

**TOWN OF RYE
ZONING BOARD OF ADJUSTMENT**

**Wednesday, December 1, 2021
7:00 p.m. – Rye Public Library**

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Chris Piela, Patrick Driscoll and Alternates Sandra Chororos and John Mitchell

Also Present for the Town: Planning/Zoning Administrator Kim Reed

I. CALL TO ORDER

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

Alternate John Mitchell was seated for the meeting.

II. BUSINESS

- **Approval of Minutes**
 - November 3, 2021

**Motion by Shawn Crapo to approve the minutes of November 3, 2021 as amended.
Seconded by Chris Piela. All in favor.**

- November 17, 2021

**Motion by Shawn Crapo to approve the minutes of November 17, 2021 as amended.
Seconded by Chris Piela. All in favor.**

III. APPLICATIONS

- 1. Domenic Martignetti & Phyllis Martignetti 68 Manchester St., Nashua, NH for property owned and located at 4 Breakers Road, Tax Map 8.4, Lot 68 requests variances from §190-2.4.C(2) for a platform deck .6' from the side boundary where 20' is required; from §190-2.4.C(1) for expansion of an existing structure; from §190-3.1.H for deck 1' within the wetlands buffer; and §190-3.4.E and §190-2.4.C(5) for lot coverage of 75% where 30% is allowed. Property is in the General Residence, Coastal Overlay District and the SFHA, Zone AE (8). Case #33-2021. Applicant requests a continuance to the January 5, 2022 meeting in order to appear before the RCC first.**

Motion by Shawn Crapo to continue the application of Domenic and Phyllis Martignetti to the January 5, 2022 meeting. Seconded by Patrick Driscoll. All in favor.

2. **Peter G. Hamill Rev. Trust for property owned and located at 152 Harbor Road, Tax Map 9.2, Lot 18** requests variances from §190-2.3.C(1) for a patio 2.67' from the rear property boundary where 30' is required; from §190-2.3.C(2) for granite edging 2.6' from the east side boundary and 10.72' from the west side boundary, a cobble walkway 11.3' from the east side, a shed 12.7' from the west side boundary and 8.66' from the east side boundary where 20' setback is required; from §190-2.3.C(3) for granite driveway edge .4' and a shed 8.6' from the front boundary where 40' is required; from §190-3.1.H(2)(a), (e)(2) and (g) for a permeable patio 7.3' from the south wetland, for a cobble driveway 8.4' from the north wetland, a shed 15.3' from the wetland, to remove tree in the wetland buffer, to add stairs 60.5' and a deck 82.7' from the wetlands where 100' is allowed; from §190-6.3.A for expansion of the house. **Property is in the Single Residence, Coastal Overlay District, SFHA Zone (AE). Case #49a-2021.**
3. **Peter G. Hamill Rev. Trust for property owned and located at 152 Harbor Road, Tax Map 9.2, Lot 18** requests a special exception from §190-3.1.G(3)/3.1.H(f) for a storage shed 15.3' from the wetlands. **Property is in the Single Residence, Coastal Overlay District, SFHA Zone (AE). Case #49b-2021.**

Attorney Monica Keiser, representing the applicant, presented to the Board. She stated that in reading the notice or looking at the chart, it starts to feel like a lot of variances. She explained there is a lot of stuff that's already there. A lot of what is being done is landscaping and hardscaping over stuff that's already there. She pointed out that there's a portion of the property right on Harbor Road; however, the house is set back from the road. The house is accessed by a right-of-way and is next door to the Laings. The plans are to put a shed in the northwest corner. There is some existing crushed impervious surface on the south side acting as a patio. The plan is to replace that with a permeable material. The area will be a bit larger and have nice landscaping elements around it. The driveway in the front of the property will be slightly expanded. One of the reasons why that's important is so guests won't park in the easement area, which the Laings use to access their property. The driveway will be bigger so it will accommodate more cars. The driveway right now is pea stone and is impervious; however, it will be going to permeable. She continued that the dimension on the relief chart is 0.4', which is at the upper corner where it curves in. It's about 3.5' from the lot line. There is no structure in this area and it's just open to the road. There will be some changes to the hardscaping that exists. There's a retaining wall along the property at 0' from the lot line. There will be some changes, but it will be within the retaining wall area. She pointed out that to the back of the property on the west side, there's a small back step and a little bit of gravel crushed stone. There is going to be a replacement deck and stairs in this area; however, it's not going to be enclosed or covered.

