

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

**Wednesday, November 4, 2020
7:00 p.m. – via ZOOM**

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Patrick Driscoll, Gregg Mikolaities 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 7:05 p.m. via Zoom teleconferencing.

Statement by Patricia Weathersby:

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

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: www.zoom.com ID #336 719 3675 Password: 123456

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

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

Roll call attendance of members:

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

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

II. BUSINESS

- **Approval of Minutes – October 7, 2020**

Motion by Burt Dibble to accept the minutes of October 7, 2020 as amended. Seconded by Shawn Crapo.

Roll Call: Burt Dibble – Yes; Gregg Mikolaities – Yes; Shawn Crapo – Yes;

Patrick Driscoll – Yes; Patricia Weathersby – Yes

Motion passed

III. APPLICATIONS

- 1. 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 Road, 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(E) 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.**

Attorney Tim Phoenix, representing the applicants, presented the application to the Board. He introduced Attorney Monica Kieser, Alex Ross from Ross Engineering, Architect Justin Knowlton and Builder Ron Houghton. He stated that most of the board members sat on this about a year ago when it came before the Board for almost the identical relief that is now being requested. The application was before the Board a month or so ago and some questions came up that were not able to be answered because the architect was not available. He commented that they now have those answers. He pointed out that some pretty significant changes to the design have been made to address some concerns that were raised, particularly by Chair Weathersby and Vice-Chair Crapo, last year and again one month ago. He explained that the intent is to merge the two lots. The existing cottage and two sheds will be removed with an addition being

put onto the house. Essentially, they are taking the volume of the cottage, turning it a bit, attaching it to the house and putting some living space over it. Last time this was before the Board, the primary concern heard was the nearness of the three-car garage to the common lot line, even though a letter had been received from that abutter stating they had no objections to the plans. He pointed out that the same abutter received very similar variance relief, some years ago, to expand his home leaving it about 5' from the lot line.

Attorney Phoenix stated that one of the questions that came up at the last meeting was why it had changed from jacking up the existing house to building the addition? He asked Ron to address this question.

Ron Houghton, Builder, explained that building movers were brought out to the site last year to address raising the building to get the height. It became apparent that the brick veneering on the house is failing. Also, all the lintels above the windows that support the brick have failed and are starting to crush the windows making them inoperable. There was discussion about raising the house and lifting the brick with the building. It was indicated that the chances of failure, in having all the bricks completely fall off the side of the building, could happen. There are a lot of cracks in the bricks, as well as diagonal cracks. There has been water in behind the walls, so the walls probably have damage as well. The damage that the bricks can cause from falling with just destroying the building, was just not worth the effort. It was decided to demo the house down to the foundation and put it back together from there.

Attorney Phoenix stated that another issue that came up last time was in regards to some windows at the "basement" level. This led to a question of whether it was living or storage space. There were also questions about flood vents. He noted that this area is going to be dead storage space only. There is a crawl space that is going to be approximately 7' in height from floor to ceiling. There is no intention for living space. The windows have been removed and now flood vents are shown. There was also a question on what part of the foundation was being used. Other than the part that is now in the middle of the house, the entire existing foundation will be used.

Referring to the existing conditions plan, **Alex Ross, Ross Engineering**, stated that at the northern property line there is an existing cottage, which is less than 5' from the property line. There is also an adjacent residence that is 5' from that property line. The previous plan showed a new garage at just 5'. The Board had some concerns that there was just not enough separation. Mr. Ross pointed out that Mr. Knowlton, the architect, shrank back the garage and doubled what currently exists out there. There is now good separation from the property line to the garage at a little over 10'. He noted that this is better plan with less coverage and more separation to the property line.

Justin Knowlton, Architect, presented the architectural plans for the Board to review. He stated that the original plan showed a third bay on the garage with an extension of about 12'. To get the additional offset to the property line, the entire wall has been brought in 6'. That area is no longer useable as a garage but will provide room for storage space. It is the same thing with

the roof line. The whole upper part has been pulled in 6'. (He reviewed the architectural plans and pointed out what was approved last year.) He noted that by building new, they are also able to reduce the volume of the roofs by putting in some shallower pitches to the rooflines. The max peak now falls below the max building height. The proposed building height reduced by about 3.5'. (Mr. Knowlton also reviewed the foundation plan showing the outline for the existing foundation versus what is proposed.) He noted that the first-floor height is dictated by the FEMA height. The crawl space height is predicated on the flood vents needing to be within 1' of the lowest grade on the backside of the house. This leaves a ceiling height of approximately 7' in that crawl space. There is no intent to finish that space. It will be used strictly as storage space.

Vice-Chair Crapo stated that he sees the plans are marked at 28'. There is the new regulation with the extra 2' for the floodplain. He asked if this already allows for the 2' with 28' being marked above that. Or is this 28' from existing? Also, since the two lots are combining, there are three definitions on how and where to measure the grade when it is one lot. He wonders how and where the benchmark was achieved in relation to the height.

Mr. Knowlton replied that the benchmark was established early on, so Alex may be able to answer that question.

Mr. Ross explained that a grade plain was established by taking the average grades around the perimeter. The grade plain is just over 13. That is where all the measurements were taken from.

