

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

**Wednesday, May 5, 2021
7:00 p.m. – via ZOOM**

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

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

I. CALL TO ORDER

Statement by Patricia Weathersby:

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

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: www.zoom.com ID #893 7555 5369 Password: 123456

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

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

Roll call attendance of members:

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

Note: Unless otherwise noted above, members confirmed they were alone in the room for the meeting.

II. BUSINESS

- Approval of the April 3, 2021 Meeting Minutes

Motion by Shawn Crapo to approve the minutes of April 3, 2021 as amended.

Seconded by Burt Dibble.

Roll Call: Shawn Crapo – Yes; Patrick Driscoll – Yes; Burt Dibble – Yes;

Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

III. APPLICATIONS

1. **Nicole & Michael Callahan for property owned and located at 1367 Ocean Blvd, Tax Map 17.4, Lot 16** request variances from §190-2.4.C(1) for a house 5.1' and a paver walkway 1.2' from the rear boundary where 30' is required; from §190-2.4.C(2) for a 2nd floor deck 11.0' and a garage overhang 15.0' from the side boundary where 20' is required; from §190-2.4.C(3) for a garage overhang 1.3', a garage/connector overhang 7.2' and 4 parking spaces within the 10ft of the Highland Park Ave front boundary where 30' is required; from §190-3.4.D and §190-2.4.C(5) for dwelling coverage of 50.5% where 15% is permitted; for total impervious coverage of 56.3% where 30% is permitted; from §190-6.3.A/B for the expansion of a nonconforming building; from §190-3.1.H.2(a) and (g) for a paver walkway 56.0' and a garage 61.0' from the wetland where 100' is required; and from §190-5.0.C parking spaces within the front setback. **Property is in the General and Coastal Overlay Area Districts and SFHA, Zone AO+3. Case #08-20201.**

Attorney Tim Phoenix, representing the applicants, introduced Mike and Nicky Callahan, Paul Dobberstein from Ambit Engineering, Architect Michelle Shields and Attorney Monica Kieser. (The existing conditions plan was presented on the screen.) He noted that the plan has been updated because it was found that some additional relief is necessary. The property is a small 4,893sf lot at the corner of Highland Park Avenue and Ocean Boulevard, which requires two front setbacks to be applied. Essentially, the nature of the relief is driven by the wetland that is nearby and the narrowness of the lot. When applying the front setback from Highland Park Avenue and the left side, facing it from Ocean Boulevard, there is essentially no building envelope. The existing garage with apartment is over the property line slightly. Virtually, nothing on the site meets setbacks from the lot lines and/or the wetland. (He presented the proposed plan on the screen.) He noted that the plan is essentially the same size and is roughly

22x22. The new building will be moved to be entirely on the lot. There was an impervious slate patio between the existing garage and the house, which will be removed in favor of a pervious patio. There is a two-story connector so the Callahans can move from the house into the garage. (Photos showing the existing conditions on the property were reviewed.) Attorney Phoenix stated that the existing garage is short. The garage doors are too small to put a car inside. The existing garage height is 26.8' (sea-level elevation) and the proposed is 34.03'. The height of the house is 43.7', which is about 10' higher than the proposed garage. He pointed out that quite a bit of relief is being requested. If the existing building and garage were put up today, the same or similar relief would be needed. The relief being requested has been charted. Virtually, in all cases, things are getting better, including the overall impervious coverages. He noted that the coverage has now come down even a bit more because it has been confirmed that pervious pavers can be done on the new patio between the new buildings. He also pointed out that the things that are violated are very slight. The only significant increase is the impervious coverage for the dwelling. It is 36.4% existing and 50.5% proposed. The reason is because the existing garage is separate and is not a dwelling, so it is considered in the second percentage. When the garage is connected with living space over, it's one building and the whole thing is counted. The overall percentage is going down from about 60% to a little over 56%.

The architectural plans were shown on the screen and reviewed.

Attorney Phoenix commented that a non-conforming building, which is off the site and doesn't meet code, is being moved onto the site and is being built to meet code with a useable garage. He noted that letters of support have been sent from nearest abutters; Joseph Bezanson, 1359 Ocean Blvd.; the Drapeaus, 1369 Ocean Blvd., the Duffys, Frank Malsbender, 1363 Ocean Blvd. The Conservation Commission has also inspected the site and has issued a letter of support. (Attorney Phoenix read the letter from RCC.) He stated that when the Conservation Commission looked at the proposal, the plans were a bit different and showed a slight increase in overall impervious by .05%. It has now decreased below what it is today.

Attorney Phoenix addressed the criteria for granting the relief.

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The overall test is if granting the variances unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives. The underlying issue is whether granting the variances will alter the essential character of the locality or threaten the public health, safety or welfare. The character of the locality isn't really changing. There is a garage with an apartment over and that is what is being created with a little connector. It is bettering the locality because it'll be a building to code, which will be more valuable. This will also help values in the area. The garage and apartment will be totally on the site with stormwater treatment and pervious surfaces. For those same reasons, the proposal will not threaten the public health, safety or welfare.
- The surrounding property values will not be diminished, which is amply demonstrated by the letters of support. This property will be more valuable and it will not decrease the values of surrounding properties. The Callahans received relief a few years ago for

improvements to the house. The garage was not done at that time for financial reasons. The proposed garage design will fit in with the design of the existing home.

- In regards to hardship, there are special conditions of the property. It is a very small and narrow property. There is already a house and garage on the property. The garage violates the setback by going over the property line into the right-of-way. Most of the lot is within the 100' wetland setback.
- There is no fair and substantial relationship between the purposes of the ordinance and its application in this instance. Wetland buffers protect the wetland. The Conservation Commission agrees the proposal will make this better. Setbacks are to provide for air, light and separation to neighbors and it is the same for coverage requirements. The coverage requirements are becoming better on an overall basis. The new building will be entirely on the lot. The substantial relationship between the purposes is not violated.
- The proposed use is reasonable, as it is a residential use in a residential zone.
- Substantial justice will be done. This factor is satisfied if there is no benefit to the public that would outweigh the hardship to the applicant. The Conservation Commission's letter and the neighbors' letters demonstrate that the people who would be most affected in the public, with respect to wetlands, are not going to be harmed. Things are going to be better than they are today with the stormwater treatment proposed and the decrease in impervious coverage. The public is actually helped by a better-looking building that is fully to code. The Callahans will be harmed if they are denied because they will be forced to keep the old building that is past its prime and can't be saved.

Vice-Chair Crapo stated that he realizes the garage is being moved back onto the property so there is no overlap. However, it still leaves it very close to the road for vehicles backing in and out. He asked if a western end entry to the garage or pushing it back a little more was considered, in order to gain some room for vehicles to get in and out safely.

Attorney Phoenix explained that the garage's relationship to the house and how it ties into the existing living space puts the connector where it is proposed.

Vice-Chair Crapo noted the parking is still in the right-of-way.

Attorney Phoenix replied there is a garage there today that cars cannot go into, so any cars that park are in that area. With the proposal, there will be two compliant parking spaces inside the garage with another two where they are now. He noted that is a prior nonconforming condition that is not being changed.

Nicky Callahan, applicant, explained they were trying to not go right up against the lot line of the neighbors. If the garage was moved back, it would be getting really close to their lot line. They are trying to be sensitive to trying to keep the building away from the neighbor and not worsen the situation. They are also trying to connect the garage to the house. She continued that the parking is definitely not all on the property; however, it is not in the road itself.

Speaking to Attorney Phoenix, Chair Weathersby asked if the relief for the two parking spaces in the front setback are for the spaces in the garage (5.0.C).

Attorney Phoenix explained there will be two spaces entirely on the lot and covered. There will also be two spaces in the driveway, which are partially on and partially off the lot.

Chair Weathersby replied that this Board cannot grant permission for parking on property that is not owned by the applicant.

Attorney Phoenix stated the Board can grant permission for the conversion of one compliant space in the garage, which isn't truly useable, to two spaces in which cars can be put fully into.

Chair Weathersby clarified this is on their property in the garage, so she agrees.

Referring to the requested relief for what is off site, Attorney Phoenix pointed out that it's a condition that will likely continue, absent a complaint by the Town. He understands if it is the Board's position that they can't give relief to allow parking in the right-of-way.

Vice-Chair Crapo asked if the analysis would be that they are allowing the requirements to be varied, so they do not apply. In this case, would it be saying that spaces are not required for the parking and they are relieved from the requirement? The Board cannot grant them parking in the right-of-way; however, they may be able to say the minimum number of spaces can be reduced.

Chair Weathersby asked the number of spaces that are required for the apartment and home.