Attorney Keiser noted that the lot is about .75-acre. It has overlapping buffer wetlands; however, it's been previously developed with this house. There's a lot of manicured lawn area, which will be addressed and restored with native plantings. She stated that they went to the Conservation Commission in March and got some feedback for the original proposal. The proposal went back

to RCC in September with a revised plan. There is a tree that the property owners would like to remove in the southwest corner of the property. The tree is near the proposed patio and the grade changes in that area. The tree is sort of pitched a bit. There is some concern about the work that is proposed for that area around the root structure. The neighbors are also concerned about the tree and have asked for it to be removed. The plan is to replace that area with a number of arborvitaes to provide some screening. There are other trees on the property. This is the only one that is proposed to be removed.

Eric Weinrieb, Altus Engineering, explained that the property has frontage on Harbor Road and then the parcel jogs. There's an access drive onto the site across the abutting property and an easement on the Laing parcel. It is a site of multiple wetland buffers. It has previously been developed. The work will all be within developed areas. (He pointed out on the plan the locations of the tidal buffer and the highest observable tide line.) He noted that there's a wetland system that is entirely on the Laings' property, but it's small enough so it doesn't have any setback criteria. He also noted that the entire site is within the 100' buffer. The proposal will be going to the Wetlands Bureau for a dredge fill permit. However, because all the work is within the 100' buffer, there's no shoreland permit needed.

Mr. Weinrieb continued that the cobblestone drive, which is permeable, will be converted to pavers, which is also permeable, but has less maintenance. They will be able to plow the driveway without the concern of stones being thrown into the wetland buffer and it will be less maintenance, as far as picking up those stones in the resource area. An area is being added for a driveway access area for overflow parking. A vegetative buffer will be added with the bark mulch taken out in that area. He pointed out that there's bark mulch in multiple areas and it will all be removed. Along the southern boundary is a picket fence that limits wildlife from coming up into the area. It's been manicured down to the picket fence. (He pointed out on the plan the area that would be restored and naturally vegetated.) He continued that the Conservation Commission indicated that they would like to see 5' to 10' of natural buffer. That's being proposed; however, there is a pinch point that is about 3.5' to the property and that minimum won't be able to be maintained.

Chair Weathersby asked if the picket fence is being removed.

Mr. Weinrieb confirmed. He continued there will be stepping stones going up to the deck. The shed will be raised up so water can flow underneath. As discussed with the Conservation Commission, there will be gravel underneath to help water to infiltrate, as well as a stone drip edge on three sides. The Conservation Commission had some concerns about the concentration of flow down the drip edge, so a diverter in the middle is being proposed. If water flows down that edge, there will be a way to check the velocity and slow it down before it flows back over.

Vice-Chair Crapo asked if stone or gravel is going to be under the shed. The term "gravel" has become synonyms with impervious.

Mr. Weinrieb explained it's going to be installed with filter fabric and 2" crushed stone bedding. He continued that Joel Noel mapped the wetland and the highest observable tide line. James Verra did the details to the existing conditions survey. He pointed out that the whole boundary was not done, as there is an area unaffected by the project. The focus was on the larger area. The location was developed through a combination of constraints. The property has the access drive and there is an existing leach field that has a fill extension requirement at a maximum 3 to 1 slope. The project couldn't be pushed up further without getting into the fill extension and the 3 to 1 slope area. He noted that he went to the site and found the corner of the leach field and the fill extension. He made sure the area for the project didn't impact the fill extension or the stone and pipe leach field. This brought it down to the lower level. He pointed out that the house itself is not in the 100-year floodplain. Another challenge is the floodplain goes right through the parcel, so there are two different floodplains. (He pointed out on the plan the area outside the 100-year floodplain.)

Mr. Weinrieb stated that the Laings have started construction on their house next door. The Laings have expressed that they do not have any concerns with the project.

Chair Weathersby noted that an email was received from the Laings.

Mr. Weinrieb pointed out that the Travers support the tree being removed. The tree is right on the edge of the project. Even if the project was moved over, it would still be in the root system and the tree would be disturbed. By doing the supplemental plantings, they will be making up for that loss.

Vice-Chair Crapo stated that the Conservation Commission letter indicated that the tree is healthier than was depicted. He asked what they are proposing for an offset.

Mr. Weinrieb explained there are a bunch of arborvitaes proposed. Also, as part of the wetlands application, a full planting plan is required. Before it goes to DES, it has to be signed off by RCC. They are going to get another chance to review what is proposed for landscaping.

Peter Hamill, applicant, stated that within that 50 x 50 quadrant, the tree is worth about 25 points. So, they are exceeding point count.

Vice-Chair Crapo commented that arborvitaes are not on the native species list.

Mr. Weinrieb replied that's more of a buffer planting. (He pointed out the area on the plan that will be filled in with native plantings.)

