

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

**Wednesday, August 4, 2021
7:00 p.m. Rye Public Library**

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

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

I. CALL TO ORDER

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

Members sitting for the following business and all applications (except the application for 63 Old Beach Rd):

Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Chris Piela and Burt Dibble.

II. BUSINESS

- **Elect a Chair, Vice-Chair and Clerk**

Motion by Patricia Weathersby to nominate Shawn Crapo as vice-chair. Seconded by Patrick Driscoll. All in favor.

Motion by Shawn Crapo to nominate Patricia Weathersby as chair. Seconded by Patrick Driscoll. All in favor.

Motion by Patricia Weathersby to nominate Chris Piela as clerk. Seconded by Shawn Crapo. All in favor.

- **Minutes of the July 7, 2021**

Motion by Shawn Crapo to approve the minutes as amended. Seconded by Burt Dibble. All in favor.

- **Verizon will be withdrawing the application at 120 Brackett Road**

Planning/Zoning Administrator Reed reported that Verizon has withdrawn their application for 120 Brackett Road since substantial completion has started on 68 Old Port Way.

- **Kevin Maley, Alternate**

Chair Weathersby welcomed Kevin Maley as an alternate to the Board.

The following continuances were requested:

- **Steven & Denise Manseau, 117 Wentworth Road:** Additional time is needed for their application in order to provide the information that was requested by the Board.
Note: Chair Weathersby pointed out that this is the second continuance for this application. It is not certain that another continuance would be granted in September without a good reason.

Motion by Shawn Crapo to continue the application of Steven and Denise Manseau for 117 Wentworth Road. Seconded by Burt Dibble. All in favor.

- **Arthur & Sharon Pierce, 261-279 Pioneer Road**

Motion by Burt Dibble to continue the applications for variances and a special exception submitted by Arthur and Sharon Pierce for 261-279 Pioneer Road. Seconded by Shawn Crapo. All in favor.

- **Charles & Lyndsay Benyon, 30 LaMer Drive**

Motion by Shawn Crapo to continue the applications for an administrative appeal and variances of Charles and Lyndsay Benyon for 30 LaMer Drive. Seconded by Burt Dibble. All in favor.

- **Matthew & Susan O'Connor, 92 Old Beach Road**

Motion by Shawn Crapo to continue the application of Matthew and Susan O'Connor for 92 Old Beach Road. Seconded by Burt Dibble. All in favor.

III. APPLICATIONS

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

2. **~~Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18, request variances from §190-2.2.E for a leach field 14.5' from the side boundary where 20' is required; from 190-2.3.C(2) for a soffit 17' from the side boundary where 20' is required; from 190-2.3.C(3) for a soffit 23' from the front boundary where 40' is required; from 190-3.1.H.2(a),(b),(g) for a generator 19.9', a soffit 28', a foundation 30', a leachfield 86', a septic tank 77', a porous drive 25' from wetland A where 100' is required; from 190-3.1.H.2(a)(b),(g) for a septic tank 83' for soffits 86' and 88' and a porous drive 75' from the wetland across the street where 100' is required; from 190-3.1.e for 79 trees to be cut that are >4" in diameter and relief from Building Code §35-14.B(5) for septic system 14.5' from the side boundary where 20' is required. Property is in the Single Residence District. Case #25a-2021.~~**
 - *Withdrawn*
3. **~~Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18, request a special exception from §190-3.1.G & §190-3.1.H.2(f) for a pervious driveway 25' from the wetland A. Property is in the Single Residence District. Case #25b-2021.~~**
 - *Withdrawn*
4. **John St. Cyr, Trustee, Saint Realty Trust for property owned and located at 21 Vin Mar Court, Tax Map 8.4, Lot 34, requests variances from §190-2.2.D(1) for two family homes on one lot; and from §190-2.3.A for two family homes on one lot. Property is in the Single Residence and Coastal Overlay Districts. Case #30-2021.**

Attorney Monica Kieser, representing the applicant, presented the application. She explained that many years ago, the 4.92-acre lot was part of a subdivision in the 1970's. The subdivision was revoked in 1993 when an attorney, on behalf of a perspective owner, had the subdivision declared void. John St. Cyr purchased all of the lots as one big parcel and constructed the existing home. She noted that Mr. St. Cyr's daughter would like to be close by and is hoping to make a home near her father. She pointed out that there is a fair amount of wetland around the existing dwelling. While in Rye there can be an attached accessory dwelling unit (ADU), it is not feasible to expand the existing dwelling. It is already set up the way it is and there are significant wetlands surrounding it. She noted that Rye does not permit anyone to seek a variance from the conditions of the standards for the ADU. Mr. St. Cyr cannot seek a variance from the condition that the ADU has to be attached. In considering all of that, as this is almost a five-acre lot, it was decided to seek relief for a small second dwelling. The location for the second dwelling was chosen because it is away from the other wetlands. It is compliant with the closest wetland buffer and is dimensionally compliant in terms of setbacks. Also, the location is closest to the existing sewer line on Vin Mar Court. The goal is to create a second dwelling and connect to the existing sewer line. The new proposed home will be served by a well. Mr. St. Cyr is still considering whether to connect the home to water, in order to simply things; however, that has not yet been settled. She pointed out that there are not a lot of lots of this size in the area.

Henry Boyd, Millennium Engineering, explained that the lot is about 5-acres in size. A good deal of the area in the back is wetland. Sergio Bonilla, from Mission Wetland and Ecological Services, was hired to delineate the wetland to see what could be built. The first question was whether a structure could be built that would comply with the setbacks to the wetland areas without having to apply for relief. (He pointed out the 75' wetland setback on the plan. He also pointed out the building setback.) He noted that there is plenty of room to site a house. The house being proposed is a very modest home. There would be about 1,000sf of dwelling increase. The total square footage with the garage is about 1200sf. He continued that they wanted to demonstrate on the plan that a well could fit on the lot. However, Mr. St. Cyr will probably approach the Water District to see if public water can be brought to the home. There is an existing sewer manhole with sufficient depth to get a gravity flow service from the new house into the main. He pointed out that all the wetland setbacks and sewer requirements are met. It is a benign request, as it is a very large piece of land. The chosen location for the proposed home is clearly the friendliest spot for it to be. He noted that it is bit of an odd situation where there is no frontage. At one point, there was frontage. In 1970, there was a survey that was done that created six lots and those were merged. Now there is an abundance of land with very little frontage. Though it is possible to subdivide the land, there would be a tremendous amount of impact to bring a road in. He pointed out that if this were to be built, the dwelling coverage on the lot would be 1.1%.

Attorney Kieser noted that Richard Gasparoni, 18 Vin Mar Court, sent a letter of support. She reviewed the criteria for granting the variances.

- In regards to lessening congestion in the streets, this is a very big lot on a dead-end street. Adding a small home will not have a negative impact. It will be a new code compliant additional home on a 5-acre lot, which will be served by well and town sewer. The applicant asks that town sewer be made a condition for the variances. The proposal has gone before the Sewer Commission. However, it has to go to the BOA first and they also need to speak with the engineer about the technical aspects. Attorney Kieser noted that the only way this works for Mr. St. Cyr is if he can connect to the sewer. She reiterated that he is considering connecting to water, as well. This will be a game changer in terms of promoting health and general welfare, given the concerns that typically exist around development near wetlands. Also, the large lot, lack of traffic impact, and other concerns around general health and welfare, will not be negatively affected by granting the variances. There will not be any negative impact on light and air. The land is not going to be overcrowded. It is well over three times the minimum lot size in this zone. There won't be a considerable concentration of population. Attorney Kieser pointed out that the existing home will be served by septic and the proposed home will be served by sewer. Both of the homes, as proposed today, would be served by wells.
- The proposal does not diminish the surrounding property values given that it will be tucked into this large lot. Nobody is going to see that there is a second dwelling. Furthermore, it's dimensionally compliant and will not have an impact on anyone. Mr. Gasparoni, who is the abutter that would be mostly affected, enthusiastically supports the proposal.

- Denial of the variance would result in an unnecessary hardship. There are special conditions that distinguish the property from others in the area; notably, its size and the wetlands on the lot, specifically the wetlands around the existing home which prevents the possibility of any expansion.
- No fair and substantial relationship exists between the general public purpose of the ordinance and its specific application. Use restrictions exist to shield adjacent properties from incompatible uses and preserve the character of the neighborhood. There is an additional detached dwelling proposed. However, given the lot is so large and located at the end of a dead-end street, abutted by primarily undeveloped lots or other oversized developed lots, the proposal is not going to alter the characteristics of the area and it is not incompatible. In balancing Mr. St. Cyr's rights to develop against the regulations, there is no fair and substantial relationship.
- The proposed use is reasonable. When the use is permitted it is deemed reasonable. If the two dwellings were fully incorporated, it would be permissible with one of them being an accessory dwelling unit. The proposal being presented is essentially the same idea in separate structures with overall residential use. Overall, the proposal is reasonable and denial would result in an unnecessary hardship.
- Substantial justice is done. If there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to Mr. St. Cyr not outweighed by gain to the general public is an injustice. Given the large size of the lot, where it is tucked at the end of the street, and the proposed dwelling is outside of the wetland and inside all the appropriate setbacks, there is no benefit to the public in denying the application. However, the hardship to Mr. St. Cyr by denying would be significant.