Vice-Chair Crapo asked if the height utilizes the additional 2'.

Mr. Knowlton replied it does not. The height does not go up to the 30' that is allowed.

Chair Weathersby clarified that no height variance is needed for the ridge, as it is no longer at 28.2'.

Attorney Phoenix confirmed. He pointed out that the minutes from last year's meeting reflect that the Board determined relief was not needed for the cupola.

Chair Weathersby asked the height of the cupola.

Attorney Monica Kieser replied 33.29'. She pointed out that this is 1' lower than the plan from 2019, which was 34.2'. She also pointed out that there is about 3' that has been taken off the south elevation.

Attorney Phoenix commented that he thought he read in last year's minutes that the Board determined that the cupola did not need relief. He cannot find it in the minutes now so he has to halfway withdraw that comment.

Attorney Kieser presented the chart showing the existing conditions, the variances that were approved before, what was previously submitted a month ago and the changes.

Attorney Phoenix pointed out that the primary change from a month ago was pulling the garage and the roof away from the property line quite substantially. This also had the effect of lowering the impervious coverage. (He reviewed the variances approved in 2019 and what is now being requested.)

Vice-Chair Crapo pointed out that in going through the chart, it was said that the building inspector added the east side requirement. The difference may be that it was not required before because the existing structure was being kept; however, here the structure is being razed.

Attorney Phoenix stated this is a tricky one just because of the nature of the project. His view is that none of these variances are needed. The way he interprets the ordinance, if there is already an approval but that is being made better, the old 603.2 would allow for it to be done. In his opinion, that would include the coverage. He continued that the house was being lifted anyways, so there was not additional volume being created on that side. He thinks the building inspector's view was this is being taken down to the foundation so that is different and added it in. He commented that it does not hurt anything because it is the same or better, in terms of volume and distance from what is there.

Attorney Kieser explained that she added the east side variances. Those are not in the denial letter this time. She added it because the building inspector required front setback relief again, even though it was granted before. She thought that the building inspector's analysis had been like Vice-Chair Crapo said. She was not sure why he did not ask for side relief also, so she asked for it just in case. Attorney Kieser pointed out that on page 26 of the previous minutes of 2019, it shows that the Board determined that height relief was not needed for the cupola.

Chair Weathersby asked where the utilities will be going.

Vice-Chair Crapo asked about the generator also.

Mr. Ross explained that all equipment would have to be FEMA compliant at the proper elevations.

Mr. Knowlton stated that the intent of the design was that a lot of this would be suspended in the garage to achieve getting the equipment above the floodplain. It would help keep things from being in the main living space of the first floor.

Chair Weathersby stated the only other thing to address is the change in the FEMA Maps. This coming January, the new maps will be in and this property changes from AO to VE. She asked if they think they will be able to commence construction in a meaningful way by the time the maps come in.

Attorney Phoenix explained the intent is to get the demolition done as quickly as possible and move as far as they can before the maps are in place.

Chair Weathersby stated that Planning/Zoning Administrator Kim Reed spoke to Jennifer Gilbert about this. She asked Mrs. Reed to summarize the conversation.

Planning/Zoning Administrator Reed noted that she reached out to Jennifer Gilbert, NH Office of Energy and Planning (FEMA Rep). Construction for this project has to be substantially complete. Rye's Zoning and Land Development Regulations address what "substantially complete" means. It can't just have a foundation. It means there has to be four walls and roof on it, as well. The project has to be started before January 29, 2021 and there has to be substantial completion. She continued that a floodplain permit for this project is also needed. In the permit, it says that it has to be substantially complete.

Chair Weathersby stated that the note from Jennifer Gilbert said that they had to have the building permit by 1/29/2021 and construction had to be started within 180 days of the permit date. Start of construction is substantial improvements.

Vice-Chair Crapo stated that there are two different terms. One is "substantial improvement" and one is "substantial completion". Those are two very different terms.

Attorney Phoenix stated that it is his view that it is "substantial improvement". He believes that if the foundation is in, under the current regulations, that will be enough. He found in the zoning ordinances that with respect to expiration of variances, there has to be substantial completion and there are two years to do that. His brief reading of the floodplain ordinance seemed to say how far along it had to be. He interprets it as substantial improvement.

Mr. Ross stated that they have been working with Jennifer Gilbert for a couple of years on this project and have gone through the changes that are coming up in January. It was her take that the building permit must be obtained and construction started. Assuming relief is received tonight, the plan is to get the necessary permits for demo and start with the foundation and have that work complete prior to the end of January.

Vice-Chair Crapo commented that they have had the analysis before in terms of "substantial completion" and just the foundation did not satisfy that. If it is "substantial improvement", he thinks that is a different standard than "substantial completion".

Referring to Vice-Chair Crapo's earlier comment about the generator pad, Attorney Kieser noted the generator and air conditioner are existing features and shown on Sheet 1. Those will be staying in the same place.

