have 220' from front to back, makes her less concerned; however, according to the GIS maps there are wetlands back there. She reiterated that the application has not been before the Conservation Commission. They have not had an opportunity to look at the plan.

Mr. Frechette explained that in the application materials, the question was "*if relief regarding wetlands was required*". He did not think relief was required, so it was not addressed with the RCC.

Chair Weathersby explained that the application did not go before the RCC because the building inspector determined that no wetland buffers exist within the proposed project area, so they did not need wetland relief. She thinks it is good to have this conversation now to be sure people are good with that determination.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:53 p.m.

Vice-Chair Crapo stated he does not have an issue with the proposal. He knows there are wetlands back there. In looking at the plot plan, they are far enough towards Central Road that he does not think the wetlands are an issue. He does not see that the rest of the project is an issue. The houses along there are getting to the point where it is more economical to make whole changes than just repairs.

Member Dibble stated he is comfortable with the depth of the lot description by the applicant and soil scientist that said there is no evidence of wetlands being inside the boundary line.

Member Mikolaities commented he is fine with the proposal.

Member Driscoll stated he walked the property and had no issues with the wetlands. It seemed like they were far enough away. It is a level lot, so there is not going to be a lot of runoff going into the wetlands. The one thing he looks for is dumping in the buffer and that area. He did not see any signs of that. It seemed to be pretty clean back there. He thinks it would be good for the applicant to know that he should not be dumping any clippings in the back, if in fact it is a marked wetland. He thinks that the angle of the sun with the garage going up an extra story is going to affect the daylight to the neighboring property, which concerned him initially. However, a decent portion of that is how close that neighboring property is to the common boundary line. They look even closer than the 11.5' that is there. Looking through the



criteria for the zoning and hearing that the abutter has no objections and is in favor of the application, he does not have any issues. Member Driscoll commented that the neighbor on one side looks to have just completed a project and the other side looks to be a new build. It is nice to see the neighborhood working together and giving everyone a fair shake. He does not have any objection to the application.

Chair Weathersby stated that she echoes everyone else's comments. The project is reasonable. She understands the need and desire to have a master bedroom with an improved garage and mudroom. They are actually improving the setback slightly; although, they are adding a fair amount of bulk in that setback. However, the fact that the abutter who is most affected is in support of the project and there is over 11' to the boundary with distance on the other side to the neighbor's house, she does not have a problem with the proposal.

**Chair Weathersby called for a vote for variances to §190-6.3.B and §190-2.4.C(2):**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Gregg Mikolaities – Yes  
Patrick Driscoll - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the variance application of Mark and Nancy Frechette for property owned and located at 136 Perkins Road as advertised. Seconded by Patrick Driscoll.  
Roll Call: Shawn Crapo – Yes; Burt Dibble – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Patricia Weathersby – Yes  
Motion passed**

**ADJOURNMENT**

**Motion by Burt Dibble to adjourn at 9:02 p.m. Seconded by Shawn Crapo.  
Roll Call: Shawn Crapo – Yes; Burt Dibble – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Patricia Weathersby – Yes  
Motion passed**

Respectfully Submitted, Dyana F. Ledger