Vice-Chair Crapo asked why the existing home was not hooked up to sewer. The only way to have been exempt from hooking up to sewer would have been to almost have a new system when the sewer tie-ins happened, which must have been 20 to 30 years ago.

Attorney Kieser replied the existing home was constructed in roughly 1999.

John St. Cyr, applicant, clarified that the home was built in 1997.

Attorney Kieser asked if there was any discussion at that time about connecting to sewer.

Mr. St. Cyr stated that the driveway is over 400ft. He is not sure that sewer was on Vin Mar Court, but the reason for not hooking up would have been because of the distance.

Mr. Boyd explained that hooking the existing home up to sewer has not been considered because the system functions well. He believes there would also be a need for a force main to push it up to the street. It would be a tremendous amount of work to do that and it would have to all be done within the wetland buffer. There is also a culvert under the driveway, which would cause challenges. If the existing septic system were to fail or have problems, some of the technologies available nowadays to replace the septic would essentially be putting clean effluent into the ground. He pointed out that the risk to the environment by connecting to the sewer is worse than leaving the "sleeping dog".

Referring to the gravel drive, Vice-Chair Crapo noted that it transitions at the pillars. He asked if Mr. Gasparoni has an easement because he is beyond the end of Vin Mar.

Attorney Tim Phoenix, on behalf of the applicant, explained that originally this was a subdivision, so that was part of the street. He doesn't think much thought was given to the fact that it was never built by the Town so it became a paper street, which means the two owners own to the middle of it. Mr. Gasparoni has the right through a prescriptive easement to utilize that portion of Mr. St. Cyr's property to access his home.

Mr. Boyd stated that he concurs with Attorney Phoenix. When the subdivision was vacated, Mr. Gasparoni has rights at least to the center, but may also have an easement by necessity to get to his property.

Attorney Kieser explained that Mr. Gasparoni's deed doesn't have any reference to an easement. It existed at the time of the 1971 subdivision.

Chair Weathersby commented that he might own 20ft of the paper street, but Mr. St. Cyr would have the right to cross that.

Attorney Phoenix stated that when the subdivision was abandoned, they probably should've continued Vin Mar to the end of Mr. Gasparoni's lot.

Mr. Boyd noted that in looking through the records, there is no written easement recorded at the registry, but he certainly has rights.

Chair Weathersby asked if Mr. St. Cyr is open to a condition that the proposed home remains under the same ownership, as it is being presented as a detached ADU.

Mr. St. Cyr replied that it is going to be set up under the same ownership anyways, under a trust, which will own the entire 5-acres as it does now. He agreed with the condition.

Alternate Dibble asked if there is design space to put a septic on the parcel.

Mr. Boyd replied that he believes there is space. The State requirement is 75ft from the wetland and that can be met. However, the goal is to be friendly to the Town, neighbors and the environment.

Alternate Dibble asked if there is any possibility that the home could not be connected to sewer service.

Mr. Boyd replied that he cannot answer that because he has not had those discussions.

Alternate Dibble pointed out that if this is conditioned upon connection to sewer and that is not available, the proposal will be back before the Board.

Chair Weathersby noted that the Board would have to know exactly where the septic is going to go. The house could not be built without a sewer connection approval.

Referring to the area on the plan where it is believed that the septic would be located, Mr. Boyd explained that he feels comfortable with this location because of the distance to the setbacks. The house could actually be pushed further back and still meet the 75ft setbacks. Septic test pits have not been done in that area yet; however, size wise and location wise, it would absolutely fit.

Attorney Kieser stated that Mr. St. Cyr has had some preliminary discussions with one of the sewer commissioners who said that there should not be any problems. She continued that she went to the Sewer Commission meeting on June 8th and presented the general idea. The commission had similar questions as the Board about the paper street. They also had questions about things being pumped to the sewer or gravity fed. It was speculated that the existing dwelling didn't connect because it was over 200ft from the sewer connection. The commission provided a checklist of specific technical issues they would be looking at. The expectation is that this will be able to connect to sewer.

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

Jeff Gardner, Rye Conservation Commission Member, noted that RCC abuts the land. This is the first time the commission is hearing of the project. The commission would like to have the project come before them.

Chair Weathersby commented that she does not think they have to go before RCC because there is no wetland relief being requested.

Mr. Gardner pointed out that seeing a major project like this and being told that the 15ft elevation line represents the wetland that wasn't delineated, raises some red flags.

Attorney Kieser noted that the area in the back, where the wetland wasn't delineated, is not being developed. The area near the proposed home, where the disturbance is likely to occur, has all been delineated by Sergio Bonilla and it's all outside the wetland buffer. She pointed out that an abutter notice was provided to the Town of Rye, who is the owner of the abutting property. She agrees that because no wetland relief is being requested, they are not required to copy RCC on the application.

Hearing no further comments or questions, Chair Weathersby closed the public session at 7:56 p.m. and opened to the Board for discussion.

Member Driscoll asked for clarification on why they can't ask for a variance for a detached ADU (190-5.6).

Chair Weathersby explained that ADU's go to the Planning Board now. At one point, the Board was instructed by counsel that variances from performance standards could not be granted. This would require ADU's to be attached. She pointed out that the Board can attach conditions to meet the requirements.

Member Driscoll stated that as he looks through the ADU requirements, it seems like once they decided it wasn't going to be an ADU, they pushed things a little bit larger. That was the one concern that he had. If there starts to be two houses on one lot, it will make the Board's job a bit harder. As far as this proposal, it is a large lot and it seems to fit in with the neighborhood pretty well. He does not think it would stick out in there at all. He would love to see it an ADU and abide by as many of the requirements as possible. However, in looking at the five criteria, he cannot pinpoint one that he would clearly vote against.

Vice-Chair Crapo commented that there are properties that have a large detached barn with the upstairs converted into an ADU. For whatever reason, the Planning Board is not contemplating those. To him, this is almost like that. He understands what Member Driscoll is saying about limiting the size; however, he is viewing this as not necessarily as an ADU but as a second home on the lot. This is a very unique situation. This is at the end of a cul-de-sac, and at the end of a dirt road. People would barely even know there was a house back there. He doesn't see that there would be a neighboring toppling affect by adding a house here, as this is very spread out. He does not see a problem with the proposal. He agrees with the idea of having a deed restriction to keep it in the same ownership, so they can't later ask for it to be subdivided.

Member Piela stated that the Board recently had a case before them with a garage and apartment above. He was also thinking about whether this should be conditioned to no more than three occupants and how that would be enforced. The condition could be made, but it doesn't seem to make a lot of sense. He continued that the plan, as presented, makes a lot of sense. The structure looks like it is put in the best place it could be located. He does not have a problem with the proposal.

Alternate Dibble stated that it has occurred to him that people ask for bigger pretty frequently. He does not like when people ask for bigger when it is more bulk or encroaching on adjacent properties. This looks to be a very modest two-bedroom dwelling that will be totally out of sight. To make a livable space for a family is something that he can be in favor of. He maintains the position that this should probably not be conditioned upon the sewer connection. This would prevent the applicant from having to come back and reapply to the Board. He commented that it seems the conservation land is remotely impacted by what's here. It is hard for him to envision how the conservation land would be impacted by what is developed on this particular parcel. He would leave it to the chair to propose the wording for assuring that this stays in the same ownership.

Alternate Chororos asked if this would ensure that it doesn't become a rental.

Chair Weathersby noted that as it is right now, they can rent it out. She asked the Board if the rental would change anyone's analysis.

Vice-Chair Crapo commented that someone can buy a house and rent it out or live in it.

Member Driscoll pointed out that an ADU specifies there cannot be short term rentals. It has to be three months or more.

Chair Weathersby noted that this could certainly be added as a condition.

Referring to Alternate Dibble's comment about the development of the parcel not impacting the conservation land, Vice-Chair Crapo stated that development of the existing home could impact the conservation land. As far as this proposal, he agrees that it would not be impacted.

Chair Weathersby commented that it is unfortunate that the Conservation Commission didn't receive the notice that was sent to the Town until recently, if at all. With that said, the proposal is acres away and its entirely out of the wetland buffer.

Alternate Brousseau stated that it not going as an ADU is comforting. Precedent setting of pushing boundaries would be a concern if it were to be an ADU.

Chair Weathersby stated that she never really wants to see two single family homes on one lot; however, this lot is so unusual and was originally subdivided into six. Its location is at the very end of Vin Mar. The proposal meets all the setbacks for the wetlands. Given the amount of space available for a building envelope, she does not feel as though it needs to be limited to the 1200sf as an ADU. She would like to see it remain under single ownership. She also would be in favor of a condition for no short-term rentals. After hearing everything about sewer versus septic, she is convinced that if they couldn't connect to sewer, they could get a septic in there.

Vice-Chair Crapo stated that the general feeling of the Town is to get away from septic and go more towards sewer. He would be more in favor of requiring sewer.

Chair Weathersby asked the members their thoughts on suggested conditions: 1) single ownership; 2) no rentals for less than three months; and 3) sewer connection.

Member Piela asked if they should add no more than three occupants.

Chair Weathersby commented that because of the size of the home and its location, she does not feel it would be necessary.