Mr. Hamill explained that the arborvitaes were chosen because there are two existing now on the Travers property and that line is going to be continued. With the Travers permission, they could think about more native types of evergreens.

Chair Weathersby pointed out that the back yard is relatively flat. She asked why the deck area couldn't be pushed on top of the leach field.

Mr. Weinrieb replied that it's a stone and pipe system, so there shouldn't be any type of structure over it. If it was a chambered system, something could go on that area that wouldn't crush the pipes.

Mr. Hamill noted that the original proposal was 3.5' south toward the wetland. With the Conservation Commission, there was discussion about shifting it north. It's already been moved about 4'. The elevation grew about 30", because of that 3 to 1 requirement.

Chair Weathersby asked the reason for the shed. She pointed out it's a very large home with a basement and two car garage.

Mr. Weinrieb noted it's a slab on grade.

Attorney Keiser stated it's a shed that is matched to the home and the neighborhood. There are several other sheds in the neighborhood. There are several other large homes. In that sense, she thinks a smaller shed wouldn't be scaled properly. The design of the shed, being that it's up on pilings and not sitting on the ground, is a big difference. However, there is no basement and most of the homes in the area don't have basements. The water table itself doesn't permit basements. In regards to the garage, once stuff is put into the garage, sooner or later, the cars aren't in the garage anymore. For wetland purposes, it's better if the cars are in the garage. It's also better for the Laings and the parking situation. If the owners' cars are in the garage, people who come to visit can be in the driveway. The owners have expressed the need for additional storage space. A shed is permitted in the wetland itself. An unoccupied structure not fit for human habitation is permitted in the actual wetland by special exception. Her interpretation is that they are permitted in the wetland buffer by special exception, as well. The Board has generally taken the position that if something needs a special exception or a variance, ask for both. She reiterated that the use is permitted by special exception. She thinks this takes a bit of the "steam" out of the argument of whether the shed is needed. Arguably, the shed is permitted by special exception and it meets the criteria for a special exception.

Chair Weathersby asked if the first floor of the house is finished (on top of the slab).

Mr. Hamill explained there's an entryway that steps up 4' immediately off the garage. There's one bedroom on that slab on grade. The rest is crawl space. That bedroom is stuffed with Christmas decorations and things that would traditionally go in a basement. He pointed out that there's no attic space and no basement. The crawl space is filled with mechanicals. The fourth bedroom is what the shed is replacing and it would create a guest bedroom.

Chair Weathersby clarified the shed is not going to be a bedroom.

Mr. Hamill confirmed. He noted that the shed is not going to hold lawn equipment. It's just for traditional storage.

Kelly Hamill, applicant, commented that they have never been able to use the garage because that's being used for storage also.

Member Driscoll asked about the gas firepit area. He commented that after hearing the description of the shed, it makes sense to him and is in line with what he has voted to approve in the past. The patio that close to the lot line and 7.3' from the wetland delineation is a bigger ask.

Mr. Weinrieb noted that the underlying area is already crushed stone, so it's not a natural area. They are taking that area and making it more functional. The entire area for the patio is generally the same area.

Member Driscoll asked when the home was built.

Mr. Weinrieb replied 2000. There were two separate buildings and they infilled with a concrete patio.

Mr. Hamill explained that originally, there was a fish market on one side and a captain's house on the other side. The loading dock that was removed is now the entryway and the two houses became one. That was finished in 2001.

Member Driscoll asked if there was a variance for the crushed stone area in the back.

Attorney Keiser replied not that she knows of. When her firm was involved with the Laing project, she had researched this property, but she doesn't recall that specifically. She is not sure how the crushed stone came to be there. It doesn't look like a lot of crushed stone, but there's certainly enough there that it's been compacted down. The idea is to take advantage of that area and have it for some outdoor living space.

Member Driscoll asked if there is a roof deck.

Mr. Hamill confirmed. The firepit would be a portable gas firepit with four Adirondack chairs around it. The upper level would be an outdoor table with a 12 x 10 pergola that's 11.5' tall with four columns.

Speaking to Mr. Hamill, Attorney Keiser pointed out there's a roof deck on top of the screened in porch. She asked if there is a reason why the roof deck can't be utilized for some of things that are trying to be accomplished.

Mr. Hamill stated that it can, but someone would have to climb the stairs and go through his daughter's bedroom.

Attorney Keiser commented the idea is to connect to the first floor living space.

Member Driscoll stated that he thinks the tiered portion with the pergola is in line with what he has voted for in the past. The lower section creeps pretty close to the wetland and boundary.

Mr. Hamill stated that he thinks it's an absolute improvement from the existing condition.

Chair Weathersby opened to the public for comments.