Zoning Administrator Reed explained that the plan must show two parking spaces for the apartment.

Chair Weathersby asked the legal status of the apartment.

Attorney Phoenix stated it is his understanding that this has been reviewed with the building inspector and it has been there for decades. He is not aware that it ever got relief.

Mrs. Callahan explained they have owned the property since 2015. The septic was redone in 1998. At that time, the apartment was there. The septic was approved by the Town to include a one-bedroom apartment. She noted that she has a letter from the former building inspector that talks to the fact the property has an apartment.

Zoning Administrator Reed commented that if it is a tear down and rebuild it wouldn't be grandfathered because it would have to meet the current zoning for the apartment and would need Planning Board approval. She asked if this is correct.

Vice-Chair Crapo stated this is what he is thinking. The ZBA no longer has the ability to approve accessory dwelling units (ADU).

Attorney Phoenix stated that right now it is approved as two dwellings on one lot. It will be going from two dwellings on one lot to two dwellings on one lot. The parking relief is going from one space on the lot parked in a garage, where four spaces would be necessary, to two where four would be necessary. He does not think the relief is needed; however, it has been

asked for because the building inspector says it is needed. If that is the case, relief is needed for two where four would be required.

Referring to the use, Vice-Chair Crapo stated it might be grandfathered for two units on one property but it is willfully being destroyed; therefore, it needs to be built more conforming. In this case, there is quite a degree of parking nonconformity.

Attorney Phoenix pointed out that relief has been requested for the expansion/destruction variance. Also, it is being made more conforming with respect to parking. It is going from one available space on the site to two. He thinks they meet the test for a variance for the parking on the lot, given there is a use of two homes on one lot that has been approved.

Chair Weathersby commented that she wonders if they can grant a variance for the two spaces that are primarily on town owned land conditioned upon the availability and/or approval of those spots by DPW. She pointed out that if the Town ever decided to widen that little road, those spots would be gone. Maybe the Board could approve the spots with the understanding or condition that the spots are partially on public land and it may not always be available, in which case the spots would go away.

Vice-Chair Crapo stated he would be uncomfortable approving the spots in that area, versus the semantical language of allowing the criteria to not be applied for that section of the parking criteria. He could see an issue in the future if the Town was to ever widen the road.

Attorney Phoenix stated that he does not think they need to get as complicated as a temporary approval for the two that are outside the garage. He thinks the Board could just approved two spaces on the site, where four would be required. What happens next would depend on the Callahans and DPW.

Chair Weathersby clarified it would be as Vice-Chair Crapo was saying; waive the requirement for four spaces and just approve the two. She agrees they should go in that direction.

Vice-Chair Crapo stated he is not saying he is in favor of it yet. He is just saying that is the technical way they have to look at it and is probably the only way an approval could be achieved.

Member Driscoll stated he was wondering about snow removal in that area and making sure the snow they are removing is staying on their lot. He asked if there has been any thought on where the snow from the driveway would be piled.

Attorney Phoenix replied that is not really changing. All that is being done is making it a bit better by getting the entire building on the lot. What is done with the snow is not going to change.

Paul Dobberstein, Ambit Engineering, stated that it is a difficult situation where the driveway is basically entirely in the town right-of-way. As far as keeping snow on the lot, he is not sure that is entirely possible. Clearing off the end of the driveway, the snow will probably still be piled in the right-of-way.

Mrs. Callahan explained the snow is moved as far off the road as possible.

Chair Weathersby noted that letters of support have been received from;

- Mike and Michelle Duffy
- Frank Malsbender
- Joe Bezanson
- Joan and William Drapeau
- Rye Conservation Commission

She opened to the public. Hearing no comments or questions, she closed the public hearing at 7:50 p.m.

Referring to the parking, Chair Weathersby noted that Section 5.0 requires them to have four parking spaces; two for the single-family dwelling and two for the other dwelling unit. The spaces cannot be located within the front yard setback or within 10' of a lot line, which is not complied with. Should the Board wish, the way to get through the parking issue is to grant them a variance from 5.0 allowing two on site spaces, where four is required, as represented, in the front setback and within 10' of the lot line.

Member Driscoll stated he would like to have the building a bit further back. He understands the constraints of the stairwell and connector. Any parking in front of the house is really tight with the existing and proposed building. If the Town were to come in and want to widen that road at all, it would encroach on the 18' length of the parking space that is out there. He would not feel comfortable going in the direction of allowing parking spaces within the right-of-way. He is struggling with the two parking spaces instead of four, given the challenges of how small that space is and the fact the majority is not on their lot.

Vice-Chair Crapo stated that if this is renovated, it is more likely that there will be a tenant with two cars. He sees people trying to juggle four cars in this area that is already super tight. He thinks the addition needs to be angled or pushed back to try to get more parking on the lot. He can't see having the right-of-way being the only place that extra cars can park, given how tight the street already is.

Member Dibble stated he shares the concern about the parking. The current parking situation is not in compliance with the ordinance. He images that counting the two spaces in the garage and getting into the garage is not going to be easy. On the other hand, the situation that exists now is not being exacerbated and is perhaps being improved a little, since no cars can be parked in the garage at the present time. He does not think that moving the addition back solves the problem. He does not think there is any solution for this property that is going to get four cars outside of the right-of-way.

Speaking to Attorney Phoenix, Chair Weathersby stated that she wonders why the proposed connector needs to be 10'x12'. If it were 6'x10', there would be 11' between the garage and the property boundary to the west. There could be two more spaces back-to-back on the property off the right-of-way. She explained that if the size of the connector was reduced and the building was moved over 6', there would be at least 11'.

Attorney Phoenix replied that next to the connector is a stairway. He understands the concerns about the parking in the road; however, it cannot be denied that it is worse today than what is being proposed.

Michael Callahan, applicant, commented that in looking at the plans for the connector, the only thing that is in there is a stairway and a landing. It is a covered walkway. The width cannot be reduced because a safe stairway requires a certain amount of space and run.

Michelle Shields, Architect, stated the goal was to move the garage as far to the east and to the south as possible. The size of the connector is largely dictated by code stairs, in order to get up and down from both buildings. She reiterated that the goal was to move the new building and make it as conforming as possible. Currently, the garage didn't really accommodate cars at all, so there are really no legal parking spaces. The new garage will at least have two parking spaces that were not there. The location and the size of the connector are as minimal as possible. The current conditions have no legal parking spaces and the new building allows for two legal parking spaces with two other parking spaces that are somewhat in question relative to the road setbacks.

Chair Weathersby reclosed the public hearing at 8:00 p.m.

Member Piela asked if the intention for the living space above the garage is to be income generating rental property.

Mrs. Callahan replied that is ultimately the intention, whether it is right away or not still needs to be determined.

Member Piela commented that this goes back to Vice-Chair Crapo's comment about making it a very attractive apartment and the likelihood of the renter having more than one vehicle.

Vice-Chair Crapo stated that he thinks they could get creative, while still moving the building and having the stairway. Right now, he cannot get onboard with a variance to have a walkway off the end of this building that could be an area for parking. This design is a bunch of "desire to have" and "nice to have". He thinks they need to go back to the drawing board and go to what is needed and what can be sacrificed to achieve what is wanted. He cannot get into where it is located when part of it, which could be parking, is a proposed walkway.

Chair Weathersby commented that she disagrees. The stairs, the garage and house are already there. The garage will be roughly the same size and will be more conforming. The building will be back of the west and northerly property boundaries. There are now two legal parking spots. She thinks it would be a big ask to say they can't have the garage when it has been there and has had an apartment in it for quite some time. She knows that came up when the Board visited variance requests from them several years ago. At that time, she went out and looked at the property and drove by it this time as well. The conditions are improving and the building is much more attractive. Also, the parking situation is improving. The height is not an issue at all.

Vice-Chair Crapo commented there are plenty of people who have a garage that is not 28' wide. He thinks there is some design room for them to make modifications and still achieve things in a better way.

Chair Weathersby commented they could go down to 22'x24' and get a little more space. However, right now, the garage is 28'x22', which is the same size as proposed. It would make having an apartment a little trickier if it is shorter, but it could be done.

Vice-Chair Crapo asked Chair Weathersby to ask Attorney Phoenix if whether a sideways modification could be done to achieve things.

Chair Weathersby reopened the public hearing for Attorney Phoenix to address the question.

Attorney Phoenix stated he is not sure about turning the building; however, the parking depth is 22' right now. It cannot get much smaller than that to have a garage and storage. He pointed out there is other parking in the area. People can park parallel to the building. Part of it may be in the right-of-way but it is not on the road. Right now, there are additional places to park along the side of the building, if needed.