Member Driscoll stated that he would condition it on ownership and short-term rental.

Vice-Chair Crapo stated he is in favor of conditions for the connection to sewer and ownership. He does not think the short-term rental condition is needed.

Alternate Dibble stated he is not in favor of the sewer connection and the short-term rental conditions. He is in favor of same ownership.

Member Piela stated he is in favor of sewer and in favor of common ownership. He does not think the rental condition is enforceable.

Chair Weathersby commented she is in favor of all three conditions. Based on the Board's poll vote, she noted that the proposed conditions will be single ownership and sewer.

Chair Weathersby called for a vote on variances to 190-2.2.D(1) and 190-2.3.A:

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

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

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

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

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

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

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

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

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

Patrick Driscoll – Yes
Shawn Crapo – Yes
Burt Dibble – Yes
Chris Piela – Yes
Patricia Weathersby - Yes

Motion by Burt Dibble to approve the application of John St. Cyr for property owned and located at 21 Vin Mar Court for variances to §190-2.2.D(1) and §190-2.3.A for two family homes on one lot with the conditions that the new structure be connected to sewer service and the two dwellings will remain under common ownership. Seconded by Shawn Crapo. All in favor.

Note: Patricia Weathersby recused herself for the following application. Shawn Crapo stepped in as acting chair. Alternate John Mitchel was seated.

5. **Aloha Properties, LLC, 159 Main Street, Suite 100, Nashua NH for property owned and located at 63 Old Beach Road, Tax Map 8.4, Lot 134, requests variances from §190-2.4.C(1) for a retaining wall 2.1', a generator 9.8', a rinsing station 17.5', a house 19.2' and a pervious patio 8.1' from the rear boundary where 28.3' is required; from §190-2.4.C(2) for east/right steps 7.0', right overhang 6.5', a condenser 7.3'/8.4' and a retaining wall 1.0' from the side boundary where 20' is required; from §190-2.4.C(3) for a retaining wall 4.9' from the front boundary where 21' is required; from §190-2.4.C(5) and §190-3.4.E for dwelling coverage of 21.4% where 15% is allowed; and for lot coverage of 33.4% where 30% is allowed; from §190-3.1.H(2)(a)(f) and (g) for a retaining wall 2.8' and other structures in the 100' buffer; and from §190-6.3.B for**

destruction and rebuild of a non-conforming structure. **Property is in the General Residence, Coastal Overlay District and SFHA Zone AE(13). Case #31a-2021.**

6. **Aloha Properties, LLC, 159 Main Street, Suite 100, Nashua, NH for property owned and located at 63 Old Beach Road, Tax Map 8.4, Lot 134,** requests a special exception from §190-3.1.G(2), §190-3.1.H(2)(f) and §190-7.1.A(3) for a driveway in the wetland buffer. **Property is in the General Residence, Coastal Overlay District and SFHA Zone AE(13). Case #31b-2021.**

Attorney Tim Phoenix, representing the applicant, presented to the Board. He noted that the lot is fully developed and is 8,898sf. There is a 2.5 story home on it that covers 1,410sf. There is a detached garage right up against the property line with a paved driveway. There are other impervious surfaces and an outdoor shower. The intent is to take everything off the site; existing home, driveway, garage, shower and other impervious surface. They are proposing to build a new home, which will have a permeable driveway and a permeable deck in the back. There will be a new garage which will be attached to the house. A fair number of variances are needed because the lot is so small and also because of the existing conditions. Attorney Phoenix pointed out that his submission stated that the property is in Flood Zone AE(8); however, it is Flood Zone AE(13). The notice is correct. He continued that while all the variances are needed, they actually improve existing conditions in almost every respect. The new footprint is 1,811sf. In addition to the size, the design complies with full flood compliance. The flood zone is AE(13) and in Rye the finished floor has to be 2ft above, so it will be at 15ft. This will be done by bringing in some fill and putting in a retaining wall around the outside to lift the house up to meet the 15ft elevation requirement. Overall impervious coverage will be reduced. The dwelling coverage in the Coastal Overlay District is 15% and 30% overall. The proposal does not meet the 15% for the dwelling. The existing home is just over 15%. However, in adding the detached garage to the existing home, the coverage is more than the proposed dwelling. The overall coverage is being reduced from approximately 38.8% to 33.4%.

Attorney Phoenix stated that 28.3ft is required, which is one-quarter of the lot depth. The garage is less than a foot from the rear yard and the shower is 7ft. The retaining wall is close to the lot line, but everything else will be an improvement over the setback distances today. A setback of 21ft is required for the front yard, which is the average of the lots on either side. For the proposed home, the steps will be 23.5ft and it's 29.2ft to the drip edge of the new house. For impervious coverage, there is a 15% limit for the dwelling with an overall limit of 30%. Right now, the house is at 15.8% for the dwelling and 38.8% for overall. The proposed home will be at 21.4%. While it is over the limit, it's less than the combined house and garage that exists today. The overall coverage is being reduced from 38.8% to 33.4%. Today, there are non-conforming front, rear and side yard setbacks, and non-conforming dwelling coverage today. The proposal will increase the yard setbacks and decrease the lot coverage. In addition, there will be stormwater treatment, which is not there today, and the home will be flood complaint.

Attorney Phoenix noted there are two Conservation Commission letters submitted with the packet. The first site walk with the RCC was last December and they were not keen with the proposal. Corey Colwell wrote a letter explaining the purpose of lifting the house, instead of putting it on piers. Subsequently, there was another meeting with RCC. A second letter has

come in from RCC and they are essentially in support. RCC has made the following recommendations: 1) Pervious patio on the rear made smaller so a vegetative buffer of native plants can be planted along the boundary to protect the abutting wetland. He noted there are significant plantings proposed. The Tosis are amendable to reducing the patio size at 10%. 2) Trees to be planted in the front where stormwater can be directed. Attorney Phoenix pointed out there is one tree in the front. Mr. Colwell has stated that there really cannot be more. 3) The plants should have an 85% survival rate after one year. The Tosis are fine with this. 4) Generator and propane tank to be sited as far away from the wetland as possible. (Attorney Phoenix pointed out the proposed location on the plan.) He explained there is really no other place to put them that would be feasible or aesthetically pleasing. The Tosis would prefer to leave them where they are.

Corey Colwell, TF Moran, explained that in 2021, FEMA changed the flood maps and this site went to an AE(13) Zone. The existing house on the property is at elevation 11. FEMA says that the living space and all mechanicals have to be at elevation 13 and Rye requires an additional 2ft of freeboard. Living space and mechanicals have to start at elevation 15 and its currently at elevation 11. In order to be compliant, the existing house would have to come up 4ft. There are two ways to do that; 1) put the house on stilts; or 2) bring in fill. The proposal is to bring in 2ft to 3ft of fill. The first reason is to get the house up past the flood zone; however, there is also an attached garage. If the house is at elevation 15 on stilts, fill would still need to be brought in to get the garage up to elevation 10. There would need to be a retaining wall between the garage and the house, in addition to the stilts. It would be a situation where the garage is on grade going to a house on stilts. It would not be aesthetically pleasing and there would be a retaining wall to contain the fill. He continued that in order to control the stormwater and roof runoff, the fill accomplishes that. In the back of the property, the water table is 18" below grade. In the front the water table is at 36" below grade. If the house was put on stilts and the front of the lot stayed on grade, there wouldn't be enough separation from the water table to do a pervious driveway, pervious walkway and pervious patio. If the house were on stilts, the driveway, walkway and patio would have to be paved because the separation for treatment is needed. The pervious features have about 22" of stone below. The bottom of the stone has to be above the water table at least a couple of feet. The fill allows for this to be accomplished. It also gives some storage volume for the stormwater. By bringing in 2ft to 3ft of fill, it allows for stormwater to be contained on site. The impervious area can be reduced because of the proper separation between the bottom of the stone to the water table. That allows stormwater runoff to be reduced in all directions. Mr. Colwell noted that a drainage analysis was done pre and post construction. By bringing in fill and reducing impervious features, stormwater runoff is being reduced in all directions. In his mind, the only way to do this project is with fill. It allows for compliance with FEMA, allows for proper treatment and allows for the stormwater to be stored on site.

Mr. Colwell pointed out that the retaining wall is about 1.5ft to 2ft as it runs towards the back of the lot. At its highest point, it's about 3.5ft high and goes back to 1ft flush in the front. This will allow for the fill to be contained on site and stormwater to be reduced.

Member Driscoll commented that it's within 3ft of the wetlands in the back corner. He asked if there is any benefit in having an impermeable surface that close to the wetland. Will the permeability create a path for whatever is on the patio to travel into the wetlands?

Mr. Colwell explained that it is designed so stormwater from the roof goes down, not laterally. Without it, there would be lateral movement of stormwater. Today, there is more stormwater going into the wetland than if this were to be elevated.

Member Driscoll asked if the project has more or less effect on the wetlands, as compared to what is on the lot now.

Mr. Colwell explained that the site today has more affect on the wetland than post-construction because of the separation to water table and there is more impervious area. Greater impervious area means more runoff off site. The impervious area is being reduced by roughly 5.5%, approximately 500sf. That alone will have a reduction in runoff.