Nancy Braese, 146 Harbor Road, stated that they are very contiguous with the Hamills. They are very happy to have the improvements. The tree has had several branches come down and it makes a complete mess. It may be healthy, but it's only a matter of time that the tree will come down. They are perfectly happy to have the tree removed and are in favor of the proposal.

Mike Travers, 146 Harbor Road, noted that the tree is 75' tall and is 45' from their house. In the last four years, two sizable branches have just died and fallen off the tree. It doesn't seem to be a healthy tree. He's been very interested in seeing that tree go. As far as the patio in the back, the way it is now, rainwater just runs right off into the wetlands. It was completely covered with phragmites. He noted that they paid to eliminate most of the phragmites and are working with the Hamills to get rid of the rest. If they put a deck in that location, it's going to be so much better than what is there now. He expressed his support for the project.

Mr. Hamill pointed out that the Travers own the property along the south edge of his property.

Chair Weathersby noted that the Board received an email from Mr. Travers, dated February 7, 2021, in support of the landscape plans. The Board also received a letter from Scott and Karen Laing, 140 Harbor Road, in support; however, they do have one issue. The letter states; "We would like to say we hope the Board maintains the 20' boundary between the property lines. We do agree they need to do a little with their driveway and maintain the 20 x 20 easement onto their property".

Mr. Weinrieb pointed out on the plan the 25 x 20 easement.

Attorney Keiser reiterated that part of the reason is to have more parking and get cars out of that area.

Mr. Hamill commented it allows for three cars on the drive. Anytime a guest comes, there's a little pull off on Harbor Road where they park.

Vice-Chair Crapo stated that he would like to correct a misstatement he made. He said the Conservation Commission said the tree was healthy. They said that it was too far away to threaten the house.

Susan Shepcaro, Rye Conservation Commission, stated that the Commission is looking for heavy native plantings. They are also waiting on a planting plan. The Commission won't sign off until there is a planting plan. The Commission is also looking for a deed restriction for the shed for no petroleum products to be stored. There will also be no mulch in the wetland buffer. Where the locust is proposed to come out, the Commission has asked for ground cover along the backside (west). She continued that where the Conservation Commission is not crazy about the shed, it is up on the land and is not on the edge of the wetland. With the pervious around it, the Commission feels that the water will be absorbed through the gravel drip edge and the crushed stone. The main concern is that the planting plan be very rigorous.

Mr. Travers noted that the arborvitaes thrive in that area and the birds love them. He would not be worried about them not being native, as they do really well.

Ms. Shepcaro stated that if there is an alternative to the arborvitae that could create a screen, the Commission would much prefer native plantings.

Chair Weathersby noted the Board has received a letter from the Conservation Commission dated November 19, 2021 with the RCC proposed conditions. It indicates that RCC does not object, as long as the conditions are followed. The Board also has an April 11, 2021 letter from RCC, as well.

Ms. Shepcaro stated that the Hamills have listened to the Commission and have changed their plans. They understood the wetland issues, as they went through the process. The RCC very much appreciates their responsiveness.

Attorney Keiser stated that in regards to the condition of the detailed planting plan before approval, the take is that it not be before the BOA's approval. RCC will be looking at this again for the process with DES. That would be the time the detail planting plan would be presented. Right now, they are not ready with the details, except for the arborvitaes. The other issue is the deed restriction. She pointed out they are not transferring the property right now. She's not sure how they would put a deed restriction on something that they own, unless they are transferring it. If they sell the house in ten years, who's going to remember there's supposed to be a deed restriction? She has often suggested that notice of approvals be recorded. When there is a subsequent purchase and title search, it would be on record and part of the title search. Although, her clients are perfectly willing to do a deed restriction, she is just concerned how or when it would happen.

Vice-Chair Crapo noted that perhaps it would be a covenant that would be recorded with the deed, rather than a new deed.

Attorney Keiser commented that it sounds to be a little difficult. Why not record the notice of decision with the conditions attached? She continued that in looking at the relief chart, it shows that a lot of the existing and proposed dimensions are not getting closer. The primary issue is the lower deck. Again, the position is that this will be replacing a developed crushed stone area.

She pointed out that there was a difference of opinion as to whether the boundary line was a side line or a front line, so she asked for both. (She pointed out the line in question on the plan for the Board.)