Attorney Phoenix reviewed the criteria for the variances;

- Variances are not contrary to the public interest and the spirit of the ordinance is observed. The test is whether the variances will unduly and to a marked degree conflict

with the ordinance such that they violate the ordinances basic zoning objectives. The purpose of the ordinance is to lessen congestion in the streets. This will be taking two houses that require four parking spaces and making them one house. Theoretically, there will be less congestion in the streets. Secure safety from fire, panic and other dangers. A 20 plus and 50 plus year old homes will be removed and a new home built to code. There won't be any worries about bricks falling when it is lifted. It will be flood compliant. Promote adequate light and air. This was approved last year in essentially the same configuration, only it is better now that the third bay of the garage is taken off. Light and air is being improved. Prevent the overcrowding of land. The two houses that are there crowd the land more than this project. Two homes are becoming one. Attorney Phoenix noted that a stipulation of this is the merging of the lots and the implementation of the Conservation Commission's recommendations from last year.

The pervious portion of this lot is being increased greatly, making it 25%, instead of nearly 50%, impervious. This will fit in with the locality. The houses next to it are quite large. This lot is now wider than most of those lots because the lots are being merged. This project and the variances needed does not alter the essential character of the locality. What is there now threatens the public health, safety and welfare more than a brand new to code house that will be further from the left-hand lot line than what is there today.

- Granting the variances will not diminish property values. If someone were to buy that cottage lot now, they would be putting up a large house similar to the others in that location. What is proposed will be less impactful and will not diminish surrounding property values.
- Special conditions exist that distinguish it from other properties in the area. These are two very narrow lots. There is a driveway easement, very close to the house, that cannot be built in. There is an existing house and cottage in their present locations. Those factors and combining the lot lines create special conditions.
- There is no fair and substantial relationship between the public purposes of the ordinance and its application. Setback restrictions are to ensure adequate air, light and stormwater treatment. This has been made better than it was last year. Given the house that is there, the limitations of this lot and the restrictions cause by the easement, there is just no reason to apply the strict requirements of the ordinance.
- The proposed use is reasonable as it is a residential use in a residential zone.
- Substantial justice will be done by granting the variances. A letter from the nearest neighbor to the north was received. Last year, letters of support were received from several other neighbors; Gamache, Doykos and Condrun. The only concern by one of the neighbors was parking on his lot, which has been addressed. There is no harm to the general public in granting these variances. Denying them would take away the Tierney's right to the reasonable use of their property, especially given the changes they made in the last month.

Chair Weathersby noted that a letter of support has been received from **Timothy and Kathy Keane, 5 Cable Road**. She opened to the public for comments. No comments were heard. She pointed out that a letter was received from the Rye Conservation Commission, which is dated September 30, 2019 with four conditions.

1. In order to remain pervious, the pervious paver area must be maintained regularly per manufacturer's instructions.
2. Native plantings should be added to the existing landscaped border along the ocean side of lots 43 and 44. The northeast corner of lot 44 to be planted with native salt resistant plantings to a depth of 3' to tie in with existing grasses.
3. Existing lawn to be fertilized with low nitrogen fertilizer, if fertilization is necessary.
4. Conservation Commission would like to reserve the right to visit the property in a year to review the completed project.

Attorney Phoenix commented that they have no objections to those condition. A copy of both the new submission and the revisions were submitted to the Commission, but they have not heard from them. He assumes they are fine with what is being done now subject to their letter.

Vice-Chair Crapo asked what would be the difference in requirements if this was to be the VE Zone. He asked how it would change this project.

Planning/Zoning Administrator Reed explained it would have to be built on piling or piers with absolutely nothing below.

Attorney Phoenix stated that he does not believe it would change anything in terms of the height or dimensions of the structure. It is just what can be underneath the first floor. If they were required to comply with the new regulations, there would still be 2' to play with because the 2' was not used for freeboard. If it had to go above that, the project would need to come back and it would have to be addressed at that time.

Vice-Chair Crapo commented that it looks like care has been taken to get the mechanicals out of the basement area. It looks like some storage would be lost to what is being proposed now.

Attorney Phoenix explained that things could be stored but they would not be protected from anything because there would be pilings and breakaway walls, instead of a foundation.

Member Driscoll stated that he remembers the debate the Board had about the cupola. He is in agreement that the cupola does not count as part of the height restriction. He asked if everyone on the Board is okay with that.

Chair Weathersby explained that in the past, if a cupola is small and more of a decorative feature, the Board says it doesn't need the height. However, if it is a bigger part of the structural element of the property then it does. This is coming up again in the last application. She commented that they probably should be clearer and have a definition in the zoning ordinance.

Vice-Chair Crapo commented that he thought it was already described in the ordinance.

Attorney Phoenix replied that he is not aware of that in the ordinance. He read from the minutes of 2019; ***“It was also agreed that the height variance for the cupola did not need to be addressed, as it is not part of the main roof.”*** He continued that this is consistent with his understanding of the way Peter Rowell (past building inspector) had interpreted it. He commented that he has had cupolas in the past and the Board has found that they are not included. If it is a decorative structure, it is not counted.

Chair Weathersby asked if the cupola sits on top of the roof.

Mr. Knowlton replied the intent is for it to be open and let light down into the bedroom areas. There is no access to get into the cupola. The dimensions are 4’x4’.

Speaking to Attorney Phoenix, Chair Weathersby asked if this is the same as the previous project.

Attorney Phoenix replied it is a little bit shorter.