Vice-Chair Crapo noted that one of the Conservation Commission's concerns was the retaining wall possibly diverting the flow of water from adjacent properties. He commented that at the rear of the property is the garage at ground level. Right now, if there is water currently flowing from the neighbors in that direction towards the wetland, it would be rotting and wrecking the garage. He asked if there is flow that would potentially be blocked and if there would be a need to make provisions in the wall to prevent blockage of the flow.

Mr. Colwell explained the road is higher than the back. The flow is naturally to the back. There is really no deterioration from flow.

Charlie Hoyt, Architect, stated that they had discussed putting weep holes into the retaining wall. However, Mr. Colwell has convinced him that because of the way the water flows, the site will keep all the water generated by the roof and adding fill is the best solution. There is a lot of engineering involved with this project. He continued that he had to be convinced or the house would've been on piers. The intent was to keep this house as humble and small as possible, so it would fit in with the neighborhood.

Vice-Chair Crapo commented that on the inland side, there is more tidal and a rise and fall in the waters. He has never really observed the tidal aspect of the wetland that this is connected to and it seems to be the catchall for the entire slope of land. It's like a trapped water wetland. He asked if there is a benefit to the wetland from the storage or if there is a detriment to putting water towards the wetland?

Mr. Colwell replied there will be less water post-construction than what exists there today. That alone will have a better effect on the wetland.

Mr. Hoyt explained that this is not the first design they have come up with. This is the second one. He was pleased to see that they could develop a house in keeping with the neighborhood. It's a relatively modest home around 3,000sf. The ridges of the house have been kept below 28ft.

Mr. Colwell pointed out that there will be flood vents, which are needed in this zone.

Alternate Dibble asked if there will be a crawl space.

Mr. Hoyt explained that originally it was going to be a crawl space, but they could do one of two designs. If there is a crawl space, the vents have to be put in. If it is all filled in, the openings would just be aesthetic. The garage would still need flood vents.

Vice-Chair Crapo clarified it is a crawl space at most.

Mr. Hoyt confirmed.

Alternate Dibble noted that the retaining wall looks like it slopes to grade as it goes towards the front of the lot.

Mr. Colwell confirmed.

Alternate Dibble asked about the foundation for the retaining wall.

Mr. Hoyt replied it is a frost wall that goes down about 3ft.

Alternate Mitchel stated he is not clear what FEMA says about using fill in the AE Zone. He asked how the retaining wall is built. Is it built specifically to withstand flooding? He is looking at the AE Zone as a flood zone. What will happen to the wall when it floods?

Mr. Colwell explained that in an AE Zone, FEMA allows buildings to be built on a slab or crawl space. If it's a V Zone, FEMA wants it on stilts. There are a lot of homes being built in the AE Zone that are not on stilts.

Alternate Mitchel asked if this is happening in Rye.

Mr. Colwell replied that he does not know if there has been construction in the AE Zone in Rye recently. In other communities, homes have been built in the AE Zone not on stilts. In regards to flooding and the retaining wall, he explained that if the site floods, there will be more fill and more storage. He continued that there are houses across the road and the ocean is back a ways. He pointed out that he has not seen flooding here and FEMA says there is a 1% chance of that happening. If there is flooding, the size of the wall is not big enough for it to collapse.

Alternate Mitchell asked about wave action. He commented there is a channel coming from the ocean right at the house.

Mr. Colwell explained that in an AE Zone, FEMA says the maximum wave action is 1.5ft.

Alternate Mitchell asked if this is being considered when building the wall.

Mr. Colwell confirmed.

Mr. Hoyt explained that the structural engineers will probably design the retaining wall to have a 5ft footer where it's the tallest. It's going to be designed so it doesn't look like a structural wall. It's going to have a fieldstone front overlay. It will be designed to be able to handle large storms.

Alternate Mitchell asked what would happen to the properties on either side if there was flooding action.

Mr. Colwell explained that if the property is flooded, most of the stormwater is going to flow towards Old Beach Road.

Alternate Mitchell asked if that will be the same for the property on the right.

Mr. Colwell confirmed.

Referring to the retaining wall, Alternate Mitchell stated this is unique because a lot of houses are being built on piers, but those may be in the V Zone and not the A Zone. It's almost like this is setting precedent right now by doing this. It will set this property apart from the other properties along that road.

Mr. Colwell explained that the purpose and function of the retaining wall is to contain the fill on site such that there will not be steep slopes and the fill will not have to stop at the edge of the house. The retaining wall will allow for the lot to be more level.

Vice-Chair Crapo asked if this is a solid concrete retaining wall or a segmented landscape block retaining wall.

Mr. Hoyt replied that he does not think a segmented block wall would work structurally and it would fall apart over time. He envisions this to be a structural wall with a stone veneer, so the concrete will not be seen.

Vice-Chair Crapo commented that he was originally envisioning a segmented wall so the water can flow in and flow out. It wouldn't hold as much along the side. Being only 3ft long at the rear, he sees that right adjacent to the house there would need to be the strongest abutment. However, on the driveway side, he doesn't think there would be a need for poured concrete.

Mr. Hoyt stated that to do a reinforced concrete wall as the core, and a veneer fieldstone mix, will make it look like a New England stone wall. In his mind, weep holes may or may not benefit this particular construction. Once the structural engineer is involved, there may be weep holes, if that is needed.

Vice-Chair Crapo commented that he is thinking it might make it less of a bathtub effect and allow things to push out.

Mr. Hoyt replied this is where the weep holes would come in, if they are needed.

Alternate Dibble commented that the idea is to actually keep water on the property.

Hearing no further questions for Mr. Colwell, the presentation was turned back over to Attorney Phoenix.

Attorney Phoenix noted that he did the math quickly and the building coverage is 1811sf or 20.4%. He also noted that a lot of the questions that were asked are the same that were asked by the Conservation Commission. They were eventually convinced by Mr. Colwell's explanation about this project and how it is going to work. Attorney Phoenix reviewed the criteria for granting the variances.

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. All of the purposes are met by removing more impervious surface; in favor of, less impervious surface, more stormwater treatment and full flood protection according to FEMA. Considering the benefits of removing the existing home, detached garage, outdoor shower and other impervious surface; in favor of, the home itself is a little bit larger than the existing home but the overall size of this house with the garage is less than the existing house and detached garage combined. This will be an improvement over existing conditions. The impervious driveway is being replaced with pervious surfaces; as well as, the walkway and patio out back. Many small homes in Rye along Old Beach Road, are being replaced due to age and condition. This home will fit in well with the neighborhood. The variances don't change the essential character of the locality and don't threaten the public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. The only variance that does not improve existing conditions is dwelling coverage at 20.4%, while the existing dwelling plus garage is at 22.7%. Given all the improvements and having an aesthetically pleasing home, this is not going to diminish surrounding property values.
- Special conditions exist. The lot itself is a special condition. The proximity to the wetlands is a special condition. The requirement to meet elevation 15 for the first floor because its in AE(13) is a special condition. The location of the existing improvements against the lot lines create special conditions, which are being made better.
- Dwelling and overall impervious coverage are to prevent overcrowding of land, to give sight lines, give adequate air and light, and provide stormwater treatment. This project betters what is there today in all respects. There is no reason to apply the strict requirements of the ordinance. Care has been taken to provide protect for the neighbors, protection to the wetland and protection from flooding. In virtually all respects, the variances improve existing conditions and create more air, light, separation from neighbors, flood protection, storage and stormwater treatment.
- The proposed use is reasonable. It's a residential use in a residential zone.
- Since the lot is being improved and there will be flood protection and stormwater treatment to protect the wetland, there is no harm to the general public in granting the variances. Denying the variances will disallow the Tosi Family the chance of a redevelopment of an older home that needs to be replaced. The harm to the Tosis, if these were denied, far outweighs any harm to the public if they are granted.

Attorney Phoenix noted that the requirements for granting the special exception are listed in his submission. There has always been a question in his mind if whether a special exception is needed in a circumstance where a variance is also needed. He pointed out that driveways are exempt from setback requirements, but not exempt from excavation and fill. In order to take the safe route, he has asked for the special exception. The special exception is not injurious nor detrimental to the neighborhood for the reasons that have been stated. All the other requirements of the special exception had to do with whether there is any other location for the driveway and what can be done to minimize impact upon the wetland. There is no place to put the driveway that is not within 100ft of the wetland. For that reason, a special exception should be granted.

Referring to the retaining wall, Member Driscoll stated that typically a footing is about a foot wider than the retaining wall. It looks like the retaining wall is 1ft off the property line. If that's the case, the over dig is going to be on the abutter's land. Also, its going to be really close to the wetland. He asked if there has been any thought on this.

Mr. Hoyt explained that the property line will be delineated and the over dig cannot go onto the other property.

Alternate Dibble asked if the retaining wall might shrink.

Mr. Hoyt replied yes; but also, the footer might be next to nothing.

Vice-Chair Crapo pointed out that they are talking about having veneer. Potentially, the concrete of the retaining wall is going to be set further back. The veneer still has to stay within the property line.

Vice-Chair Crapo opened to the public for comments.