Attorney Keiser reviewed the criteria for granting the variances and special exception:

- Not contrary to the public interest and in the spirit of the ordinance. This proposal does not undermine the purposes of the ordinance. There's no change in use. The lot coverage is well below the required 15%. The native plantings will be incorporated. In terms of encroachment on the side, front or rear, there is no development in front or behind the property. The encroachment is not going to have the effect of crowding abutters.
- Proper use of natural resources and other public requirements. The Hamills are very responsive to this process. They are willing to have the type of landscaping the RCC is interested in, which is significant. This will accomplish the types of goals the RCC would like to see.
- Nothing can be done on the property at all without asking for relief. Even the lower patio would need the same type of relief, even if it were a little smaller. There is probably enough coverage to have a patio that isn't pervious. It would be better to have the permeable patio in that location.
- Granting the variance will not diminish the surrounding property values. The Laings and the Travers demonstrate that they are not adversely affected by the proposal.
- Denial of the variances would result in an unnecessary hardship. It starts with special conditions; the configuration of the property, the wetlands surrounding the property, the fact that the property is developed with a large home and nothing can be put on top of the septic system. Those are the things that dictate where the patio goes and where the shed can be located.
- No fair and substantial relationship exists between the general purposes of the ordinance and its general application in this instance. The reason why that's the case is a result of the Mr. Weinrieb's design and the Hamills willingness to incorporate a lot of things that have been proposed; putting the shed up on a piling and planting native plants on three sides of the property go a long way in allowing the proposed conditions to exist without undermining the purposes of the ordinance.
- The proposed use is reasonable. Based on the size of the house, the surrounding neighborhood and the configuration inside, she would submit that the shed is both permitted in its location by special exception and reasonable.
- Substantial justice would be done. Given that the native plantings and other elements that have been presented, address the purposes of the ordinance with respect to wetland protection, as well as, the features of the lot and surrounding lots and the open undeveloped space with respect to setback relief, denying the proposal or any part of the proposal would not benefit the public.
- In regards to the special exception request for the shed, the use is not injurious nor detrimental. Because of the design elements that Mr. Weinrieb has presented and

the fact that there are a number of other sheds for other ocean front lots, the shed is not going to be injurious nor detrimental to the area. It's not going to be used to store chemicals or pesticides. That's all to the benefit of the surrounding area and the wetlands.

- The requested or proposed use is in harmony with the general purposes of the ordinance and in accordance with the general and specific rules contained therein. There is still a way to have this proposal exist and still have the wetlands to fulfill their purposes and important function. The specific permeable designs and native ground covering enhancements will continue to ensure the wetland continues to function as well, if not better.
- The shed is essential if the lot is not capable of accommodating a basement and doesn't have an attic.
- Based on the wetland delineation and the feedback from the Conservation Commission and the efforts the Hamills have taken, there will be no detrimental effect on the wetland and no detrimental effect to the wetland buffer.
- Economic advantage alone is not sufficient. The Hamills are just trying to make the property more livable for their family.

Referring to RCC recommendations #3, Vice-Chair Crapo noted that it says "storing of petroleum". He would like to add "or similar liquid products". He pointed out that some shelving, buckets, etc., actually have petroleum products in the plastics. The intent is no gasoline or oil.

Alternate Chororos asked about paint.

Attorney Keiser commented that paint may fall under chemicals.

Chair Weathersby suggested gas, oils, paints, pesticides or other chemicals.

Hearing no further questions, Chair Weathersby closed the public hearing at 8:13 p.m.

Alternate Mitchell stated that everyone addressed all the thoughts he had; the shed, lower patio and removal of the tree. He thinks it's a really nice plan and is worthy of the site. This is a prominent piece of property. It's also a very private area. He thinks the abutters have a lot to say about it. He doesn't see anything negative from the abutters. He was thinking there may be some objections to such a big shed being on that side of the property; however, there are no objections. He thinks there was a great explanation for the shed. He feels like this property needs good stewards. It seems like the Hamills are good stewards of this property. He thinks it's part of the Board's job to assist the residents of the town in enjoying their property within the codes. It's a nice design and is a nice improvement. He does not have any objections.

Member Piela stated that first thing that strikes him is that in the letter from RCC it says "the applicants have made significant changes to the original proposal". He appreciates that. The second concern he had was the lower gas pit and patio getting close to the boundaries. Knowing

now that the abutter who would be most affected by that is in favor of the project, combined with the fact that's what's there now is stone, it makes him more favorable despite the fact that's it's up against the property line.

Alternate Chororos stated that she feels some hesitancy with the gas firepit. She doesn't know if there is any opportunity to have a conversation about moving that back a bit to give a little more leeway between the firepit area and the wetlands.

Vice-Chair Crapo asked about the age of the septic system. He also asked if the shed was going to restrict the location for a replacement system in the future.

Mr. Weinrieb noted that the septic system was rebuilt in 2001 with a traditional stone and pipe system. Due to the location, should that system fail, it will be pulled out and an advanced treatment system would be installed. (He pointed out on the plan the proposed location for a new system in the future.)