Member Driscoll stated that he is good with it, as it doesn’t seem large enough to hit the threshold. He just wanted to be sure the other members agree.

Member Dibble commented he is not in opposition to it. He does agree that maybe the Planning Board should take this under advisement for purposes of the regulations.

Attorney Phoenix pointed out that most ordinances in the seacoast say that chimneys and cupolas are not included in determining height. Some ordinances have up to a certain size. Having it addressed is pretty consistent throughout other ordinances.

Heather Reed, Conservation Commission Member, commented that the chair of the Conservation Commission sent her the application yesterday. As far as she knows, the Commission hasn’t discussed this at all. She has not heard anything, so she thinks the Commission is good.

Attorney Phoenix noted the Commission received notice of this back in August and then received the updated project. What the Commission received yesterday is a different project he is working on.

Heather Reed noted that the package was just picked up yesterday.

Attorney Kieser confirmed that the Commission was sent the plans in August of this year with a notation on the front that this was a project that was previously reviewed, but there were some changes. The note also asked the Commission to let them know if they wanted to review it again.

Member Dibble stated that it sounds like they are moving towards approving this with the recommendations of the Rye Conservation Commission. In the past, there have been discussions about how the use of low-nitrogen fertilizer products is going to be policed.

Chair Weathersby commented they can discuss this in deliberations.

Member Driscoll pointed out that Attorney Phoenix and his team have agreed to the Conservation Commission going out to the site at the end and approving what's been done. Hopefully, this will give some assurance to the Conservation Commission in case they want to go through it a bit more or see what is there.

Attorney Phoenix confirmed that having the Conservation Commission back to the property when the project was complete is fine with the Tierneys.

Referring to Rye's Floodplain Development and Building Ordinance, Chair Weathersby pointed out that there is a definition for 'Start of Construction' (page 17). She thinks this is verbatim what Jennifer Gilbert stated in her email. She commented it is in the ordinance.

Attorney Phoenix noted that Heather Reed was correct. Last week's changes were not emailed to the Conservation Commission. They were mailed and they probably just received them. He explained that last year's approval was reviewed by the Conservation Commission and they wrote the letter, with the conditions that were read earlier this evening. When a new application was filed in August with the primary change to further reduce impervious from 48% +/- to 25% +/- and to take the whole existing building down, the Conservation Commission was notified. He continued that the change that was made last week, which makes the building smaller, was mailed to them and not emailed. Since the building is smaller and it slightly decreases impermeable surface, he would assume the Conservation Commission would have the same response to it now as it did last year.

Speaking to Heather Reed, Chair Weathersby asked if she thinks the Conservation Commission's position has changed on this in any way with the improvements to the project from an environmental standpoint. She asked if the RCC would like more time to review this.

Heather Reed replied that no one has had time to review this. She honestly cannot say.

Chair Weathersby pointed out that the Shoreland Impact Permit was approved this past April for the prior project. She asked if this carries through to this project.

Attorney Phoenix replied that it does have to go back for an amendment.

Mr. Ross explained that he has been in contact with Eben Lewis from DES. The changes were described to Mr. Lewis. Since this is less impactful, Mr. Lewis said to send him the plans if this is approved and it can go from there. Mr. Lewis will let them know if an amendment is needed for the permit.

Chair Weathersby asked if the permit is needed before construction can start.

Mr. Ross confirmed. He also confirmed that a building permit cannot be issued until something is received from DES.

Attorney Kieser noted that she emailed Planning Administrator Reed the acknowledgement from Suzanne McFarland (Conservation Commission Chair) on receiving the August submission.

Heather Reed stated that she just reached out to Suzanne and she did not have time to look at the plan. However, based on what has been submitted, she thinks they would be okay with the same recommendations and also going back to revisit when it is finished.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:33 p.m.

Member Dibble stated he was not one of the ones that spoke very aggressively at the last hearing about the bulking issues of this project. He can remember that Chair Weathersby had a hope that this could be smaller than what was presented. He thinks that goal has reasonably been achieved here. He considers the recommendations of the Conservation Commission to be routine in the way they have reviewed other matters. He does not have any issues with conditioning the project on their letter.

Member Mikolaities stated he did not sit on this in 2019, but he heard the discussion last time, went through the package and read the notes. Where they have abutters' support, are asking for less relief than they did in 2019, reducing the bulk and the height, and already have Conservation recommendations, he does not have any problem and thinks it is a good project. The architects did a good job and he supports the application.

Member Driscoll stated he did not sit on the application previously. He would like to give credit to the applicants and their team as they made the presentation pretty easy to see. It was also easy for him to see what concerns the board members had previously. He did not bring up FEMA or gutters because they seem to be self-evident. FEMA is going to be stringent on what they require. He commented that he probably would not have been in favor of the previous application. However, with the improvements, he does not have any issues with the proposal.

Vice-Chair Crapo stated he was the most critical of the old proposal, but voted in favor because it was keeping the old structure. When it became a teardown, he does not think his vote was guaranteed and he became more critical in the last presentation. He is happy to see it has been modified, pulled back and reduced in size and bulk. He could not support the proposal that was before the Board at the last presentation. He can support this package, as it is now.