Vice-Chair Crapo commented it is in the right-of-way.

Attorney Phoenix stated he has been before this Board numerous times with people who park in the right-of-way. The Board says they can't approve that because it is in the right-of-way, but that is where it remains. He thinks there are probably a lot of places in Rye where this happens. He asked Ms. Shields to address Vice-Chair Crapo's question.

Ms. Shields commented that she does not think there is a way to change the driveway and the access to the garage. In looking at the current stairs and access to the house, there is a minimum amount of space required. She cannot reinforce enough that currently, there are no legal parking spaces. The existing garage cannot accommodate any cars. There are no garage parking spaces. The parking areas are encroaching on town land. The proposed building will have two covered legal parking spaces off the road. The driveway parking in question is bigger, so it is more removed from the town parking. In order to get a minimal sized garage on the site with a parking spot between the house and garage, there is not room, even if the stairs were to stay where they are now. If that were to try to be done, it would be adversely against the rear setback. To try to get a parking space in that location, the garage would have to be more nonconforming than it currently is.

Chair Weathersby stated the Board sees a lot of garages that are 24'x24' or 24'x22'. This one is 28'x22'. She asked if they would be able to park cars, one behind each other, along the western boundary if the garage was shortened to 24'x22'. She asked why the garage needs to be 28'x22'.

Mrs. Callahan stated that the issue with making the garage smaller is that the living space of the apartment becomes smaller. The apartment living space becomes 528sf, which is too small and smaller than the Town would want a dwelling unit to be.

Vice-Chair Crapo commented that he was thinking to go maybe 24' wide and 24' to 28' deep and analyze whether the encroachment makes sense to get the parking onto the end.

Ms. Shields explained they were trying to keep the square footage of the new garage to be similar to the square footage of the existing garage.

Chair Weathersby asked the square footage of the existing apartment.

Mrs. Callahan replied 623sf and the proposed is 613sf.

Ms. Shields commented the intention is to not have the new building bigger than the existing.

Chair Weathersby reclosed the public hearing at 8:10 p.m.

Member Driscoll stated that when he was at the site, there was a car parked parallel to the existing house. He is more comfortable with that. He can look at it from a legal and zoning perspective, where the argument could be made that the building is there already, it is this size and this requirement has to be done. To Attorney Phoenix's point, it's there and it's existing. However, that really doesn't hold water if the Town wants to widen that road. That argument is not going to prevent anything from happening. He has a concern with emergency vehicles and plow vehicles. When he was looking at the property on Google satellite, there is a sedan with a bumper pretty much into the road parked against that building. He is still wrestling with the application. He would not be in favor of anything that would allow two spots in the right-of-way. He would shrink it up so not as much of the lot is being used, so cars can be parked. Member Driscoll continued he is leaning towards being okay with reducing the number of spots to two and having them in the garage, not because he thinks it is reasonable, but when he looks at the zoning, he does not see at way he can vote against it on the criteria.

Member Piela stated that he thinks they need to ask for a variance to 190-5.B(4), which says "the Planning Board shall not allow fewer parking spaces as required by the table". The table shows they are required to have four spaces. He pointed out they are not asking for the Board to reduce the number of required parking spaces. He asked if they can even grant them a variance that was not requested.

Chair Weathersby stated that Attorney Phoenix said earlier that he was requesting the Board give two parking spaces where four is required. The notice is for 190-5.0.C but he did verbally make the request.

Member Piela stated it was mentioned earlier that the two the Board would be granting are for the two that are in the garage. He is okay with the two in the garage. He agrees with the Board's comments that they can't grant parking in a right-of-way. He pointed out they have not asked for the Board to reduce the number of parking spaces from two per dwelling unit.

Chair Weathersby noted that it was asked verbally.

Attorney Phoenix stated that the chart shows they are asking for two spaces in the garage. Section 4 relates to the planning board during site review, which this is not.

Chair Weathersby stated that as she understands it, relief is needed from 5.0.C for parking in the front setback and within 10' of the westerly lot line, and 5.0.B for two spaces where four is required.

Member Driscoll commented that all four spots need 5.0.C. Even the spots in the garage are within 10' of the setback.

Attorney Phoenix noted that his zoning chart shows they've asked for 5.0.A, B(1), and C.

Vice-Chair Crapo stated it is not like they can condition and say that they can't allow occupancy of the dwelling or restrict it to people that don't own cars. Typically, people are going to have at least one car. In the past, when they have allowed parking in the setback, it has been that there is a buffer of grass between the structure and the lot line that does not conform to typical driveway standards. He does not recall that they have ever allowed parking in the right-of-way.

Chair Weathersby pointed out that they are asking for two garage spaces that are in the front setback and at least one is in the side setback as well. In looking at the application for a variance, she does not see a request for 5.0.C. It is in the chart but it is not on the application.

Attorney Monica Kieser explained that a supplemental request was submitted after Mrs. Callahan applied for the original relief. A letter was provided with a new relief chart, along with additional notice and abutter fees because there was additional relief identified.

Member Dibble stated this is very problematic to him. It seems that there is a good argument to be made that the garage is bigger than it needs to be. At the end of the day, it feels that the size of the apartment is driving the consideration. He shares the notion that he may be able to approve the parking spaces in the garage, but he cannot get onboard with anything that has cars parked protruding into the right-of-way.

Member Piela stated he agrees with Member Dibble. That is the reason he asked the applicant if the living space above the garage is intended to be an income generating dwelling unit, versus an in-law or occasional family guest area. He appreciates the fact that they have letters from all the abutters. He thinks everything is perfect and the design improves on what is existing. It is all great until it comes to the fact that it is going to be an income generating dwelling unit. To Member Dibble's point, he cannot get onboard with allowing a dwelling unit that doesn't have safe parking.

Chair Weathersby stated the garage exists and there is an apartment there now. They can rehab the garage where it is right now, continue to park wherever they are parking and rehab the apartment. She is of the mind that it is improving the location and improving the building substantially. It will be up to code. They are improving the setback compliance and getting two spaces where people will actually park on the lot. There are a lot of improvements. The neighbors are in favor. What will happen is the apartment is not going to have any legal parking.

The Town can rescind their permission for parking in the right-of-way; particularly, during storms. They will have to arrange for off site parking, which may affect the rentability of the apartment. She is not sure that it is enough for her to deny the relief for the fact the apartment may not have parking, where the apartment that exists now does not have parking.

Referring to Sheet C-2, Vice-Chair Crapo stated that the utilitarian aspects of this and the usage type request he can get behind. He is having trouble that the patio, connector and walkway are kind of steering the issue with the setbacks and parking. He thinks it would be achievable to get the parking on the end, where they are proposing a pervious paver walkway. They are not proposing to leave that open as a green space. They are already proposing a walkway, so why not make it parking for the two cars for the apartment? Through this discussion, it seems this Board would not balk at having them go a little bit more towards the southern lot line to achieve the same amount of living space or somehow tighten up the connecting area between the two buildings. They could get everything they are trying to achieve with more compliance with parking, along with it being safer for neighbors traveling down the street. He can't support the proposal the way it is right now. They have ways to achieve what they want that are not 100% attached to these plans.

Speaking to Ms. Shields, Chair Weathersby asked if the stairs coming off the main building could be turned so they are relocated somewhere else to help free up some of the space between the buildings.

In regards to whether the apartment could be shifted back further to allow for more parking, Ms. Shields stated they were looking to not encroach onto the southern setback anymore. She asked Vice-Chair Crapo if he is asking if the apartment could shift back a little further to allow for more off-street parking.

Chair Weathersby asked if the stairs and connector be located somewhere else or turned so that the apartment can move closer to the house, in order to get parking closer to the western boundary.

Ms. Shields replied that she thinks there could be some slight reduction, but she does not think it will help with parking.

Member Driscoll asked the ceiling height in the garage.

Ms. Shields replied a little over 9'.

Chair Weathersby asked if the stairs and middle connector could be shortened, relocated or turned, so the apartment could be pushed closer to the existing home.

Ms. Shields replied that she is not sure. The stairs are between the two units. She reiterated there might be an opportunity for some reductions, but she is not sure if it would set off a chain reaction of changes.

Chair Weathersby asked if the people living in the apartment will be coming up the walkway, around the western side of the garage and entering off the southern side.

Ms. Shields confirmed.

Vice-Chair Crapo asked the width of the proposed walkway.

Mr. Dobberstein replied 4' wide.

Vice-Chair Crapo commented if they gain another 4' they will have an 8' wide driveway. He is a "no" vote on this right now. The applicant may want to consider whether they want to continue and come back next month.