Vice-Chair Crapo commented the shed is rather large.

Chair Weathersby commented this is bigger than the typical shed that comes before the Board, but it's not supersized.

Vice-Chair Crapo stated that the neighbor brought up a good point about the somewhat utilitarian part of the firepit area and that it could drain. He doesn't know if making it 2' to 4' shorter is really going to necessarily be a benefit versus the construction of the permeability to allow percolation to go down. He doesn't know if there's a quantitative offset if it's shortened up. Could the house be there today? Probably not. Could the lot be developed? Most likely not. However, it is there and the owners seem to be willing to work within the laws and criteria. He thinks with some of the changes, there are more positives to be said here than negatives. He can be in favor of the project, even though on paper it looks like a million things are being asked for.

Member Driscoll stated that it seems like everything has been transparent, which makes it easier for the Board. He thinks everything is well thought out and it seems reasonable, other than that patio. From hearing the other board members, he thinks he might be in the minority. He thinks having the buffer and native plantings in that 4' area, if it was pushed back, would benefit the land. He's not onboard with the patio, so he would vote against that portion of the application. He commented that everything else is reasonable.

Chair Weathersby stated that where she stands is that it's already an impermeable surface now with the gravel. That's being torn up and pervious pavers are being put in. She pointed out that a condition the Board usually puts in is that they be maintained and installed to remain pervious. She continued that she is usually the one who says "I don't want a patio that close to the property line". However, that's due to a lot of neighbor concerns and imposing on them. This is open space and wetland that is not part of the property that's actually used. She can get behind the patio. She thinks it actually improves the environmental conditions in that area. She thinks the

things they are doing overall improves the situation; putting in the pervious surfaces, replacing the impervious and the plantings. The shed was a concern for her; however, it's been explained there's clearly a need for more storage. She thinks it was ingenious to put it up on pilings, let the water flow under and let things percolate through. Even though it's close to the wetlands, that went a long way for her. She thinks it will definitely improve the use of this property and the enjoyment. She doesn't see that it will negatively affect the wetland, if the conditions that were discussed are put into place. She thinks it's reasonable, as well.

Chair Weathersby reviewed suggested conditions:

- 1.) The pervious pavers remain pervious.
- 2.) RCC conditions;
 - o #2 – The planting plan for these areas should be developed and presented to RCC prior to DES approval.
 - o #3 – Gas, oils, paints, pesticides or other chemicals and equipment that uses petroleum.
- 3.) The notice of decision to be recorded. A deed restriction should be added with these specifications upon the next transfer of the property.

Chair Weathersby noted that for a deed restriction upon the next transfer, it would not be known if it was done. It could be enforced but it would be difficult.

Vice-Chair Crapo pointed out that if it's a condition of the variances, it would then go into the property file for this property. Anyone doing due diligence on purchasing the property would be on notice with the file.

Attorney Keiser commented this is why the recording is better.

Chair Weathersby replied they can do both. They can ask for the notice of decision to be recorded and the deed restriction to be added upon the next transfer.

Vice-Chair asked if the dimensions on the shed from the setback are from the drip edge of the roof.

Mr. Weinrieb replied it's from the walls. He is not sure what the overhang is from the structure. He commented that the shed could be slid up so the drip edge is the dimension.

Chair Weathersby asked if they are sticking with the request.

Mr. Weinrieb confirmed.

Chair Weathersby continued with proposed conditions:

- 4.) No mulch
- 5.) West side of the property with native ground cover plantings, trees and shrubs.

Alternate Chororos asked about the tree.

Chair Weathersby commented they haven't really talked about the tree. She hates to have big trees taken down in the wetlands because they absorb water. This one is clearly starting to lose branches. She thinks between the new plantings and trees it offsets it and then some. She would not hold this up because of a tree.

Vice-Chair Crapo noted that stuff gets old and obsolete. The offset is the equivalent replacement and that allows for some latitude. He pointed out that arborvitaes are typically one of the better choices for compact screening. He would not want to see #2 cause an issue between the RCC and applicant which causes a heartache on the variance. He always hesitates on final planting plans being approved.

Chair Weathersby noted it's not being approved. It's developed and presented to the RCC prior to DES approval. RCC will have input, but it's not subject to their approval.