Jeff Gardner, Rye Conservation Commission Member, stated that the first time the Commission went to the site, they heard about enormous amounts of fill going deep into the buffer zone. Mr. Colwell did a good job explaining the engineering to RCC. RCC's letter might imply that the Commission was all for the project, but the Commission was actually razor-thin split on saying they would like to see piers versus the fill because it seems like a huge impact. The other concern was the future of the neighborhood. As oceans rise, having piers versus fill is something that should be considered.

Peter Brothie, 67 Old Beach Road, commented that he did not receive a notice of this meeting. He received a plan that was emailed to him, but that was just on Monday. He stated that he has the same concerns about the retaining wall. There is a very, high water table in this area. His house has a full basement and his sump pumps are very active. The rear yards are very wet and take a couple of days to dry out. He is concerned that there will be the affect of water being pushed onto his property. He is also concerned about the retaining wall only be 12" from his lot line. He noted there is a natural vegetated fence between properties from about where the garage is proposed to the rear. It can't imagine that vegetation will not just die and 12" seems to be close.

Vice-Chair Crapo asked Mr. Brotchie if he received notice back in June. He pointed out that a new notice would not have been sent for this meeting because this application was continued.

Mr. Brotchie replied no. There was a signature request slip in the post office box, but it was returned.

Vice-Chair Crapo pointed out that the notice was sent June 22nd. An applicant only has the obligation to send the notices, but the Board can't force people to receive it.

Mr. Brotchie commented that he is very supportive of the project. However, he does not know the effect of these things. He feels there is a significant possibility there may be more water in his basement. The back of his yard could flood more and take a lot longer to drain and dry out. Those are his concerns and he would like to have time to study that to see what the effects will be on 67 Old Beach Road.

Speaking to the applicants' team, Vice-Chair Crapo asked if they can get a firm delineation on the distance from the property line to the face of the retaining wall. Even if this were to be considered the same as a fence, the decorative fascia would need to be at least 1ft back. He asked if they would need redesign time to make sure it's right.

Mr. Hoyt replied that they would keep the face 1ft back. It could be put 14" back, just to be safe. If the wall has to come 2" or 3" into the property, it is not going to be a detriment to the project.

Attorney Phoenix stated that he believes the wall is at least 1ft off the property line.

Vice-Chair Crapo pointed out that the footing/subsurface piece will be closer to the property line.

Mr. Hoyt replied it doesn't have to.

Attorney Phoenix stated that his interpretation of the zoning ordinance is that a fence can be placed 1ft from the property line. The idea is the fence itself should not be crowding the neighbors, but what's under the ground can. He would rather not put this application off.

Mr. Brotchie commented that he is supportive of the project. However, a retaining wall, with however many cubic feet of fill, is different from a fence. A privacy fence, made out of plastic or wood, is not a concrete retaining wall with footing with however many yards of fill in the middle that is going to act as a diverting wall for water rushing down and being diverted onto his property. He just can't take it on faith by their engineer. He needs to get some assurance that his property is not going to be adversely impacted.

Vice-Chair Crapo commented that he understands the concern. Every property in that neighborhood has a valid concern about water and drainage. He continued that his understanding is that stormwater coming into the property is not purging out onto abutting lots. Its being forced to stay in and go down. It may prevent water from the abutting lots from coming in to the proposed lot. He does not see this as necessarily causing a torrent of water going back and forth.

Mr. Brotchie commented that he does not think anyone can predict where the water is going to go.

Member Driscoll stated that he thinks Mr. Colwell has done exactly what he was supposed to do. There cannot be water going onto abutting property and the stormwater management has to be considered. He thinks the abutters are talking about that raised grade acting as a diverter for water. Water that would be shared with three lots is now going to be diverted from that lot with a higher grade, retaining wall or not. He suggested having Mr. Colwell speak to whether he has looked at that. He thinks that Mr. Brotchie is talking about water that is coming in through the road and the neighborhood.

Patricia Weathersby, speaking as a member of the public, stated that she has been at the property when water has come down Old Beach Road and gone into the front yard and driveway during a bad storm. The water also comes up from the marsh and the wetland and the back yard does get saturated. Procedural wise, she would like to remind the Board that if they desire, they can hire their own experts to address matters they may feel need further clarification. Also, she believes retaining walls are considered structures, not a stonewall or fence, and are subject to variances.

Vice-Chair Crapo asked Mr. Colwell if he would like to respond.

Mr. Colwell stated there are two different things when talking about water. There is stormwater that is generated by a storm, which is being contained on the site. There's also the stormwater from the ocean that is going to run down the road. Any site that is higher, is going to divert that flood water onto adjacent property. If the abutters want to do improvements to their homes, they will have to comply with FEMA. Eventually over time, each house on that road is going to go up. In regards to ocean flooding, there is no question that when the site is raised, it's going to divert water either way. FEMA says that this property has the capability to flood to elevation 13. Currently, the average grade of that property is elevation 8. According to FEMA, the property could have 5ft of flooding from the ocean. If the site is raised 2ft or 3ft, the property is still going to flood. He commented there is no way to stop the storm surge from the ocean.

Vice-Chair Crapo asked if this is at the minimum height that it can be. He also asked if there is a way to design this without retaining walls. He asked if that method would help or hurt any flow or inflow from the neighbors.

Mr. Colwell explained the site is about at the minimum height that is required. The Town requires 15ft and this is at 15.2ft. The retaining wall really allows for the pervious features and stormwater infiltration. It allows the site to be built up to get the separation from the water table to provide treatment. Absent the walls, the site would have less fill but it would have a sharp slope at the mid-point of the property. Even that would have a diversion effect on neighboring properties. He does not think the diversion effect can be prevented while complying with FEMA. The retaining walls help precipitation events, but its not going to have a positive effect on a storm surge coming from Ocean.

Speaking to Jeff Gardner from RCC, Alternate Maley asked if the Commission was looking at impacts on neighboring properties.

Mr. Gardner explained that RCC is generally concerned about the wetland. In terms of that property, RCC concurred with Mr. Colwell that it is an improvement.

Speaking to Mr. Colwell, Alternate Maley asked if there is a requirement to analyze what would happen on adjacent properties.

Mr. Colwell explained that they do a stormwater analysis which analyzes current flows off the property to adjacent properties. The new features are then introduced to the site and what that does to stormwater flows to adjacent properties is analyzed. With the plan before the Board; with the new home, pervious driveway, pervious walkway and pervious patio in the back, in all four scenarios, at all four lot lines, the stormwater was reduced from this site to adjacent sites. If this is not built, there will be more runoff coming from the property onto adjacent properties.

Hearing no further comments, Vice-Chair Crapo closed the public hearing at 9:31 p.m.

Vice-Chair Crapo called for a poll vote of the Board on whether they want further information and a review by an engineer. He asked if they are comfortable with moving forward and evaluating the information that is before them.

Member Driscoll stated that more information would be helpful. He is struggling with the criteria for “values of surrounding properties are not diminished”. If five of the six abutters all raise up their homes in the same way, is the sixth abutter going to get all the storm surge? He understands that a storm surge that comes up 5ft is going to affect all the properties until elevation 13. The concern that he has is the storm surge that comes up 2ft to halfway up the retaining wall. He wants to make sure that the Board is watching out for everyone else. He doesn’t want it to become something where the neighbors are going to build a retaining wall 2ft higher and the grade of the neighborhood is changed.

Vice-Chair Crapo commented that in a sense, no one would be able to proceed forward with the new flood regulations. No one would be able to touch or renovate their house.

Alternate Dibble stated that he accepts the engineering as it has been presented. He is certain he can’t predict what’s going to happen in a 5ft flood. He thinks there is a significant advantage that on a day-to-day basis the stormwater on the property gets treated. This brings a net benefit to the land. That leaves the outstanding consideration of a 2ft flood and potential harm to the adjacent properties. To him, that feels like a lot of speculation. He is not sure it makes him want to stand in the way of the project.

Alternate Mitchell stated that he walked the site. The wetland to the rear of the lot has dual culverts, which can contain a lot of water. He just has a lot of questions. He loves the design and would love to see this kind of a house going up there. So much engineering has gone into the design. He trusts the engineering, but he really has concern for the public. The concern is for the abutters and what will happen to their yards. From the marsh on the back side, what is

going to happen when this property builds up and the next one builds up? Does it start to fill up Route 1A over to the properties on the other side. He feels he does not have enough information right now because of those things.

Member Piela stated that in looking at the location of the property, it is directly across from the access point. A wave action is going to come up that path and to the front yard of the property, which will be elevated. He is concerned how that will affect the properties on either side.

In regards to hiring an engineer to look at the plans, Vice-Chair Crapo stated that he struggles with the fact that anybody in that neighborhood that tries to do anything, is stuck with the new FEMA regulations. He does not see that an engineering study is going to give any more information. This is the first property and they are trying to follow the regulations that have been imposed on them. In order for anyone to modernize, update or keep their home from dilapidating in that area, he does not see how they aren't going down the path of everyone coming up 2' or 3'. He asked the Board if they all feel comfortable in going through the criteria to a vote. Does anyone feel they do not have enough information to make a proper decision on the vote? He noted that he feels comfortable moving forward with the information that is before the Board.

Alternate Mitchell stated that he wishes they had that additional information.

Member Driscoll commented the inherent struggle with the zoning ordinance is what setback is this retaining wall. At what point, does a fence become a structure.