Chair Weathersby suggested that the board members summarize their positions. The applicants can then decide if they want to withdraw, continue or proceed to a vote. She can get behind the application. She hears Shawn saying that he may vote against some of the variances.

Member Driscoll commented he would begrudgingly vote for the proposal. Of course, the stairs can be rearranged and the size can be readjusted, but he is hearing from the applicant and their team that they have no interest in doing that. They want what is being proposed and want to ask for as much as they can. The impact it has on the neighbors and the Town does not seem to have too much relevance to them. To him, having two additional parking spots is making it marginally better. He would hope that they would be neighborly if they get the relief and move forward with the project.

Member Piela commented he echoes Member Driscoll's comments. He thinks it is an improvement. He puts a lot of value into the abutters' letters and support. He puts a lot of weight into the Rye Conservation Commission's letter and the fact that they have no issue. He has a problem with having a rental apartment that does not have parking; however, that is the applicants' challenge. He would be a "yes" vote with no issues if they could figure out a way to get four parking spots on the lot.

Member Dibble stated that he does not see there is ever going to be more parking spots on the lot. He would accept a continuance on this project. He is very sympathetic to Vice-Chair Crapo's position. He does not think it is the Board's position to help people fix their application so it works for the Board. He would vote for a continuance, but he cannot vote for the project as it is currently submitted.

Speaking to Attorney Phoenix, Chair Weathersby asked if he would like to continue or move to a vote.

Attorney Phoenix replied that it seems like there is a majority to get approval. He does not agree with the concept that these people do not care about the neighbors. He asked Mr. and Mrs. Callahan how they would like to proceed.

Member Driscoll commented that one condition he would impose on his approval, or one point of clarity, is to make sure that it is known that the two spots that are shown on Sheet C-2 are not approved by the variances as being parking spots.

Attorney Phoenix noted that if it is approved, he would propose that they do a supplemental plan to remove those spots.

Mrs. Callahan stated that they really tried hard to take the neighbors into account when they did the plan. The parking situation is much worse now than it is going to be.

Mr. Callahan commented that a lot of thought has gone into this design. There was a lot of thought about the neighbors and not asking for anything outrageous. They are forced into the size and shape of the building because of code compliance. The connector is the size it is because it has to have a certain number of stairs. The stairway is proposed to have two safe egresses from the apartment. He continued they have an approved nonconforming apartment that could be rented. The reason it is not rented is because they want to be cautious of the neighbors and themselves about keeping use down. The only thing they are doing is maintaining what is already there and bringing it to higher safety codes.

The Callahans confirmed that they wished to move forward with a vote on the proposal.

Chair Weathersby suggested conditions of approval;

- Supplemental plan be submitted that doesn't show the parking in the public right-of-way; and
- Pervious pavers to be installed and maintained to be pervious.

The Board agreed with the conditions.

Chair Weathersby called for a vote on the requested relief to 190-5.0. A, B and C for two parking spaces where four is required and parking in the side and front yard setbacks:

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

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

2) The spirit of the ordinance is observed?

Burt Dibble – No
Shawn Crapo - No
Patrick Driscoll - Yes
Chris Piela - Yes

Patricia Weathersby - Yes

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The purposed use is a reasonable one?

Burt Dibble – No
Shawn Crapo - No
Patrick Driscoll - Yes
Chris Piela - Yes

Patricia Weathersby - Yes

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

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

Chair Weathersby called for a vote on the requested relief to 190-2.4.C(1), 2.4.C(2), 2.4.C(3), 2.4.C(5), 6.3.A/B, 3.1.H(2)(a) and (g):

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

Patricia Weathersby - Yes

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

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

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

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

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

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

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

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

Motion by Patricia Weathersby to grant the variances requested by Michael and Nicole Callahan from §190-2.4.C(1) for a house 5.1' and a paver walkway 1.2' from the rear boundary; §190-2.4.C(2) for a deck 11.0' and a garage 15.0' from the side boundary; §190-2.4.C(3) for a garage 1.3', a garage/connector 7.2' and parking spaces within the 10ft of the Highland Park Ave front boundary; §190-3.4.D and §190-2.4.C(5) for dwelling coverage of 50.5% and total coverage of 56.3%; §190-6.3.A/B for the expansion/destruction of a

nonconforming building; §190-3.1.H.2(a) and (g) for a walkway 56.0' and a garage 61.0' from the wetland, and from §190-5.0.A, B and C for two parking spaces where four is required for parking within the front and side setbacks with the conditions; (1) a new Sheet C-2 will be presented that does not show parking within the public right-of-way; and (2) pervious pavers to be installed and maintained to be impervious.

Seconded by Patrick Driscoll.

Roll Call: Burt Dibble – No; Shawn Crapo – No; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed by a 3 to 2 vote.

Note: Due to the time and number of applications on the agenda, Howard Lazerowich of the Rye Place Realty LLC application voiced his interest in being continued to the June meeting.

Motion by Patricia Weathersby to continue the application of Rye Place Realty LLC to the June meeting. Seconded by Shawn Crapo.

**Shawn Crapo – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes
Burt Dibble – (not available for the vote)**

Motion passed.

- 2. Joseph & Mary Jo Smith for property owned and located at 24 Maple Avenue, Tax Map 5.2, Lot 36 request a variance from §190-3.1.H(2)(a) and (g) for a shed 33' 60' from the wetlands where 75' is required. Property is in the General and Coastal Overlay Area Districts. Case #13-2021.**

Joseph Smith and Mary Jo Smith, applicants, were present to review their application for relief from 190-3.1.H(2)(a) and (g). Mr. Smith noted that the 33' is really the distance from the property border. The distance from the wetlands is approximately 60'. Part of the shed, which is 12'x18', is in the wetlands buffer, not the wetlands itself. He also noted the shed will be located in a lawn area and no trees are being cut. The Conservation Commission reviewed the application and conducted a site walk. They have submitted a letter of support with no objections to the location of the shed.

Chair Weathersby confirmed the receipt of RCC's letter. She asked the applicants if they have spoken to their abutters

Mrs. Smith replied that she has spoken with the Wallaces who are fine with the proposal. She pointed out that the shed will not be able to be seen from the road.

Chair Weathersby commented there are two two-car garages on the property. She asked the reason for the 12'x18' shed.

Mrs. Smith explained that her husband has inherited an antique car, which is taking up space in one of the garages along with other vehicles. They now have a need for more storage for other items.

Member Piela asked if there will be power running to the shed.

Mr. Smith commented that they are planning to run power to the shed. There will not be heat or water. The shed will just be used for storage.

Chair Weathersby opened to the public for comments. Hearing none, she closed the public hearing at 9:14 p.m.

Vice-Chair Crapo commented that it makes sense. The shed will be located in an already disturbed lawn area. The RCC views it has an area that has already been established as lawn. It is not damaging any wetlands. Trees are not going to be taken down and there will not be any site preparation. From that perspective, it makes sense.

The other board members agreed.

Chair Weathersby called for a vote on the requested relief to 190-3.1.H(2)(a) and (g) for the shed approximately

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The purposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the application of Joseph and Mary Jo Smith for property owned and located at 24 Maple Avenue for a variance to §190-3.1.H(2)(a) and (g) for a shed approximately 60' from the wetlands. Seconded by Shawn Crapo.

Roll Call: Burt Dibble – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

- 3. Aaron Proulx & Jun Lee for property owned and located at 797 Ocean Blvd, Tax Map 23.1, Lot 8 request variances from §190-6.3A for expansion of nonconforming structure; from §190-3.1.H(2)(a), (c), (f) and (g) for an A/C condenser 24'7.5" and generator 23'8" from the wetlands where 75' is permitted; for deck 20' +/- from the wetlands and steps 18.5' +/- from the wetlands; from §190-2.4.C(3) for stairs for a deck 25' from the front yard boundary; from §190-2.4.C(2) for a deck 12.1' from the side yard boundary where 30' is required. Property is in the General Residence and Coastal Overlay Districts. Case #16-2021.**

Jun Lee, applicant, presented the proposal to the Board. She explained that they are requesting to rebuild the back deck and make a smaller footprint. They would also like to add on a 4' walkway of about 80sf to the front deck. The existing generator needs to be relocated so it is not under a deck, in order to make it code compliant. The proposal is to locate the generator and a condenser in back of the house. The Rye Conservation Commission has sent a letter of support. Also, the three abutting neighbors are in support of the proposal. She continued there is a condo association in the front and across the street, who have no issues with the application.