Chair Weathersby called for a vote on the special exception to 190-3.1.G(3)/3.1.H(f) for the shed:

- **Essential to the productive use for the land not so zone?**

Chris Piela – Yes; John Mitchell – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes;
Patricia Weathersby - Yes

- **Has it been shown by a certified wetland scientist that to the maximum extent practicable construction of the shed would have the least detrimental impact upon the wetland?**

Chris Piela – Yes; John Mitchell – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes;
Patricia Weathersby - Yes

- **Has it been shown by a certified wetland scientist that no alternative feasible route or area exists which does not cross or alter a wetland?**

Chris Piela – Yes; John Mitchell – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes;
Patricia Weathersby - Yes

- **Is it true that this is not being done for economic advantage alone?**

Chris Piela – Yes; John Mitchell – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes;
Patricia Weathersby – Yes

- **Is this shed neither injurious nor detrimental to the neighborhood?**

Chris Piela – Yes; John Mitchell – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes;
Patricia Weathersby - Yes

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

Chris Piela – Yes; John Mitchell – Yes; Shawn Crapo – Yes; Patrick Driscoll – Yes;
Patricia Weathersby - Yes

Motion by Shawn Crapo to grant the special exception for the construction of the shed with the following conditions:

- 1.) **The pervious surfaces are installed and maintained to remain pervious.**
- 2.) **Whenever the project abuts the wetland or within 20ft of the wetland, a heavy planting of native of plants is required to a depth of 5-10ft.**
- 3.) **A planting plan for these areas to be developed and presented to the RCC prior to DES approval.**
- 4.) **The shed to have restrictions that prohibit the storing of petroleum products including but not limited to: (gas, oil, paints, or similar liquid products), pesticide or other chemicals and also equipment that uses petroleum. The notice of decision will be recorded and a deed restriction upon the transfer of this property with these specifications.**
- 5.) **No mulch allowed in the wetland buffer.**
- 6.) **The west side of the property should have a native ground cover planted and several trees and shrubs should be planted.**

Chair Weathersby called for a vote on variances to 190-2.3.C(1); 2.3.C(2); 2.3.C(3); 3.1.H(2)(a), (e)(2) and (g), and 6.3.A:

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

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

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

Patricia Weathersby – Yes

3) Substantial justice is done?

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

7) The proposed use is a reasonable one?

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

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

Chris Piela – Yes
John Mitchell – Yes
Shawn Crapo - Yes
Patrick Driscoll – Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the relief requested as presented with the following conditions:

- 1) The pervious surfaces are installed and maintained to remain pervious.**
- 2) Whenever the project abuts the wetland or within 20ft of the wetland, a heavy planting of native of plants should e required to a depth of 5-10ft.**
- 3) A planting plan for these areas should be developed and presented to the RCC prior to DES approval.**
- 4) The shed should have restrictions that prohibit the storing of petroleum products including but not limited to: (gas, oil, paints, or similar liquid products), pesticide or other chemicals and also equipment that uses petroleum. The notice of decision will be recorded and a deed restriction upon the transfer of this property with these specifications.**
- 5) No mulch allowed in the wetland buffer.**
- 6) The west side of the property should have a native ground cover planted and several trees and shrubs should be planted.**

Seconded by Chris Piela. All in favor.

IV. OTHER BUSINESS

a. Communication

None

b. Zoning Amendment

Chair Weathersby noted the Board packets contain the proposed zoning amendments for review. If there are any concerns or suggestions, members should get in touch with the Planning Administrator. Zoning amendments are handled by the Planning Board, but the Board can offer suggestions.

c. Other

Chair Weathersby stated that she would like to discuss what happens when one of the criteria for a variance fails (at least three “no” votes) and whether that variance can be granted. She noted that the answer is no. The Board had a case in November with this situation. There has been

confirmation from the Board's counsel that if one of the criteria fails, the whole thing has to be voted down.

Member Piela asked if the Board stops voting at that point.

Chair Weathersby commented that they could stop and have a motion to deny.

Member Driscoll pointed out that they would want the full vote on an appeal.

Vice-Chair Crapo agreed. It would probably need to proceed for a fair appeal. There have been requests for a rehearing before where the application failed because one of the questions, when applied to that project, got kind of muddy. In a rehearing, the applicant may have some criteria as to why the Board made a mistake on a particular question.

Chair Weathersby stated that it can be done legally either way. She was on another board with a very important case and it failed on one of the first questions. The board never dealt with any of the other factors. The Board can also go through the questions to provide the guidance. She commented that the better practice might be to go through the questions. However, there may be some applications where it's not the better practice. She pointed out that if a board member feels they may have voted incorrectly or just want to revisit a question, the member can make a motion to review a particular criterion again. She continued that if a board member reviews an application and it's felt that the Board made a wrong decision on some grounds, the Board can make a motion to reconsider. It doesn't have to just come from the applicant themselves.

Planning/Zoning Administrator Reed stated that something would have to be put in writing to be put on the agenda, so the other members know they are reconsidering an application.