Chair Weathersby stated her position is very much like Vice-Chair Crapo's. She made it clear last time that she had some difficulty with the last proposal. She very much appreciates the efforts that have been made to pull it away from the Keane property, bringing the height down to 28' and reducing the lot coverage. There have been a number of improvements with this. The

biggest one to her is the setback between the garage and the Keane property. She is in support. Referring to the requested variances, she continued that the east side is probably not needed because it is probably grandfathered and wasn't something the building inspector flagged. In some ways, it is more complete to put all the relief that is necessary into one notice of decision. The contrary argument is it is giving them something that hasn't been flagged. She could go either way. She would probably err on the side of putting everything into the one notice. She asked the Board's thoughts on the east side setback relief.

Member Dibble commented that he does not have any objection to it the way it is submitted.

Vice-Chair Crapo stated he thinks it is more complete having it in there. He does not see that it is necessarily an issue that it had to be denied from the building inspector. He thinks there have been a couple where it was said that the Board can step into the shoes of the building inspector and make those amendments.

Regarding the cupola, Chair Weathersby stated she understands it was the consensus of the Board that no relief is needed. She called for a poll vote of the Board.

Shawn Crapo – No relief is needed; Burt Dibble – No relief is needed; Gregg Mikolaities – No relief is needed for this project; Patrick Driscoll – No relief is needed; Patricia Weathersby – No relief is needed for this project, as they are more decorative in nature.

Chair Weathersby called for a vote on variances to 190-2.3.C(1)(3), 190-2.3.C(5) and 3.4(E), 190-6.3.A and 190-6.3.B with the conditions of the Rye Conservation Commission;

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 public 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 application of Lawrence L. Tierney and Mary R. Tierney Revocable Trusts for property owned and located at 1 and 3 Cable Road for variances as proposed this evening and conditioned on the recommendations of the Rye Conservation Commission. Seconded by Shawn Crapo.

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

Motion passed

Note: Patricia Weathersby recused herself for the applications for Stevens Family Trust. Shawn Crapo stepped in as acting chair and Chris Piela was seated.

- 2. Stevens Family Trust, William & Lisa Stevens, Trustee for property owned and located at 61 Parsons Road, Tax Map 20.2, Lot 38, request a variance from §190-2.4.C(2) to reconstruct and expand a shed 10' from the side boundary where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #42a-2020.**

Lisa Stevens, applicant, explained that last year when they submitted the application for the variance, she did not specifically list the shed replacement as part of the renovations. When it was reviewed by Building Inspector Marsden, he did not catch the shed and did not cite it in the denial letter that it needed relief from the side setback. When the variance was approved, they were under the assumption the shed was included with it. In demolition of the patio and in preparation to do the foundation for the garage, the original existing shed was torn down at that time. Once the variance was approved and the contractor went in to get the building permit, Building Inspector Rowell denied the shed; however, they did not get anything in writing or follow up to determine why the shed was denied, so the shed did not get rebuilt. In April, Building Inspector Marsden came out to do the CO and there was discussion about the shed. Building Inspector Marsden indicated he would get back to them, but they did not hear anything. She continued that in July she submitted for a new building permit for the shed and was denied. At that time, Building Inspector Marsden stated that side setback relief was needed. He indicated there was no in-kind or grandfathering allowed in Rye Zoning. Also, whereas the shed is no longer in existence, it would be like a new shed. He also suggested it be located somewhere on the lot where it did not need as much setback relief, as it would be more desirable. She noted this has been done and that is the revised plan before the Board. She pointed out it is still the same size of the original shed. The original shed had a lean-to beside it, which made the

footprint 8x10. The entire new shed is 8x10, so there is a bit more bulk but the footprint is the same. She noted that she has submitted a memo in regards to the five criteria. She can read through those if the Board would like.

Vice-Chair Crapo commented the Board has read through the packet. He thinks they can accept that as being read.

Member Piela asked for the location of the old shed.

Mrs. Stevens pointed the area out on the plan. She noted that the new shed will be moved over and backup to the neighbor's fence beside the ledge. In front of that area is the leachfield hump, so it will be tucked in back.

Acting Chair Crapo opened to the public for comments.

Joanne Hardin, 32 Shoals View Drive, spoke in support of the variance approval for the shed and the equitable waiver as well.

Hearing no further public comments, Acting Chair Crapo closed the public hearing for the shed at 8:59 p.m. and opened discussion to the Board.

Member Mikolaities stated that he does not have a problem with the shed. He thinks he saw a letter from the McCanns in support, who are another abutter.

Member Dibble agreed.

Acting Chair Crapo read the letter of support received from **Beth and Steven McCann, 57 Parsons Road**.

Member Driscoll commented he has no issues with the request.

Member Piela stated he does not have any concerns. He appreciates how they have solicited their neighbors to write letters or speak on their behalf. That alleviates any other concerns that he might have had.

Acting Chair Crapo stated that sheds seem to be becoming more of a "must have" for people's storage. There are letters from effected abutters and they seem to be in favor. The way the lot is laid out, it does not seem to be infringing on anyone.

Acting Chair Crapo called for a vote for a variance to 190-2.4.C(2);

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

7) The purposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the application of Stevens Family Trust, William and Lisa Stevens, Trustee for property owned and located at 61 Parsons Road for variance relief as requested. Seconded by Chris Piela.