Chair Weathersby noted letters were received from:

- Rye Conservation Commission
- John Kittle, 1 Parsons Road

Suzanne McFarland, RCC, stated that the applicants agreed to remove a lot of debris from the wetlands and create a buffer by the retaining wall.

Chair Weathersby clarified per the letter, RCC approves of the project with five conditions: (1) Existing fence to be removed and replaced with a fence on the retaining wall nearest the house or on the house side of the retaining wall; (2) Debris removed from the wetlands; (3) Native saltwater resistant plants to be installed to a depth of 5' along the entire back yard, except for the shed and step area; (4) Owners to submit a planting plan for Conservation Commission approval prior to planting; and (5) RCC is allowed to return after completion of the project to assess compliance.

Suzanne McFarland confirmed.

Speaking to the applicants, Chair Weathersby asked for clarification about the fence and retaining wall.

Referring to the plan on the screen, Ms. Lee pointed out the red dotted line, which represents the existing chain-link fence that will be removed. She also pointed out the existing retaining wall, where a new fence is also proposed. The area behind the retaining wall will be revegetated.

Chair Weathersby asked if they agree with the Conservation Commission's conditions.

Ms. Lee confirmed.

Chair Weathersby opened to the public for comments or questions.

Vice-Chair Crapo asked how tall the fence will be on the retaining wall. He noted there is no clear definition of whether a 6' fence can be put on top of something 2' or 3' tall or if that would go over the height restriction.

Aaron Proulx, applicant, stated that they have asked the fence contractor to price out a 3' tall fence. They really want to be able to see the wetlands and not create a blockade of any kind.

Chair Weathersby asked the height of the retaining wall.

Mr. Proulx replied the highest point is approximately 30" off the wetlands area.

Hearing no further questions, Chair Weathersby closed the public hearing at 9:27 p.m.

Member Dibble stated he has no problem with the application. He likes the idea of moving the fence out of the wetlands.

Member Driscoll commented he is in favor and likes what they are doing with the deck closest to the wetlands. It was interesting to see the project in its current state and how big the deck is going to be. The application looks reasonable and they have done a really good job. He respects that they are working so well with RCC, which makes the Board's job easier.

Vice-Chair Crapo agreed.

Member Piela also agreed. He has no challenges with the application.

Chair Weathersby agreed. She asked the Board if they are okay with adding the five conditions from RCC.

Vice-Chair Crapo pointed out that they cannot grant permission for the Conservation Commission to go back on someone's property.

Chair Weathersby stated there has been verbal acknowledgement from the applicant that they have been working with RCC and they will allow them to return. However, the Board cannot say that RCC is allowed to return. She pointed out that the building inspector is allowed to go out and make sure everything is in compliance, as he has the authority. She suggested taking off the fifth condition. She is certain the applicant will work with RCC and building inspector.

The Board agreed with RCC conditions 1 through 4.

Chair Weathersby called for a vote on the requested relief to 190-6.3.A, 190-3.1.H(2)(a), (c), (f) and (g) and 190-2.4.C(3), 190-2.4.C(2):

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

Patricia Weathersby - Yes

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

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

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

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

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

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

Motion by Burt Dibble to approve the application of Aaron Proulx and Jun Lee for property owned and located at 797 Ocean Boulevard as advertised and including the first four conditions from the Rye Conservation Commission; (1) Existing fence to be removed and replaced with a fence on the retaining wall, nearest the house, or on the house side of the retaining wall; (2) Debris removed from the wetlands; (3) Native saltwater resistant plants to be installed to a depth of 5' along the entire back yard, except for the shed and step area; (4) Owners to submit a planting plan for Conservation Commission approval prior to planting.

Seconded by Shawn Crapo.

Roll Call: Burt Dibble – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weatherby – Yes

Motion passed.

4. **Alfred & Madeline Zarlengo Trust for property owned and located at 193 Locke Road, Tax Map 12, Lot 87** requests variances from §190-6.3.A for expansion of a nonconforming structure; and from §190-2.3.C(1) for a deck 20' from the rear boundary where 30' is required. **Property is in the Single Residence District. Case #16-2021.**

Attorney Tim Phoenix, representing the applicants, presented the application. He explained the house was built fairly close to the rear property line to allow for the septic system. The applicants would like to make the deck a bit larger for more enjoyment and to make it more livable. The deck is directly behind the house and cannot be seen from Locke Road. The abutter to the rear, Eben Tormey, has sent an email supporting the project. The abutter to the rear is really the only one who will see the deck. There is a fairly heavy tree line along the common property line. There is also a fairly large evergreen tree that blocks the view in the winter and fall.

Attorney Phoenix reviewed the criteria for granting the variances.

- Granting the variances will not change the character of the neighborhood, as the deck cannot be seen. The applicants need more room to get around than is provided by the existing deck. There is no harm to the public health or safety. This provides additional health and safety protections for the applicants. It is a unique property because of its location. The deck cannot be expanded without this relief because it is right on the setback line. No one is going to see the deck, except the neighbor who is in support, so there is no harm to the public in granting the variance.
- Because of the location of the deck and the neighbor who is closest to it supports it, this demonstrates that values of surrounding properties will not be diminished.
- There is a special condition because this house is where it is because of the septic. The deck was built pretty narrow to comply with the setback. The deck cannot be expanded without relief.
- The reason for the setbacks is to provide for air, light and area for stormwater treatment. This is a fairly large lot that has plenty of stormwater treatment. The neighbor's house, who supports the project, is quite far away so it will not have any effect. There is no reason to apply the 30' requirement.
- The use is reasonable, as it is a residential use in a residential zone.

Susan Zarlengo-Labrie, daughter of the applicants, noted that support was received from Jay and Jackie Rushforth, Cynthia Bogart and Andrew Widen.

Chair Weathersby confirmed receipt of letters from;

- Jay and Jackie Rushforth, 199 Locke Road;
- Eben Tormey, 15 Recreation Road

Ms. Labrie stated this is really important to her parents. They are just making the deck big enough in order to have some furniture out there so they can enjoy their deck.

Chair Weathersby opened to the public. Hearing no comments, she closed the public hearing at 9:43 p.m.

Member Driscoll commented that the proposal is great. He noted that Jay Rushforth has written a letter. He thinks Mr. Rushforth is equally as affected as the Tormeys to the rear. He continued there is a good amount of land between those houses. He is in full support of the application.

Member Piela stated the deck addition seems to be the most logical place to expand the deck. He appreciates the letters of support from the neighbors. He has no issues.

Member Dibble agreed.

Vice-Chair Crapo commented that changing the size of the deck in this fashion is not going to have any negative effect on the neighborhood.

Chair Weathersby called for a vote on the requested relief to 190-6.3.A and 190-2.3.C(1):

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The purposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the request for variances by Alfred and Madeline Zarlengo Trust for property located and owned at 193 Locke Road.

Seconded by Chris Piela.

Roll Call: Burt Dibble – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

5. **Stacey Smith for property owned and located at 51 Central Road, Tax Map 12, Lot 36** request variances from §190-6.3.A for expansion of a nonconforming structure; from §190-2.3.C(2) for a generator 10' and for a garage 2' +/- from the side boundary where 20' is required; from §190-2.3.C(3) for a garage 24' from the Meadow Lane front boundary where 30' 40' is required; from §190-2.3.C(5) for dwelling coverage of 30% +/- where 15% is permitted and from §190-5.3(C) for parking in the front yard setback. **Property is in the Single Residence District. Case #17-2021.**

Stacey Smith, applicant, stated she has owned the property for almost 30 years. The goal is to remain in the house for as long as possible. To do that, they are looking at improvements that they can make to the home. She continued that the house was built in 1890. At that time, the property included all the land around it. The property right next door, which is now 45 Central Road, was part of this property. Also, the two properties behind 51 Central were part of the property, along with Meadow Lane. Back in the 50's, the previous owners subdivided the parcel and narrowed down this property. She continued that the first project is the generator. The electrical on the house is in the front corner towards Central Road, to the right when facing the home. The setback on that side is 20' and the house is within that setback. The generator has to be 5' away from the house, so anywhere along that side would be within the setback. The only other option is to locate the generator in the back, which would put it closer to the neighbors.