Chair Weathersby agreed it would have to be in writing and outline all the reasons why it should be reconsidered. The parties should have an opportunity to attend the meeting, but they wouldn't have an opportunity to speak.

There was some discussion on how the appeal process works.

Zoning Administrator Reed noted that she has asked Attorney Eric Maher for an estimate for a complete review of the zoning ordinance. This is proposed for 2022.

ADJOURNMENT

Motion by Chris Piela to adjourn at 8:57 p.m. Seconded by Shawn Crapo. All in favor.

**Respectfully Submitted,
Dyana F. Ledger**

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

- Applicant/owner:** Peter G. Hamill, Rev. Trust
- Property:** 152 Harbor Road, Tax Map 9.2, Lot 18
Property is in the Single Residence District, Coastal Overlay District
And the SFHA Zone (AE)
- Application case:** Case #49-2021
- Date of decision:** December 1, 2021
- Decision:** The Board voted 5-0 to grant variances from the following section of the zoning ordinance:
- §190-2.3.C(1) for a patio 2.67' from the rear property boundary;
 - §190-2.3.C(2) for granite edging 2.6' from the east side boundary;
 - §190-2.3.C(2) for granite edging 10.72' from the west side boundary;
 - §190-2.3.C(2) for a cobble walkway 11.3' from the east side boundary;
 - §190-2.3.C(2) for a shed 12.7' from the west side boundary;
 - §190-2.3.C(2) for a shed 8.66' from the east side boundary;
 - §190-2.3.C(3) for granite driveway edge .4' from the front boundary;
 - §190-2.3.C(3) for a shed 8.6' from the front boundary;
 - §190-3.1.H(2)(a),(e)(2) and(g) for a permeable patio 7.3' from the south wetland;
 - §190-3.1.H(2)(a),(e)(2) and(g) for a cobble driveway 8.4' from the north wetland;
 - §190-3.1.H(2)(a),(e)(2) and(g) for a shed 15.3' from the wetland;
 - §190-3.1.H(2)(a),(e)(2) and(g) to remove tree in the wetland buffer;
 - §190-3.1.H(2)(a),(e)(2) and(g) to add stairs 60.5' and a deck 82.7' from the wetlands; and
 - §190-6.3A for expansion of the house.

The special exception was granted with the following conditions:

1. The pervious surfaces are installed and maintained to remain pervious.
2. Whenever the projects abuts the wetland or within 20ft of the wetland, a heavy planting of native plants should be required to a depth of 5-10ft.
3. A planting plan for these areas should be developed and presented prior to final approval.
4. The shed should have restrictions that prohibit the storing of petroleum products including but not limited to: (gas, oil, paints, or similar liquid products), pesticide or other chemicals and also equipment that uses

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.

petroleum. The notice of decision will be recorded or a deed restriction upon the transfer of this property with these specifications

5. There shouldn't be any mulch allowed in the wetland buffer.
6. The west side of the property should have a native groundcover planted and several trees and shrubs should be planted since that area has been cleared recently.

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: Peter G. Hamill, Rev. Trust

Property: 152 Harbor Road, Tax Map 9.2, Lot 18
Property is in the Single Residence District, Coastal Overlay District
And the SFHA Zone (AE)

Application case: Case #49-2021

Date of decision: December 1, 2021

Decision: The Board voted 5-0 to grant special exception from the following section of the zoning ordinance:

- §190-3.1.G/3.1H(f) for a storage shed 15.3' from the wetlands.

The special exception was granted with the following conditions:

1. The pervious surfaces are installed and maintained to remain pervious.
2. Whenever the projects abuts the wetland or within 20ft of the wetland, a heavy planning of native plants should be required to a depth of 5-10ft.
3. A planting plan for these areas should be developed and presented prior to final approval.
4. The shed should have restrictions that prohibit the storing of petroleum products including but not limited to: (gas, oil, paints, or similar liquid products), pesticide or other chemicals and also equipment that uses petroleum. The notice of decision will be recorded or a deed restriction upon the transfer of this property with these specifications
5. There shouldn't be any mulch allowed in the wetland buffer.
6. The west side of the property should have a native groundcover planted and several trees and shrubs should be planted since that area has been cleared recently.

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:

Domenic Martignetti & Phyllis Martignetti
68 Manchester ST. Nashua NH

Property:

4 Breakers Road, Tax Map 8.4, Lot 68
Property is in the General Residence, Coastal Overlay District and
the SFHA, Zone AE (8)

Application case:

Case #33-2021

Date of decision:

December 1, 2021

Decision:

The Board voted 5-0 to continue the application to the January 5, 2022 meeting so that the applicant may appear before the Rye Conservation Commission before attending the Board of Adjustment 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.