Vice-Chair Crapo noted that it a retaining wall is a structure. They have applied for the variances for a structure.

Member Driscoll stated that if that reasoning is applied, the retaining walls by zoning would be 40ft apart, which would allow a lot more water to go through. He thinks he has enough information to vote based on what Mr. Colwell has provided.

Alternate Dibble stated that it feels difficult to deprive people who want to develop their property the opportunity to do so. He agrees with what has been said about finding Mr. Colwell's work to be good work and he trusts the engineering.

Member Piela stated that he would be in favor of having more information. However, he understands the rest of the Board's opinion.

Poll vote: 3 to 2 more information is not needed.

Vice-Chair Crapo noted that the applicant indicated that they were comfortable with the Conservation Commission's recommendations; except, the trees in the front. He asked Mr. Colwell to address RCC's recommendation: "Trees should be planted in the front where the stormwater from the lot is being directed."

Mr. Colwell reviewed the landscape plan and pointed out the areas proposed for plantings. He noted that they are proposing one tree in the front. He pointed out the area for the infiltration trench that will be collecting roof runoff and a tree would not be planted in the middle of that. To the right of the trench, is the sewer and water laterals that feed the building and the view from the new home out to the beach is in that area. The reason the tree is not going in that location is because it would be on the edge of the infiltration trench, it would be over the water source and would block the view to the beach. That is the reason one tree is proposed coupled with the other plantings.

Vice-Chair Crapo reviewed proposed conditions: 1) The rear patio to be reduced in size by 10% so that vegetative buffer of natural plantings can be planted along the wetland boundary; 2) one tree in the front; and 3) plants should have an 85% survival rate.

Vice-Chair Crapo called for a vote on variances to 2.4.C(1); 2.4.C(2); 2.4.C(3); 2.4.C(5); 3.4.E; 3.1.H(2)(a)(f) and (g); and 6.3.B:

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

Patrick Driscoll – Yes

Chris Piela – Yes

John Mitchell – No

Burt Dibble – Yes

Shawn Crapo - Yes

2) The spirit of the ordinance is observed?

Patrick Driscoll – Yes

Chris Piela – Yes

John Mitchell – Yes

Burt Dibble – Yes

Shawn Crapo - Yes

3) Substantial justice is done?

Patrick Driscoll – Yes

Chris Piela – Yes

John Mitchell – Yes

Burt Dibble – Yes

Shawn Crapo - Yes

4) The values of surrounding properties are not diminished?

Patrick Driscoll – Yes

Chris Piela – No

John Mitchell – No

Burt Dibble – Yes

Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
John Mitchell – Yes
Burt Dibble – Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
John Mitchell – Yes
Burt Dibble – Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
John Mitchell – Yes
Burt Dibble – Yes
Shawn Crapo - Yes

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

Patrick Driscoll – Yes
Chris Piela – Yes
John Mitchell – Yes
Burt Dibble – Yes
Shawn Crapo - Yes

Motion by Burt Dibble to approve the application of Aloha Properties, LLC, for property owned and located at 63 Old Beach Road as presented with the correction of the dwelling coverage to 20.4% and with the conditions requested by the Conservation Commission with the exception that the rear patio be reduced in size by 10%, the front plantings be reduced to one tree and the removal of condition #4.

Seconded by Patrick Driscoll.

Vote: 5-0

Vice-Chair Crapo called for a vote on a special exception to 3.1.G(2); 3.1.H(2)(f); and 7.1.A(3) for a driveway in the wetland buffer:

- **Is the special exception neither injurious nor detrimental to the neighborhood?**

Patrick Driscoll – Yes
Chris Piela – Yes
John Mitchell – Yes
Burt Dibble – Yes
Shawn Crapo - Yes

- **Is it in harmony with the general purpose and intent of the zoning ordinance and is in accordance with the general and specific rules contained within the zoning ordinance?**

Patrick Driscoll – Yes
Chris Piela – Yes
John Mitchell – Yes
Burt Dibble – Yes
Shawn Crapo - Yes

Motion by Burt Dibble to approve the special exception requested by Aloha Properties, LLC for property owned and located at 63 Old Beach Road.

Seconded by Patrick Driscoll.

Vote: 5-0

Note: Acting Chair Crapo was unseated as chair and Patricia Weathersby was reseated as chair. Alternate John Mitchell was unseated.

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

Attorney Tim Phoenix, representing the applicants, presented to the Board. He noted that this is an approximately 6.1-acre lot of about 266,000sf. The lot has 141ft of frontage on Washington Road and already doesn't comply with the 200ft frontage requirement of the ordinance. The applicants are asking to put in a 25ft wide curb cut in the road to create a lot in the rear. The lot has been in its current configuration since about 1910. It's a leftover farm lot and has been carved out from other lots over the years. This one was carved to have 141ft of frontage with it opening up to a larger portion in the back.

Attorney Phoenix explained that if this is done, the left side setback requires 20ft. If there is a left side opening, there will only be 17ft from the existing structure to the property line. He noted that the area is going to be a driveway. There will be nothing higher than ground level. Someone going by the property would not know there is only 17ft. The usual requirements for air, light, separation and sight lines will all be maintained. He continued that lot 1 is proposed to be 66,000sf. This lot has the existing house and barn. Lot 2 is proposed to be just under 199,500sf. Permits are needed for a septic for the new lot and a replacement septic for the existing home. Rye Planning Board subdivision approval is also needed. He pointed out there are a number of lots on Washington Road that don't have 200ft of frontage. There are a lot that have 100ft of frontage; however, he is not sure if any have 25ft of frontage. He continued that they feel 25ft of frontage is reasonable because it will be one driveway and one house on a very large lot. The travel portion of that driveway will only be 12ft to 14ft, so it won't be the entire 25ft. A typical right-of-way is 50ft and the travel portion is usually 24ft. The intent is met by having 25ft of width and the need is met by having only a 12ft to 14ft driveway. Referring to photos showing what the proposal would look like from Washington Road, Attorney Phoenix pointed out that it is pretty unobtrusive and doesn't change the character of Rye. There has also been some question about the effect of this upon neighbors. He noted that it is about 600ft to the property line. (He presented photos showing the relative location of the house on lot 2.) Attorney Phoenix stated that the proposed location for the driveway is an open area now. It's the way they access the back, as the land is used regularly. The opening where the driveway would go is already there.

Vice-Chair Crapo asked if the building inspector could have missed a variance for a driveway within 10ft of the lot line.

Attorney Phoenix stated that because there is 25ft to work with, the driveway could be slid over.

Chair Weathersby noted that 10ft is needed on either side.

Attorney Phoenix stated that driveways are exempt from setback requirements under the zoning ordinance. The definition of structure exempts driveways from the setback.

Chair Weathersby commented that they will have to review the driveway regulations.

Planning/Zoning Administrator Reed noted that she is looking them up as they continue with the presentation.

Attorney Phoenix continued that this is the largest lot from here to Lafayette Road. The proposal is going to limit this large lot to two houses on over 6-acres. Theoretically, someone could buy the existing home, tear it down, put a 50ft right-of-way in and possibly get three lots. As the photographs show, other than the driveway entrance, once the house is built, no one is even going to notice it is there. To suggest that it somehow violates or harms Rye's rural character with respect to the old farmlands, just isn't so given the significant distance from existing houses on Washington Road and the distance from Washington Road itself. He reviewed the criteria for granting the variances.

- The purpose of the ordinance is to lessen congestion in the street. To have two homes on over 6-acres is not going to harm congestion in the street. The frontage at 25ft is the typical travel portion of a typical town street. The home is going to be 600ft away. It is going to be an entirely to code home with a new septic system and the septic system for the existing farm house will be replaced. Safety from fire, panic and other dangers is complied with. Promote health and the general welfare is met by providing single-family homes on very large lots, served by an adequate driveway and new septic systems. The ordinance promotes adequate light and air. One home will be on a 66,000sf lot and the other on an almost 200,000sf lot. Other than a driveway entrance, which is already open, no one will know a house is back there. Two homes on 6-acres does not cause undue concentration of population. The proposal does not harm natural resources by putting one house on the back of this lot.

Since the left setback is only 3ft short of the requirement, and to the eye it will look like there is a longer distance to the lot line, and because the frontage being requested matches the typical width of a travelled street accessed by vehicles today, the requirements of the ordinance are met. The essential character of the locality is not altered and the public health, safety and welfare is not threatened.

- Granting the variances will not diminish surrounding property values.
- Special conditions exist that distinguish the property from others in the area. The lot is the largest lot from here to Washington Road. It's also very oddly shaped. The lot is very narrow at the front and very large in the back.
- Side setback requirements are to provide separation from neighbors, air, light, sight lines and stormwater treatment. The two lots together are so large that granting the side line variance for 3ft is not going to harm that intention. To allow the reduced frontage, since the opening is already there and since it is already used, adding one more home to allow the Truslows to enjoy the very large back area is simply reasonable. A special condition exists because the lot was left so large in the back with insufficient frontage in the front.
- Frontage requirements are to prevent overcrowding of land, to provide sight lines, and adequate distance between neighbors. Since there is only going to be one house out back and one house in the front, the purpose of requiring 200ft of frontage is not violated when it's compared to the rights of a property owner to develop their property as they see fit.
- The proposed use is reasonable, as it is a residential use in a residential neighborhood.
- Substantial justice will be done by granting the variances. There will be no harm to the general public by allowing a small sideline setback relief and from allowing a short frontage compared to the 200ft requirement. The harm to the Truslows would be that they could not utilize, to its full extent, the rear area.