Ms. Smith explained that the next project is a garage. This is tricky because the property is narrow. They wanted a location that would provide easy and safe access from Meadow Lane. They also wanted an aesthetically pleasing design. It is very important that the garage does not impinge on the very attractive property, nor impinge on the back yard. She noted that this lot was combined with another lot. This makes what is written on the agenda not exactly accurate. Those numbers do not take into account that the two lots are one. Ms. Smith further explained that they wanted to have the garage attached, but they could not figure out a way to get it close enough and make it fit. The garage will be set 3' off the back of the carriage house, which is the part of the house that is closest to Meadow Lane. When backing out of the garage, the vehicle would still be on the property, so the driver could see up and down Meadow Lane before entering. The garage doors will face Meadow Lane. She commented that there is no space to move the garage further onto the property, as there is no space to do that without blocking the views to the back. Moving it to the back part of the property makes sense, as they will be able to go out the back door of the house to get to the garage. The projects will allow them to stay in the home, so that is why they are asking for the relief.

Howard Singer, also of 51 Central Road, explained that because the lots were combined, the lot is now 300' long. The side boundary from the garage is 170', so he does not think that is an issue. When speaking with the building inspector, he did not understand that the two lots are now considered one by the Town. Also, in regards to the coverage changes, it is not 30%. It is 15% or less because of the fact that the two lots combined are about 33,000sf total. He continued that from the garage doors to the pavement on Meadow Lane, the driveway is going to be 25'. The right-of-way of Meadow Lane is 40'. This is a lane for two homes and the road width is 22'. The setback from the edge of roof is 15', but the building itself is 16.1' and there would be another 9', so there is 25' to the actual road itself.

Chair Weathersby commented that it doesn't look like the side boundary of 2' is needed because the property includes the back lot as well. She asked if the dwelling coverage with the garage is known.

Mr. Singer replied that they came up with 16.7%. Right now, there is a very large parking area on the Meadow Lane side. It is probably 32' deep and 30'+ wide. He commented that they were actually going to cut back the driveway if the coverage was too much because they don't need all of it with the new driveway.

Chair Weathersby asked if the dwelling plus the garage is still more than 15%.

Mr. Singer replied that the dwelling and garage is well below 15%.

Chair Weathersby asked if the dwelling plus any open porches, decks, garages, carports, barns, sheds and other accessory buildings, plus patios, unwallled covered areas, impervious driveways, sidewalks, impervious walkways and other impervious surfaces will be more than 15%.

Mr. Singer replied yes. He reiterated that they can cut down the existing parking area to be within the 15%. The driveway is probably going to be cut down to 15' to 20' wide, instead of the 36' it is now.

Chair Weathersby stated that relief is not needed for lot coverage.

Vice-Chair Crapo pointed out that the coverage has been requested and is on the notice. He commented that it sounds like the building inspector may have missed the extra lot in his calculations. He asked if there is a way to tie this to the plan presented, in order to avoid them having to come back, or delay the notice of decision pending a review by the building inspector.

Member Driscoll stated that he agrees with approving the variance for lot coverage based off the plans that are provided, not necessarily the percentages given by the building department. He commented that this is not going to have any affect on the way he votes on this.

Member Dibble stated that he thinks Vice-Chair Crapo's point is if the math doesn't work and relief is not included for 5.3.C, they will be back.

Mr. Singer stated that right now, if nothing is done to the existing parking area, the coverage is at 16.7%. The plan is to reduce that anyways because they do not want that massive parking area.

Chair Weathersby suggested giving relief for lot coverage up to 16.7%, as it exists now. If the coverage can be dropped lower that would be great. That way the application does not have to come back. She pointed out that on one plan, the distance from the garage to the Meadow Lane boundary is 16.1' and it is advertised as 15.6'.

Mr. Singer explained it is 16.1' to the building but 15.6' from the roof.

Chair Weathersby confirmed that relief for 15.6' is needed.

Referring to the generator, Member Dibble stated that it looks like it is going to be pretty visible from the street. He asked if there are any plans for vegetation around it.

Mr. Singer replied they will plant bushes on that side so it cannot be seen.

Referring to the new garage, Member Dibble asked if it is going to be sitting entirely in what is now paved area.

Mr. Singer replied that where it is going there is no pavement there now.

Member Dibble asked if a lot of pavement will be removed to put in the garage and new drive.

Ms. Smith commented that the current driveway is closer to Central Road.

Mr. Singer reiterated that where the garage is going is just grass right now. The plan is to cut back on the current driveway, as it is not needed, and turn that area into lawn.

Member Dibble stated that he is trying to reassure himself that they are not going to get into trouble with lot coverage. If the garage was going on what is now paved, it would be a bit of a buffer to help. He asked if they are confident with the 16.7% number for lot coverage.

Mr. Singer and Ms. Smith confirmed.

Member Dibble stated that in looking at the drawings, there are two representations of the garage. One has a gable window and one does not; however, neither one has a passage door near the front door of the house.

Mr. Singer explained that looking at the property from Central Road, the reason it is not seen is because it is actually on the back side. The garage doors are going to be facing Meadow Lane. The passage door would be on the back side in the right corner.

Member Dibble asked if there is any plan to put a cover over the walkway in the future.

Mr. Singer replied that he does not know. He commented that they did not want to block the back of the house, so more than likely they would not be putting coverage across that area.

Chair Weathersby asked if they have talked to the abutters.

Ms. Smith confirmed. There were no objections. She noted that the Pearls were mostly interested in the generator and wanted it as far away from their door as possible, which is where the generator is located.

Chair Weathersby opened to the public. Hearing no comments, the public hearing was closed at 10:08 p.m.

Vice-Chair Crapo stated it makes sense. There may be some clean up needed with the motion concerning the notice. With the joint lot, it is definitely not the way the building inspector had seen it, as shown in his denial letter.

Member Driscoll commented he is in favor. He is glad they had the information on how far it is to the pavement of the road because that is something he could not see with the application.

Member Piela agreed. The location of the garage makes sense. He would not want to see it any closer to the intersection of Meadow Lane and Central Road. Referring to 190-5.3.C, he clarified that is for the three cars parked in the to be built garage and has nothing to do with the existing car parking area that is closer to Central Road. Going down Meadow Lane, there is a very broad paved parking area on that side of the house. He thinks this is where they are going to manage the lot coverage percentage by reducing that parking area. In looking at the plan, he thinks those cars are probably far enough in without being in the setback. He reiterated that 190-5.3.C is only for the three cars in the garage.

Vice-Chair Crapo pointed out this is a corner lot so there are two front setbacks.

Member Piela commented the existing parking is problematic, but it is an existing nonconforming spot.

Vice-Chair Crapo stated that he thinks it triggered it with the building inspector because they are expanding and putting up a structure. Therefore, the ordinance says compliant parking must be demonstrated. The parking they are asking for in the garage is not compliant because of the 40' setback.

Chair Weathersby commented it is new parking in the front setback, so they will need relief. She continued that she is in support of the project. She thinks the location of the garage makes sense. The generator location also makes sense and they are doing their best to buffer the noise. She can support that as well.

Member Dibble commented that he has a mild sense of concern about how the lot coverage is going to work out; however, he will be a person of great faith in this case.

Chair Weathersby called for a vote on the requested relief to 190-6.3.A, 190-2.3.C(2), and 190-5.3.C:

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

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

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

Motion by Burt Dibble to approve the application of Stacey Smith for property owned and located at 51 Central Road for variances from 6.3.A for expansion of a nonconforming structure, 2.3.C(2) for a generator 10' and for a garage 2' +/- from the side boundary where 20' is required, 2.3.C(3) for a garage 15.6' from the Meadow Lane front boundary where 40' is required, 2.3.C(5) for dwelling coverage of 16.7% where 15% is allowed, and 5.0.C for parking in the front yard setback. Seconded by Shawn Crapo.

Roll Call: Shawn Crapo – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

Note: The Board normally does not start applications after 10:00 p.m. The time of the meeting is 10:21 p.m.

Motion by Shawn Crapo to continue the meeting and hear the next application. Seconded by Patricia Weathersby. All were in favor of continuing.

Chair Weathersby asked if there was anyone on the meeting who objects to the Board hearing the application for 9 Cable Road. No objections were heard.