Roll Call: Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Shawn Crapo - Yes

3. Stevens Family Trust, William & Lisa Stevens, Trustee for property owned and located at 61 Parsons Road, Tax Map 20.2, Lot 38, request an equitable waiver of dimensional requirements from §190-2.4.C(3) for a garage addition 8.2' and 8.9' from the front boundary where 9.6' and 10.3' were granted on October 2, 2019. Property is in the General Residence, Coastal Overlay District. Case #42b-2020.

Acting Chair Crapo reviewed the criteria for an equitable waiver:

- (a) the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after the structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;
- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to

inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

Mrs. Stevens stated that all inspections were done beforehand by either Inspector Rowell or Inspector Marsden, along with the contractors. This was not discovered until Inspector Marsden went to complete the certificate of occupancy. He discovered that the as-built plan that was submitted by the engineers was depicted from the foundation and not from the drip edge as required. Building Inspector Marsden was the one who discovered the dimensions were off. The project was completed at that time and they were just waiting for the certificate of occupancy. The plan has been redone by Jones and Beach Engineers. All other criteria has been met that was on that letter. There was a revised drainage plan submitted in March to Inspector Rowell via email. She suspects that maybe because of Covid and him working from home it didn't get printed out and put in the file. However, when Inspector Marsden met with her at the property, he was given a hard copy. When Jones and Beach came back out and redid the site plan, they also forwarded the drainage as existing. She noted they did not go with cobblestones because of financial reasons, but they did do the pea stone, the underlayment and the drainage. As it turns out with the as-built, the measurements are off with the variances that were granted last year. Inspector Marsden indicated the way this could be remedied is to appear before the Board and ask for the equitable waiver of dimensional requirements.

Member Piela clarified the original measurement was from the edge of the foundation not the drip edge. Nothing has moved. The foundation was where it was supposed to be. He asked if that is correct.

Mrs. Stevens explained that in looking at the original plan, even with the drip edge, they might have been off 2". In looking at the pictures, it is very deceiving of where the travelled way of the road is located. The culvert on Shoals View Extension, where the driveway fronts, is actually in the road. The biggest discrepancy was that the as-built was done to the foundation and not to the drip edge.

Acting Chair Crapo commented that in looking at the actual property line, the dirt road right-of-way comes closer to their garage than the part that is used. There is an extra sort of shoulder there, so in coming off the garage there is an open space until the bed. It looks like the property line is on the other side of the bed, but on a site map it appears closer. Speaking to Mrs. Stevens, he asked if the foundation was poured where it was originally intended. Did it end up creeping a few inches as well?

Mrs. Stevens replied that to their knowledge it is where it was always supposed to be.

Member Driscoll clarified the drip edge is 1.5' and that is the discrepancy.

Mrs. Stevens replied it is almost 2.

Acting Chair Crapo commented he is reading it as 1.4'.

Member Driscoll agreed. He noted that in looking at the pictures it does not look that far off.

Acting Chair Crapo stated that in looking at the bottom next to the garage door, the siding comes out a couple of inches.

Member Driscoll stated that he does not want to get into the inches of this because it does not affect the overall outcome. He remembers talking about this explicitly when the application first came in. He pointed out there are two pins shown on the site map. He reiterated that he doesn't think it affects it. They may have just gotten off a couple of inches on the edge. He commented he is fine with it. This wouldn't have changed the way he voted on it initially.

Acting Chair Crapo opened to the public for comments. He noted that Ms. Hardin has already spoken in support. Hearing no comments, he closed the public hearing for the equitable waiver at 9:18 p.m. and opened to the Board for comments.

Member Mikolaities stated he is fine with this. It is on a private gravel road. It is a pretty small garage, so he believes it was an innocent error.

The other members did not have anything else to add.

Acting Chair Crapo asked for a vote on the criteria for the equitable waiver;

- (a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;**

Gregg Mikolaities – Yes

Burt Dibble – Yes

Patrick Driscoll – Yes

Chris Piela – Yes

Shawn Crapo - Yes

- (b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in**

measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
Shawn Crapo – Yes

- (c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property;**

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
Shawn Crapo – Yes

- (d) Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.**

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
Shawn Crapo – Yes

Motion by Burt Dibble to accept the application of the Stevens Family Trust, William and Lisa Trustees for property owned and located at 61 Parsons Road for an equitable waiver of dimensional requirements as advertised. Seconded by Gregg Mikolaities.

Roll Call: Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes;

Chris Piela – Yes; Shawn Crapo – Yes

Motion passed

Note: Patricia Weathersby was reseated and Chris Piela was unseated for the remainder of the meeting.

- 4. Francis & Michele Drensek for property owned and located at 35 Frontier Street, Tax Map 24, Lot 83, request variances from §190-6.3.A for expansion of a non-conforming structure; from §190-2.3.C(3) for covered entry above the garage 39'8" from the front property line where 40' is required; and from §190-2.3.C(2) for a covered entry above the front door 3' from the side property line where 20' is required. Property is in the Single Residence District. Case #43-2020.**

Michele Drenzek spoke to the Board. She pointed out that the legal notice says that it is a non-conforming structure, but it is actually conforming because they received a variance for this around 1990 when the addition was built onto the home. The request now is for coverage over the garage doors, as well as a coverage over the front door. Right now, when it snows, they are not able to get out the front door and all the snow comes into the garage.