Corey Belden, Altus Engineering, noted that test pits were done on the site. There will be a new septic for the new house and they will be replacing the system to the existing house. There are very capable soils in this area. The site would be designed to accommodate septic and do anything with stormwater that would be required. It will be a very nicely designed site.

Bill Truslow, applicant, noted that they do not have a house design; however, it would be approximately 2,000sf. By today's standards, it will be a fairly modest house.

Vice-Chair Crapo commented that it was said that the house would not be seen. However, the Strandwitz property has a house adjacent to the location for the proposed home.

Attorney Phoenix replied that there is a fairly thick woods between the properties.

Danna Truslow, applicant, stated that they have talked to them several times. Their only concern was that there might need to be some vegetative screening, which is not a problem.

Mr. Truslow pointed out that they were not opposed to the proposal.

Member Piela asked if lot 1 would have the right to use the access to get to the back of their property. He noted there is a large birch tree in that area and he doesn't think they could get around it very easily.

Attorney Phoenix stated that he is certain the Truslows would allow lot 1 to use it while they own it, but he is not sure when they do not own it.

Mr. Truslow commented that they would have no problem with the neighbors using it to access the back.

Mrs. Truslow stated that they invite the neighbors to use their property, as there are walking trails. The property is going to continue to be available to the neighbors.

Chair Weathersby asked the setback for the right side of the house on lot 1.

Attorney Phoenix replied 15.96ft.

Chair Weathersby noted there will be 15ft on one side of the house and 17ft on the other.

Vice-Chair Crapo pointed out that if those numbers are right, the scale on the drawing is off.

Mr. Belden replied that they can check the numbers.

Wendy Cofflin, 1053 Washington Road, noted that her husband measured and it's 8ft to the back of the barn.

Chair Weathersby stated that it is a legitimate concern that the Truslows aren't going to own this forever. For the folks on lot 1, in order to service their septic or get a vehicle back there will be tight.

Chair Weathersby opened to the public for comments.

Peter Flanigan, 1053 Washington Road, stated that the Truslow property is non-conforming. It is very narrow and very constricted. One of the reasons he bought his property is because the Truslow property that surrounded his property on two sides was unbuildable, which would ensure privacy and insulation. On the third side, there was also a landlocked lot, which is not buildable and ensures privacy and insulation. One of his fears, if the variance is granted for the driveway to access the back of the lot, is that someone will buy the land and have access to the landlocked lot. If the variance is approved for a building lot with 25ft of frontage, it will create a land rush. Everyone will be able to come up with 25ft to create another building lot. If a building lot was approved with such narrow frontage, it would be derelict of duty by this Board and an insult to the voters of the Town of Rye who voted for the existing zoning ordinances and the protections they provide. It's totally unreasonable to come before the Board and ask for 25ft when the requirement is 200ft. The end of Washington Road is very densely settled. There are 34 driveway cuts between the Route 1 light and the Truslow driveway, plus three side roads. Adding another blind driveway on that road is just going to exacerbate the problem. It's going to make a bad situation worse. He hopes the Board will give it due consideration and not allow such narrow frontage for building lots in the Town of Rye.

Ms. Cofflin pointed out that she left a letter with Zoning/Planning Administrator Reed last month.

Chair Weathersby confirmed that the Board has received the letter dated July 7th and have read it.

Ms. Cofflin read a letter to the Board that she had written since her July 7th letter. She stated that the Truslows claim that 116ft of frontage for Lot 1 is adequate; however, she respectfully disagrees. The existing house has virtually no side yard on the right side, which makes it all the more necessary to have a left side yard of more than 17ft. A large farmhouse and barn needs more space surrounding it to allow for things like positioning large equipment when maintenance is done, overflow parking, space for snow removal and space for a firetruck in case of fire. The lot would be so narrow that the septic area behind the house would essentially take almost half the width of the back yard. The Truslow proposal minimizes the impact of installing a road adjacent to the left side boundary stonewall. She pointed out that it could be a blind driveway when driving east on Washington Road. There is already a long driveway on the left side of the stonewall. So, putting in another one along the right side could essentially make the stonewall look like a median strip, which would be unattractive and not in keeping with Rye's character. She continued that this proposal is not for a short 3ft deviation. It's a very lengthy road, over 600ft long, cutting through a field. That is a lot of gravel and asphalt. It's a lot of construction noise. Cars would be passing through a back yard. It permanently changes and ruins the side and back yard of the existing homestead to have a long road cutting through it. It defeats the purpose and spirit of the zoning ordinances by going from bad to worse; to change a non-conforming property into an even lesser conforming property. It's also disingenuous to assume it would only be seen by the property owner, as there are several houses across the street and the two side abutters who can see it. There's already about thirty-four driveways and three roads along the first half mile of Washington Road. It's becoming an "asphalt jungle", not the scenic by-way entrance that Rye residents enjoyed.

Ms. Cofflin continued reading from her letter. If this application for a 25ft frontage road opening is approved, a new house is proposed to be sited on the narrowest portion of the property. It makes no sense to perpetuate new construction with insufficient width of frontage. With only about 100ft in width, there would be very little buffer, if any, on that portion of the property. If they shoehorn a road in to create a 4.5-acre back lot, why is a house going to be sited on the narrowest portion of the parcel close to the boundaries? She does not want a house situated in that close proximity to her boundary and pasture where it would be seen from her property and affect the views. Construction noise and development will also likely disturb the wildlife and drive deer further into her back field. She continued that the perceived hardship by the Truslows was brought upon by themselves when they purchased property that they knew did not meet Rye's zoning requirements for future subdivision. They knew the limitations, so any hardship perceived is self-inflicted. She noted that it has been well known for decades that the property is not subdividable. When she purchased her property, she felt assured of having privacy and not having new homes built around her property, knowing that it could not be developed. The Truslows come before the Board with a lawyer, invoking the constitution and the Supreme Court because they want to shoehorn a lot into the non-conforming property they purchased. She pointed out that she is all for property rights when they are within the local zoning ordinances. This application is a drastic request and an extreme stretch from the ordinances designed to protect property owners. It would set a terrible precedent and open the floodgates if Rye allowed subdivision and building with 25ft of frontage. She asks that Rye not approve this application, which provides only 12% of the frontage required for Lot 2 and 58% for Lot 1.

Attorney Phoenix stated that there is always an interplay between zoning ordinances and their purposes. If someone wanted to do a subdivision on a large lot, they don't need 200ft of frontage in order to do that. They need a 50ft right-of-way to cut a road in to access several lots out back and frontage would be created on the new road. He continued that the neighbors might have thought the land was unbuildable; however, this Board, in part, decides whether something is buildable or unbuildable. The Truslows believe that the current use of the property and the fact that they are committing to only one house in the back, deserves consideration, the same as if the existing home was taken down, a 50ft road put in and two or three houses built in back. He understands that the frontage is far short from the 200ft required, but they are asking this Board to recognize that they are not changing the character of Rye in any meaningful way by allowing one house on 200,000sf.

Mr. Truslow noted that they have not designed the house; however, whatever is done will meet all the setback requirements. It is not anticipated there will be a need to come back for another variance for the house.

Mrs. Truslow explained that the proposed location for the new home was chosen so there will be as much solar exposure as possible for an active and passive solar system. They also really love the woods and would like to preserve those as much as possible, as it does provide a buffer to the neighbors as well.

Hearing no further comments, Chair Weathersby closed the public hearing at 10:46 p.m. Referring to the driveway regulations, Chair Weathersby clarified that there is a regulation (5.E), construction standards, that indicates ***"no driveway shall be constructed within 10ft of an***

abutting property line, said distance being measured from the nearest abutting side line to the nearest driveway side line.” She continued this is a regulation that the proposal clearly does not conform to. As part of the subdivision approval, the applicant would have to ask the Planning Board for relief from that regulation. They would have to show that ***“strict adherence to the standard would not be possible or it would create an unnecessary burden for the land owner”***. The waiver couldn’t be ***“in conflict with the purpose and intent of the Land Development Regulations”***.

Chair Weathersby opened to the Board for discussion.

Vice-Chair Crapo stated that he is struggling with taking an already non-conforming house on one side, pinning it in on the other side and not really leaving any options for the landowner. Combining this with what was just read, it would allow for a 5ft driveway. The purpose of the zoning is to prevent overburdening the lot. Just because it is a large lot, does not constitutionally say there can be multiple houses on it. The reason some of the lots were left large were to have them stay large in order to create open space. He is also having trouble with the fact that there is not really a proposed finite house here but there is a proposed driveway. A year from now, if the driveway is approved, someone could be saying they want to put three houses back there.

Chair Weathersby noted that the Board would not be approving the driveway. They would be approving the subdivision, which dictates the location of the driveway. The approval would be for the width of the frontage to be 25ft.

Alternate Dibble asked if this would be better served to be in front of the Planning Board first.