6. **Richard Beauchesne & Patricia Ann Healy of 46 Mountain Rd, Camden, ME for property owned and located at 9 Cable Road, Tax Map 8.4, Lots 76-1 and 76-2** request variances from §190-6.3.A for expansion of a nonconforming structure; and from §190-2.4.C(5) and §190-3.4.E for dwelling coverage of 18.6% where 15% is permitted. **Property is in the General Residence and Coastal Overlay Districts and SFHA, Zone AE (Elv 8). Case #18-2021.**

Attorney Monica Kieser, representing the applicants, presented to the Board. She introduced the applicants, John Chagnon and Paul Dobberstein from Ambit Engineering and Jake Sullivan from Gray Construction. She explained that two or three years ago, she presented an application to the Board for the applicants to build on this lot. After having gone through that extensive process, it was found that for the structure that was permitted, the costs were quite high. The applicants tried to make some revisions to the house to make it a bit smaller. Now two years later, they are living in the house full time and working from home. They have found there are some elements that aren't quite workable. The primary issue is that the kitchen does not accommodate an eat-in or breakfast nook area. There is an island in the kitchen, but no room for a table. The applicants thought that a slight addition to the kitchen would resolve the problem and provide a little more space. She continued there are also some changes that have occurred in the flood zones. The existing structure doesn't have any kind of basement. It could only have a crawl space of 37" and there is no real storage below the house. The applicants did get a shed and they have a garage. As a result of the change in the flood mapping, the kitchen bump-out will be able to accommodate a basement. The addition will increase the coverage over what was originally approved, which was 16.3%. Relief is needed for dwelling coverage only but not the overall lot coverage. She continued that this rebuilt is compliant with the building envelope. It is compliant with front, rear and side setbacks. This lot could not accommodate a detached garage because there is nowhere to locate it so it would not violate a side setback. The garage was incorporated into the home. In doing so, with living space above the garage, it becomes part of the overall dwelling coverage, even though about 500sf is a garage and does not provide more living area.

Attorney Kieser pointed out that her memo says they are left with a little over 1000sf of living space, which is not correct. It is closer to 1400sf because the garage is 670sf but a lot of it is lost for stairs and other things, which becomes part of the living space. Essentially, they are living in the kitchen and living room/dining area. She stated that a concern may be how the additional stormwater will be drained. The site plan shows existing infiltration trenches on either side of the home. Those are able to accommodate additional runoff from the structure, provided the gutters are routed the same way as the previous build. She noted there is a letter in the packets from Ambit Engineering addressing this issue. The applicants have spoken with the Martignettis to the rear and they have no problem with the proposal. Grace Sheehan has provided a letter of support on the proposal. Similarly, the owner of 17 Cable Road has been very relaxed in the past with any changes to the property.

Attorney Kieser noted that the criteria for granting the variances is set forth in her memo to the Board. This will be a very small bump-out that will not be visible from the street. It will be

screened from the rear abutters by some trees and other plantings. It is not going to create a problem with air, light, space and separation. Stormwater is managed and overall coverage is still compliant at 28.5%. Special conditions exist because of the lot size and shape, which impacted the design requiring an incorporated garage that impacts the dwelling coverage calculation. The overall use is reasonable and substantial justice will be done. There is no benefit to the public by denying the proposal, but denying it would harm the applicants.

Paul Dobberstein, Ambit Engineering, explained that the flood maps were recently updated for Rockingham County. When the home came before the Board for approval, the structure was mapped in a Zone AO with a 1' flood depth. That is a zone that is basically impossible to get removed from, so they worked hard to design a home that was compliant with the flood zone. As part of that, the structure does not have a basement and just has a crawl space. Since that time, the property has been remapped into Zone AE Elevation 8, which is a better zone because they can actually be removed from the flood zone with a letter of map amendment (LOMA). He noted that a package has been put together for that and it will be submitted to FEMA. (He presented the plan on the screen showing the portion of the lot that will be removed from the special flood hazard area.) With that change in designation, a full basement will be allowed under the addition, which will be used for storage.

Vice-Chair Crapo stated that he does not see a proposed bulkhead for the basement under the addition.

Jake Sullivan, Gray Construction, stated the intent is to have a crawl space access off the back side of the bump-out. He noted that the ability to go a bit deeper with the basement access allows for someone to stand upright, so there can be a cut down door of about 5.5'. This will allow for storage of lawn furniture, kayaks, etc. It falls underneath the square footage for a full basement as far as access and egress code.

Chair Weathersby noted that a letter of support has been received from Grace Sheehan, 2165 Ocean Boulevard. She opened to the public for comments.

Mary Claire Clarkson, 14 Breakers Road, asked if the Conservation Commission had any input on this proposal. She is concerned about being subject to a drip effect of never-ending variances. The accumulative affect is destroying the natural environment of the wetland on the rear of her property and is destroying economic value. She has never seen so much water in the small area of wetlands in back of her house. She is concerned about the additional runoff, which is running down into the wetlands. The impact on her property is disturbing.

Attorney Kieser stated there is a small wetland area in the rear. (She pointed the area out on the plan.) She continued there is a small non-jurisdictional wetland area. There is no drainage going to that area from the house. Any water that falls on the property itself or on the grass is going to pool in the lower areas. However, the stormwater that hits the roof is going into the trenches.

Mr. Dobberstein stated that everything was installed and is functioning as designed. An extensive drainage analysis and stormwater management design was done for the original construction of the house. Every effort was made to keep the water on the lot and treated.

Richard Beauchesne, applicant, explained that the majority of the water is coming from the west side between the two rows of houses and ends up in the wetland area. The wetland was a major issue before they ever bought the property. Mrs. Clarkson has sump pumps that run almost constantly. That water runs basically into the wetland and in turn comes onto his land. He noted there is a drainage that goes from the wetland to the street to Breakers. Since he has been there, that has never overflowed. In addition, the infiltration trenches that were created have escape valves if they overflow. Since he has been there, not one drop has come out of the infiltration trenches. The trenches have taken all the water. He continued that where the proposed kitchen is going to be is on a downslope where there is grass. Right now, when it rains, the water drains straight back to the wetland. In his opinion, all the water that was going on that land is going to be redirected towards the front of the house. He stands by Ambit's conclusion that the addition will not add a single drop to that wetland. The water is also coming down Cable Road and drains into the raingarden. Once the raingarden overflows, it will drain towards the back of the property. It was designed to catch water and drain it slowly towards the back of the property; whereas before, it just filled into the property. If anything, what has been done by this mitigation has substantially improved the amount of water in the wetland.

John Chagnon, Ambit Engineering, presented a photo showing the lot before it was developed and spoke in regards to the drainage techniques that were designed for the lot.

Hearing no further comments or questions, Chair Weathersby closed the public hearing at 10:55 p.m.

Vice-Chair Crapo stated he does not see how the addition is going to change the runoff. His experience with these properties over the years is that some of the water goes around the Martignettis towards Ocean Boulevard as more of a river. He wonders if that has clogged up or is still in effect. That seemed to be the relief valve, not so much the water going in between the Martignettis' and Mrs. Clarkson's property to Breakers.

Mr. Chagnon replied that in the process of the project being worked on, the neighbors talked about this choke point. The choke point had an outlet. He assumes the outlet still looks like it did. He continued that they looked at it to see what could be done to make the drainage better. However, it is just so flat and would involve a lot of off-site work.

Vice-Chair Crapo stated that he does not see that the roof line of the addition is going to cause any increase in flow at the property line. The way everything is constructed, he does not see it causing a negative effect backing up onto the other properties.

Member Dibble stated that it feels to him that before the addition the back yard slopes down toward the low territory and marshy area. After the addition, the gutters will redirect the water forward towards the infiltration trenches. He is confident in the notion that this is going to reduce the amount of water going to the low area off this property. He thinks the project is a nice enhancement to the property. He can support the project without reservation.

Member Driscoll asked if there is a FEMA regulation that does not allow for them to have a sump pump in the proposed basement.

Chair Weathersby noted they don't have a sump pump now. She asked the applicant if a sump pump is intended for the new basement area.

Mr. Chagnon replied that he does not believe there is a sump pump now. He does not see that there would be a need for one. There can be water type basements now with the right kind of concrete. He thinks the notion that a sump pump would not be a good idea is an accurate one.

Member Driscoll stated he is in favor of the application. It seems like not only the professionals, but the applicant as well, are cognizant of how important it is to have that stormwater management plan and to make sure it stays maintained. He is in favor of the application with the condition of no sump pump discharging onto the lot with the new basement proposal.

Chair Weathersby commented that if a sump pump was needed it could probably drain into the trenches somehow. She pointed out that the whole stormwater management plan would need to be looked at again. If they say no sump pump, it should be okay. If it becomes an issue, they can come back and prove it is not going to be a detriment.

Member Piela stated he echoes everyone's opinions. He agrees with the comments that the roof runoff is going to be directed towards the sides of the property and no longer the rear of the property. He thinks that will be a benefit to the rear abutter who is concerned about the water. He asked if the basement is contingent upon the application for the rezoning.

Mr. Dobberstein explained that in order for a basement to be allowed, it has to be removed from the special flood hazard area. There is no question, as any lots above 8 will be removed.