Frances Drenzek explained that they are changing the siding. He has always wanted to build a shed roof over the garage and a gable roof over the front door for snow protection, so now is the time to do it.

Mrs. Drenzek stated that this is kind of a necessity because of the fact that they cannot get out the door when it snows because it piles up right in front of the door. She also thinks it will add value to the property and add to the street appeal. She pointed out that as they get older, this is becoming more concerning. This will also help keep the snow from coming inside the garage.

Vice-Chair Crapo stated that the notice states 39'8" to the front for the covered entry above the garage. He believes that should be the covered entry for the front door and the garage 34'8". To his analysis, the covered entry for the garage is not violating the setback from the front and is only from the 3' side. It seems the notice is messed up and the denial letter, as well. The covered entry on the garage is not in the front setback. He pointed out that #3 in the building inspector's letter is improper because the garage covered entry does not need front yard setback. He continued that #2, the covered entry would be in the side setback, but the front step is not in the side setback. From #2, the front steps need to be stricken. From #3, the garage needs to be stricken.

Chair Weathersby clarified that the proposed covering over the front door is 39'8" from the front property line.

Referring to the applicant's sketch, Vice-Chair Crapo explained that he believes 34'8" is what they need for relief.

Chair Weathersby asked the Drenzeks if the edge of the covered entry over the front door to the edge of the property line is 34'8".

Mr. Drenzek confirmed. He pointed out that the drip edge is 2".

Chair Weathersby asked what the distance is from the edge of the property to the drip edge of the covering for the front door.

Mr. Drenzek replied it is 39'8"; however, 2" needs to come off because it was measured to the building, not the drip edge.

Chair Weathersby asked what the 34'8" reflects, which is shown on the plan that was submitted with all the distances.

Mrs. Drenzek explained that is the distance from the front door cover to the beginning of the street.

Chair Weathersby asked if this is the relief that is needed for the front door.

Mrs. Drenzek confirmed.

Vice-Chair Crapo asked if this sticks out 5' from the front of the house.

Mrs. Drenzek replied that it sticks out 3'. The front setback requirement is 40'. The front of the house to the street is 39'8". She pointed out that they are going to have a 3' roof. They are asking for that 3' to put that coverage over the front stairs. She pointed out that the front stairs already come out 3'.

Chair Weathersby explained that if it is 39'8" from the house, with the 3' covering that should be 36'8" and this says 34'8".

Mr. Drenzek agreed.

Chair Weathersby commented that maybe they just make it the bigger dimension but it can be smaller. She continued that no front setback relief is needed for the garage because the overhang is going to be 43' from the front boundary.

Mrs. Drenzek explained that they are going to come out with a 3' overhang on the garage, which is still going to be 6' back from the original house. She thinks they need a variance for the side lot line.

Chair Weathersby stated she is just confirming that the garage is more than 40' back, including the cover. Side setback relief is needed for the garage overhang, which is 3' from the side property line.

Mr. Drenzek confirmed.

Member Driscoll pointed out that the math doesn't work out for the garage overhang either. It shows a 49' from the front setback with 3' overhang and then the number jumps to 43'. As long as it is a 3' overhang and not a 6' overhang.

Vice-Chair Crapo pointed out that in looking through the packet and the drawings, it looks like in more than one place there is a dimension saying the overhang coming off the front door is going to

stick out 5' (6' wide by 5' out). That would make sense if there is a 3' top step with a step or two that it covers. He bets the top step is 3' with two 1' steps. That would bring it to the 34'8".

The Drenzezs agreed.

Member Driscoll asked if it is known that they were measuring to the right spot on the property line on the front. It sounds like they were measuring to the road.

Mr. Drenzek replied that he measured from the property line posts.

Chair Weathersby opened to the public for comments. No comments were heard. Speaking to the Drenzezs, Chair Weathersby asked if they spoke with the neighbor to the right, who is affected by the side yard setback.

Mr. Drenzek stated that property has recently been purchased. He met the new owner a couple of times, but has not talked to him about this. The person to the right is a new house. He has not really met these neighbors.

Chair Weathersby closed the public hearing at 9:52 p.m.

Vice-Chair Crapo stated the he has no issue with the cover over the front door and garage. He knows the applicant now feels that the property is conforming. The technical way the building department looks at it is that it is conforming via previously received variances. It is still considered a non-conforming structure, as far as expansion. The Board still needs to analyze 190-6.3. A, as the notice says.

The Board did not have any issues with the proposal.

Chair Weathersby called for a vote on variances to 190-6.3.A; 190-2.3.C(3); and 190-2.3.C(2);

1) Granting those 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 grant the variance request by Frances and Michele Drenzek for property owned and located at 35 Frontier Street for expansion of a non-conforming structure for a covered entryway above the front door 34'8" from the front property line where 40' is required and for a covered entry above the garage door 3' from the side property line where 20' is required. Seconded by Gregg Mikolaities.