Chair Weathersby noted that the applicant has the right to go to either board first. The applicants probably want to know they can get relief for the setback and the frontage first. The Planning Board can’t approve it without the variances being granted or it might be conditioned upon the variances being granted.

Member Piela commented that having a lot with 25ft of frontage is a big ask.

Chair Weathersby stated that she does not necessarily think this lot is all that special in its shape. There are a lot of these long narrow lots, yet not all are necessarily subdividable. There are a few that are over 3-acres. She is afraid that if this lot was to be approved with a 25ft right-of-way, the Board will be seeing a lot of requests to redevelop backland. That is something the Town of Rye has really been opposed to over the years. She continued that this land could very well be subdividable. However, it would have to be done different by using the whole frontage and putting a road in to get to the back area, where there could probably be two lots. She thinks it is possible to meet the regulations, put a road in, do a cul-de-sac and subdivide because it’s a good amount of space. There are regulations to follow. However, there would be the loss of the beautiful farmhouse and that’s probably what they are trying to avoid. She commented that it’s a long, narrow driveway. There will be issues with firetrucks. The Planning Board is trying to create regulations to do away with hammerheads and require cul-de-sacs. There are a lot of issues in her mind. She thinks it’s a pretty big ask.

Alternate Dibble stated that Rye strategic plan speaks to the retention of open spaces. If the house were torn down to get a right-of-way for a driveway, it would mean the possibility of two house in the back. The wildlife would be gone. This project does seem to strain the land.

Chair Weathersby commented that it strains the frontage.

Alternate Brousseau agrees that's a very small frontage and it would create a precedent that would open up a domino effect.

Member Driscoll commented that he feels if there is not 200ft of frontage, it weighs heavily to have the 10ft requirements on the side, which is required by the Town. That can't be done with the 25ft.

Attorney Phoenix asked to withdraw the application.

Chair Weathersby stated that she would rather have a denial and they can come back with something materially different. She thinks it should go forward, so something can be put on the record.

The Board agreed to move forward.

Attorney Phoenix noted his objection for the record.

Chair Weathersby called for a vote on variances to 2.3.C(2) and 2.3.C(6):

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

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

2) The spirit of the ordinance is observed?

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

3) Substantial justice is done?

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No

Chris Piela – No
Patricia Weathersby - No

4) The values of surrounding properties are not diminished?

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

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

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

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

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

7) The proposed use is a reasonable one?

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

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

Patrick Driscoll – No
Shawn Crapo – No
Burt Dibble – No
Chris Piela – No
Patricia Weathersby - No

**Motion by Patrick Driscoll to deny the variances. Seconded by Shawn Crapo.
Vote: 5-0**

- 8. Domenic Martingnetti & Phyllis Martingnetti 68 Manchester St., Nashua, NH for property owned and located at 1065 Washington Road, Tax Map 10, Lot 68, requests a variance from §190-2.4.C(2) for an addition of a platform deck 8' from the side boundary, where 20' is required; and from §190-2.4.C(1) for an addition of a platform deck 8' from the rear boundary where 30' is required. Property is in the General Residence, Coastal Overlay District and SFHA, Zone AE(8). Case #33-2021.**
 - *Attorney Phoenix requested a continuance to the September 1st meeting, on behalf of the applicants.*

Chair Weathersby requested more information on lot coverage percentages. She also noted that the proposed 6ft fence around the platform deck may need variance relief, as it is 6ft off the deck.

Motion by Shawn Crapo to continue the application for 1065 Washington Road to the September 1, 2021 meeting. Seconded by Burt Dibble. All in favor.

- 9. Arthur G. Pierce Rev. Trust & Sharon Pierce Rev. Trust, Arthur & Sharon Pierce, Trustees of 24 Colony Cove Road, Durham NH for property owned and located at 261-279 Pioneer Road, Tax Map 24, Lot 117, request variances from §190-5.3.C(2) for a condominium conversion of 4 units having 580sq.ft., 580sf.ft, 530sq.ft. and 530sq.ft. where each is required to have a minimum of 600sq.ft. of floor area and from §190-5.3.C(7) the amount of land designated as common area is less than 90% of the area of the parcel and frontage. Property is in the Single Residence District. Case #34a-2021.**
 - *Continued to the September 1, 2021 meeting.*
- 10. Arthur G. Pierce Rev. Trust & Sharon Pierce Rev. Trust, Arthur & Sharon Pierce, Trustees of 24 Colony Cove Road, Durham NH, for property owned and located at 261-279 Pioneer Road, Tax Map 24, Lot 117, request a special exception per the Rye Zoning Ordinance §190-5.3.A for 8 apartments in existing 4 buildings. Property is in the Single Residence District. Case #34a-2021.**
 - *Continued to the September 1, 2021 meeting.*
- 11. Charles M. and Lyndsay A. Benyon for property owned and located at 30 LaMer Drive, Tax Map 13, Lot 44, request an Administrative Appeal from the Building Inspector's June 28, 2021 letter which refers to a swingset/play system as an accessory building pursuant to §190-3.1.G(3) and §190-3.1.H. Property is in the Single Residence District. Case #35a-2021.**
 - *Continued to the September 1, 2021 meeting.*

- 12. Charles M. and Lyndsay A. Benyon for property owned and located at 30 LaMer Drive, Tax Map 13, Lot 44,** request variances from §190-2.3.C(1) for a swingset/play system 10 +/- from the rear property boundary where 30' is required and from §190-3.1.H(2)(g) for a swingset/play system in the wetlands buffer.

Property is in the Single Residence District. Case #35b-2021. Request a continuance to the September 1, 2021 meeting.

- *Continued to the September 1, 2021 meeting.*

- 13. Matthew & Susan O'Connor Family Trust, Matthew & Susan Trustees of 15025 Alfata Drive, Pacific Palisa, CA for property owned and located at 92 Old Beach Road, Tax Map 8.4, Lot 119** request a variance from §190-2.3.C(2) for a patio, grill and kitchen 9' +/- from the right side property boundary where 20' is required. **Property is in the Single Residence District and Coastal Overlay District and SFHA, Zone VE(14). Case #36-2021. Request a continuance to the September 1, 2021 meeting.**

- *Continued to the September 1, 2021 meeting.*

IV. OTHER BUSINESS

Chair Weathersby noted that if someone wants to hire an expert, she urges the Board to advocate for that. It would be at the cost of the applicant. If one of the Board's decisions is appealed, particularly a denial, the Board could be faulted for not having evidence to support their decision. The Board needs to have an expert on their side to support the decision, unless it's really clear. If someone is not sure of the science, the Board should get someone to do peer review to provide guidance.

Alternate Dibble asked what happens if the applicant does not want to pay for the expert.

Chair Weathersby explained they can either withdraw or the Board can deny the application. She pointed out that the applicant has the burden of proof to show that all factors are met. If a member of the board is not sure all those factors are met, then they haven't met their burden and it should be denied.

Vice-Chair Crapo stated that to that respect, it takes away the town peer aspect of this board and the entire zoning process. An applicant puts in an application, brings in their experts and testifies. The Board is supposed to be able to draw on their own life experience and expertise.

Referring to the Benson case, Chair Weathersby noted there was clearly conflicting evidence about the wetlands and the functions. The Board should have just hired someone to review all the reports and give an opinion.

Member Driscoll stated he understands Vice-Chair Crapo's point, but it's scalable. He thinks it's a good point that there has to be a distinction for what expert testimony is being sought. It can't be just general.

The Board agreed.

- There was some discussion in regards to the September agenda, as there will be several applications before the Board. There may be a need to hold a second meeting during the month. This can be decided once all applications have been received.
- Chair Weathersby noted that the Board has been asked by the Long Range Planning Committee of the Planning Board to give input (as a board) to inform development of a new 2021 Vision Chapter framework to begin an update of the town's Master Plan.

After some discussion about the request, Chair Weathersby stated that she is not sure the Zoning Board has the authority to complete the survey. She will do some more research and report back to the Board at the September meeting.

ADJOURNMENT

**Motion by Burt Dibble to adjourn at 11:10 p.m. Seconded by Patricia Weathersby.
All in favor.**

Respectfully Submitted,
Dyana F. Ledger

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August 5, 2021

VIA EMAIL (KReed@town.rye.nh.us)

Kimberly M. Reed, CFM
Town of Rye
10 Central Road
Rye NH 03870

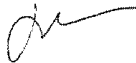
**Re: Withdrawal of Applications, Board of Adjustment Cases #09-2018, 10-2018;
Cellco Partnership d/b/a Verizon Wireless ("Verizon"),
120 Brackett Road, Rye, New Hampshire**

Dear Kim:

Consistent with our recent email exchange, the purpose of this letter is to formally withdraw Verizon's pending applications for variances and special exception (the "Applications") to permit the installation of a monopine at 120 Brackett Road, Rye, New Hampshire. Please take all actions necessary to remove the Applications from the Board of Adjustment's consideration and future agendas. Please send a check reflecting all remaining escrow funds to my office address above so that I may coordinate returning those funds to Verizon.

Thank you for your assistance with this matter. Please let me know if you have any further questions.

Sincerely,



John F. Weaver

cc: Chip Fredette, cfredette@saigrp.com
Michael Donovan, Esq., MDonovan@town.rye.nh.us
Becky Bergeron, BBergeron@town.rye.nh.us

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