Chair Weathersby stated she feels the same as everyone else. She is sympathetic to the water issues of the neighborhood. However, she does not think this 227sf addition with the roof water being redirected away from the back of the lot will cause any issues. She does not think this will exacerbate the issues that are there. She understands the need for the addition and is supportive of that. She noted that the only condition heard was that there be no sump pump used on the property.

Vice-Chair Crapo asked if there will ever be a building code regulation that would require a sump pump.

Mr. Chagnon replied that he does not think there is ever a requirement to have a sump pump.

Mr. Sullivan concurred.

Chair Weathersby called for a vote on the requested relief to 190-6.3.A, 190-2.4.C(5), and 190-3.4.E. She also noted that the conditions of approval for the house to be built remain in effect.

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

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

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

Motion by Burt Dibble to approve the application of Richard Beauchesne and Patricia Ann Healy for property owned and located at 9 Cable Road for variances as advertised with the condition that no sump pump be installed on the property and the previous condition remain in place. Seconded by Shawn Crapo.

Roll Call: Burt Dibble – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

7. **Rye Place Realty, LLC for property owned and located at 150 Lafayette Road, Tax Map 10, Lot 14 request variances from §190-3.1.H(2)(b) and (c) for construction of replacement septic and proposed parking within the 100' wetlands; and from §190-3.1.H(2)(a) for surface alteration within the wetlands. Property is in the Commercial District, Aquifer and Wellhead Overlay District and Multi-Family Overlay Districts. Case #19-2021.**

- **Continued to the June meeting.**

Adjournment

Motion by Patricia Weathersby to adjourn at 11:10 p.m. Seconded by Shawn Crapo.

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

Patricia Weathersby – Yes

Motion passed.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Rye Place Realty, LLC

Property:

150 Lafayette Road, Tax Map 10, Lot 14
Property is in the Commercial District, the Aquifer Overlay District
and the Multi-family Overlay District.

Application case:

Case #19-2021

Date of decision:

May 5, 2021

Decision:

The Board voted 5-0 to continue the application to its June 2, 2021 meeting.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Stacey Smith

Property: 51 Central Road, Tax Map 12, Lot 36
Property is in the Single Residence District.

Application case: Case #17-2021

Date of decision: May 5, 2021

Decision: The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-6.3 A for expansion of non-conforming structure.
- §190-2.3.C(2) for a generator 10' from the side boundary.
- §190-2.3.C(2) for a garage 15'6" from the Meadow Lane front boundary.
- §190-2.3(C)(5) for dwelling coverage not to exceed 16.7%.
- §190-5.0(C) for parking in the front yard setback.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

(REVISED 5/6/2021 TO ADD MISSING CONDITION)

Applicant/Owner: 16 Wentworth Road SPE, LLC of 126 Daniel Street, STE 200,
Portsmouth NH

Property: 16 Wentworth Road, Tax Map 26, Lot 18
Property is in the Single Residence District, SFHA, Zone VE

Application case: Cases #10a-2021 and 10b-2021

Date of decision: April 7, 2021

Decision: The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-2.3.C(1) for a structure 18.5' from the rear boundary;
- §190-2.3C(3) for a garage 18.1' and a retaining wall 10.1' from the front boundary;
- §190-6.3.A/B for expansion/destruction of a nonconforming structure;
- §190-3.1.H.2(e) for removal of 14 trees >4.5" in diameter within the wetlands buffer; and
- §190-3.1.H.2(a)(g) for a house 15.0' and 20.5', a pervious patio 19.1' and a pervious driveway/walkway 6.9' from the wetlands buffer.

The Board voted 5-0 to grant a special exception pursuant to the Rye Zoning Ordinance to allow for a driveway partially in the wetlands and in the wetlands buffer.

- §190-3.1.G and §190-3.1.H.2(f) for an asphalt driveway within the wetlands buffer.

Each of the above special exception, variances were granted conditioned upon continued compliance with all the following conditions:

1. The Stormwater plan to be implemented as presented to the Board of Adjustment on 4-7-2021
2. The plantings be installed as per the plan presented to the Board of Adjustment on 4-7-2021 except for the salt marsh core grass which remain.
3. Ledge removal shall be done with best management practices to minimize noise and destruction to the area.
4. The pavers be installed and maintained so as to remain pervious.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Alfred & Madeline Zarlengo Trust

Property: 193 Locke Road, Tax Map 12, Lot 87
Property is in the Single Residence District.

Application case: Case #16-2021

Date of decision: May 5, 2021

Decision: The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-6.3 A for expansion of non-conforming structure.
- §190-2.3C(1) for a deck 20' from the rear boundary.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Joseph & Mary Jo Smith

Property:

24 Maple Avenue, Tax Map 5.2, Lot 36
Property is in the General and Coastal Overlay Area District.

Application case:

Case #13-2021

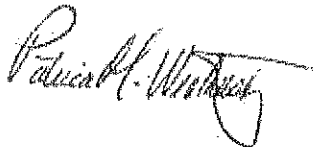
Date of decision:

May 5, 2021

Decision:

The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-3.1. H.(2)(a) and (g) for a shed 60' +/- from wetlands.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Richard Beauchesne & Patricia Ann Healy

Property: 9 Cable Road, Tax Map 8.4, Lot 76-1 and 76-2
Property is in the General Residence, Coastal Overlay Districts, SFHA
Zone AE (El 8)

Application case: Case #18-2021

Date of decision: May 5, 2021

Decision: The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-6.3 A for expansion of non-conforming structure.
- §190-2.4C(5) and §190-3.4E for dwelling coverage of 18.6%.

Each of the above variances were granted conditioned upon compliance with each of the following conditions:

1. No sump pump shall be installed or discharge on the property; and
2. All previous conditions of approval remain and the owner be in compliance with the same.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Aaron Proulx & Jun Lee

Property:

797 Ocean Blvd, Tax Map 23.1, Lot 8
Property is in the General and Coastal Overlay Area District.

Application case:

Case #15-2021

Date of decision:

May 5, 2021

Decision:

The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-6.3 A for expansion of non-conforming structure.
- §190-3.1. H (2)(a),(c),(f) and (g) for an A/C condenser 24' 7.5" from wetlands.
- §190-3.1. H (2)(a),(c),(f) and (g) for a generator 23'8" from wetlands.
- §190-3.1. H (2)(a),(c),(f) and (g) for a deck 20' +/- from wetlands.
- §190-3.1. H (2)(a),(c),(f) and (g) for steps 18.5' +/- from wetlands.
- §190-2.4C(3) for deck stairs 25' from the front boundary.
- §190-2.4C(2) for a deck 12.1' from the side boundary.

Each of the above variances were granted conditioned upon continued compliance with all the following conditions:

1. When the existing fence is removed, it is replaced by a fence on the retaining wall nearest the house or on the house side of the retaining wall.
2. All debris is removed from the wetland.
3. Native, salt water resistant plants are installed to a depth of 5 feet along the entire backyard except for the shed and step area.
4. The owners submit a planting plan for Conservation Commission approval prior to the planting.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Nicole & Michael Callahan

Property:

1367 Ocean Blvd, Tax Map 17.4, Lot 16
Property is in the General Residence, Coastal Overlay and
SFHA Zone AO+3

Application case:

Case #08-2021

Date of decision:

May 5, 2021

Decision:

The Board voted 3-2 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-2.4.C(1) for a garage 5.1' from the rear boundary.
- §190-2.4.C(1) for a paver walkway 1.2' from the rear boundary.
- §190-2.4.C(2) for a 2nd floor deck 11.0' from the side boundary.
- §190-2.4.C(2) for a garage overhang 15.0' from the side boundary.
- §190-2.4.C(3) for a garage overhang 1.3', from the Highland Park Ave front boundary.
- §190-2.4.C(3) for garage/connector overhang 7.2' from the Highland Park Ave front boundary.
- §190-3.4 D and §190-2.4.C(5) for dwelling coverage of 50.5%.
- §190-3.4 D and §190-2.4.C(5) for total impervious coverage of 56.3%.
- §190-6.3A/B for the expansion of a nonconforming building.
- §190-3.1.H.2(a) and (g) for a paver walkway 56.0' from the wetland.
- §190-3.1.H.2(a)(g) for a garage 61.0' from the wetland.
- §190-5.0.B for 2 on-site parking spaces where 4 are required.
- §190-5.0 C for parking spaces within the front setback and within 10' of the rear boundary (inside garage).

Each of the above variances were granted conditioned upon continued compliance with all the following conditions:

1. The Applicant promptly submit a new Plan C-2, revised to eliminate parking spaces not entirely on the applicant's property; and
2. The pervious pavers shall be installed and maintained so as to remain pervious.



Patricia Weathersby, Chairman

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.