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

Motion passed

5. Joe & Dodi Guyton for property owned and located at 1459 Ocean Blvd, Tax Map 17, Lot 80, request a variance from §190-3.4.D for a cupola 32' in height where 28' is required. Property is in the General Residence, Coastal Overlay District. Case #44-2020.

Robert Haberson, Architect, presented to the Board. He explained that the house is fully permitted and is under construction. Everything on the property is essentially being done by right. The home is designed to meet the proposed and future floodplain. It is a narrow lot with quite a bit of grade change and that is what they are contending with. He noted that everything is by right, except for the cupola. The way the zoning read for measuring the height for this particular property, it's measured from the center line of the wall facing the street. He noted that he took the most conservative reading of that and took the center of the line of the wall closest to the street in reviewing the building height. (He presented the plan on the screen for review. He pointed out the location of the cupola.) He stated that although it was not called out by the building inspector, there is a small spire on top of the tower that likely needs the same relief as the cupola. (He presented the elevation plans and reviewed for the Board.) He explained that the cupola and spire are both of the size and scale that is similar to a chimney or another appurtenance and would not be considered as part of the main roof structure. Mr. Haberson commented that he had an application with a cupola a few years ago. The building inspector at that time felt it was in keeping with appurtenance and did not need to go to the Board. In this case, Inspector Marsden requested that this go before the Board for review on whether this is consistent with the size that is appropriate for an appurtenance or not. The cupola is 4'x4' and from the ridge to the peak is 5' total. The spire is about 3'. He noted that the request is just for the cupola and the spire. The remainder of the building is below that 28' line.

Chair Weathersby clarified that the roof ridge is at 28' now.

Mr. Haberson confirmed. He explained that what Inspector Marsden was referring to in the denial letter is only the elements above 28' in height. At one point, the gambrel roof was slightly taller and was 11" higher than that ridge; however, that has been reduced to be in compliance.

Chair Weathersby asked if the cupola is just decorative or to let light in.

Mr. Haberson replied the only thing in the cupola is a lightbulb. It's just a decorative piece.

Member Driscoll asked if the 4'x4' is measured to the walls of the cupola or from drip edge to drip edge.

Mr. Haberson commented he believes that is the walls of the cupola. The molding is pretty shallow. It is probably another 5" beyond.

Member Dibble asked if the ridge line is exactly 28'.

Mr. Haberson replied it's a couple of inches below.

Chair Weathersby asked for clarification on the 4'x4' dimensions of the cupola.

Mr. Haberson explained the 4'x4' is from the exterior wall to exterior wall.

Chair Weathersby stated that things that are purely decorative like the spire do not need relief. It was just determined in the Tierney matter that a 4'x4' cupola did not need relief. She does not see anything about this one that makes her think otherwise.

Member Dibble agreed.

Member Mikolaities agreed.

Vice-Chair Crapo stated that he agrees, as it relates to the cupola. He thinks the applicant should have Inspector Marsden out there to make sure they are all measuring from the right 28' spot before they build that large a structure and find out a variance is needed. He pointed out that it has already been drawn attention to, so now the equitable waiver does not apply.

Member Driscoll commented he is fine with the cupola.

Member Piela commented that he has no issues with the cupola.

Chair Weathersby pointed out that no one is going to be sitting in the cupola. It is not an observation tower. She thinks she is hearing that the Board is going to dismiss this application because they do not feel relief is necessary.

Member Mikolaities stated that however they word a motion, they have to be careful because Inspector Marsden is going to be listening to whatever verbiage given. He pointed out that the one next to Ray's was denied because they were going to sit in it. It was called a cupola and then

it was a tower. It was very substantial. He commented that he has no problem with cupolas that are 4x4 or 2x2 that are a decorative accent. He just wants to make sure that whatever message the Board give Inspector Marsden is a clear message.

Member Driscoll explained this is why he was asking for the overall dimensions from drip edge to drip edge, so it can stay consistent with the size of a cupola.

Vice-Chair Crapo pointed out that they need to ask the Planning Board to act quickly on this to get something on for this coming March to help clarify this.

Chair Weathersby stated that the guidance is that a 4x4 cupola with no area to sit and observe is designed as an architectural feature only. It does not require a height variance but is more akin to a chimney, widow's walk, etc.

Chair Weathersby opened to the public.

Stanley Bocko, 1457 Ocean Blvd, stated that the lighting is a concern for him, as his house is behind this property. He asked if it is going to be a bright light or a spot light shining into his yard.

Mr. Haberson explained the lighting will be very much consistent with other residential lights, similar to a light next to an entry door.

Chair Weathersby commented that most cupolas do seem to be lit. It would be nice if the neighbors could work out some sort of dim wattage, but that is beyond the Board's jurisdiction.

No other comments from the public were heard.

Motion by Burt Dibble to decline to take jurisdiction of the application for variance by Joe and Dodi Guyton for property owned and located at 1459 Ocean Boulevard, as the variance relief requested is not required. Seconded by Gregg Mikolaities.
Roll Call: Shawn Crapo – Yes; Burt Dibble – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Patricia Weathersby – Yes
Motion passed

The Board agreed to ask the Planning Board to clarify when a cupola requires relief and to consider lighting as part of that.

ADJOURNMENT

Motion by Burt Dibble to adjourn at 10:15 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