

**TOWN OF RYE
ZONING BOARD OF ADJUSTMENT**

**Wednesday, January 5, 2021
7:00 p.m. – Rye Public Library**

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Clerk Chris Piela, and Alternates John Mitchell, Sandra Chororos, and Michael Brousseau

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.

Alternates John Mitchell and Michael Brousseau were seated for the entire meeting.

Continuances:

A request for continuance to the February meeting was received from the applicant for 16 Wentworth Road.

Motion by Patricia Weathersby to continue the application for 16 Wentworth Road to the February meeting. Seconded by Chris Piela. All in favor.

II. BUSINESS

- Approval of Minutes – December 1, 2021

Motion by Shawn Crapo to approve the meeting minutes of December 1, 2021 as amended. Seconded by Chris Piela. All in favor.

III. APPLICATIONS

- 1. Domenic Martingnetti & Phyllis Martignetti 68 Manchester ST. Nashua NH for property owned and located at 4 Breakers Road, Tax Map 8.4, Lot 68 requests a variance from §190-2.4.C(2) for an platform deck .6' from the side boundary where 20' is required; from §190-2.4.C(1) for a platform deck 4.2' from the rear boundary where 30' is required; from §190-6.2 and §190-6.3 for expansion of existing structure; 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.**

Domenic Martignetti, applicant, explained that he decided to build a deck about 1' off the ground. He noted that the area is rough and floods during rainstorms. He did not get a permit

because he didn't think one was needed for something that small. Ambit Engineering completed a survey on the lot, along with wetlands delineation. This went before the Conservation Commission and they determined there was no problems with wetlands because it's such a small area.

Chair Weathersby noted that the Board has the application and plans. She stated that she went out to see the property. There is a very large rear deck. She doesn't understand why this is needed. She asked if it's to use the area that's wet.

Mr. Martignetti replied that when his grandchildren visit, they can play on the deck. It was to utilize the land.

Chair Weathersby asked about the fence around the deck.

Mr. Martignetti explained the corner pieces of the deck have 4' tall four-by-fours for a plastic fence to go over.

Chair Weathersby asked the height of the fence from the ground.

Mr. Martignetti replied 5'. He noted that it's not there yet; however, it would never exceed 6'. He pointed out that the fence will sit on the deck, not on the ground.

Vice-Chair Crapo clarified it's like a solid railing around the deck.

Mr. Martignetti confirmed.

Member Piela asked if there was any thought that this area might be wet because of the existing lot coverage.

Mr. Martignetti noted it has always been that way.

Member Piela stated there's almost 71% lot coverage right now, where 30% is allowed. This deck will take the lot coverage up to 75%. It's not a huge incremental change, as it's only 4%; however, it's already more than twice the allowed lot coverage. His suspicion is that the reason there's wetland (bog) is because there's so much existing lot coverage. There's a crushed stone driveway and pavers in front, so all the water is rushing towards that low area. His concern is this is already more than twice the allowable limit. He noted that the crushed stone driveway is impervious. The new deck is impervious.

Chair Weathersby asked if there's a membrane under the proposed deck.

Mr. Martignetti confirmed. It's to control the vegetation. He noted that it can be removed.

Chair Weathersby asked if there was any consideration given to making a trade-off; such as, changing the driveway to be permeable.

Mr. Martignetti replied this is a lot of money. He pointed out the water collects at the back end of the shed.

Vice-Chair Crapo asked if he looked up the file on the home. There's an entire variance discussion on all the water when the shed was allowed.

Mr. Martignetti replied no. He commented the shed was there when he bought the home five years ago.

Alternate Chororos asked the size of the proposed deck.

Mr. Martignetti replied 16 x 16.

Alternate Chororos asked if there was any consideration given to doing something with the existing deck, instead of an entirely new structure. She asked if there is a means of adding less than 16 x 16, which is a good size deck. She asked if there is an alternative that could allow for both without being back in the wet pocket.

Mr. Martignetti replied that he's not sure. He commented that he doesn't think the deck bothers the wet area because it's on 8" sauna tubes in four places. It doesn't seem like it would be an issue.

Chair Weathersby opened to the public for comments. She noted that a letter has been received from Dr. Richard Beauchesne, 9 Cable Road, who previously sent a letter of support for the project. He continues to support it, but asked if the Martignettis would be willing to adjust the location of the deck to be further from the property line.

Grace Sheehan (Wieczorek), 2165 Ocean Blvd., noted that she wrote a letter to the Board, which should be in the packets. She read from the letter sent to the Board. She wrote to the Board in opposition to the Martignettis' addition of a 16 x 16 deck that abuts her property. The deck was started without a permit; even though, the Martignettis were informed that they needed a permit and probably variances. After informing Mr. Martignetti that a permit and variance was necessary, he continued building without approval. He originally said it was just going to be a platform for his grandchildren to play on, since the area is wet. Days later, posts were added, which he said were for privacy reasons. She pointed out that the deck is 5'3" from her property and 8' from the Canotas property (2 Breakers Road). The deck is being built over wetlands. Mr. Martignetti has placed a vapor barrier over the ground under the new deck.

Ms. Sheehan continued that the Martignettis were well aware of the wetland area when they bought the property. There is no hardship. The Martignettis have an existing 720sf deck, according to town records, off the back of their home. The deck is large enough to fit five umbrellas with five tables. She noted that she's not comfortable opposing a neighbor, but feels the Martignettis have been disingenuous in their approach to the project with no regard to the town requirements and abutting neighbors. What they are asking for is an overreach of zoning laws. This is not a few feet. The percentage of land coverage is laughable. She thinks this is a want and not a need.

Chair Weathersby asked for further comments from the public.

It was noted by Suzanne McFarland, representing the Conservation Commission, that the area is not jurisdictional wetland, as it's not an acre in size.

Mr. Martignetti stated that he doesn't think he was being disingenuous. He spoke to Ms. Sheehan when it was being built. He thought she was okay with the project. He reiterated that he didn't think a permit was needed.

Alternate Brousseau asked the material of the deck.

Mr. Martignetti replied pressure treated wood.

Alternate Brousseau asked if there are concerns that it will degrade if it's that wet.

Mr. Martignetti noted the deck is off the ground. It doesn't even touch the ground.

Member Piela asked about the fence.

Mr. Martignetti noted the slats are close together; however, it could be balusters because it hasn't been built yet. The fence is about 5.5' off the ground. The railing is going to be about 3.5' tall on the deck.

Vice-Chair Crapo stated that he thought the Board had an application in the past few months with an issue with more than one accessory structure on the property. He pointed out that there's already a shed. He's not sure what this would be considered, if it has sides and such.

Chair Weathersby commented that she doesn't remember a limit on the number of accessory buildings. It comes down to lot coverage.

Vice-Chair Crapo stated that decks are considered impervious. To further put a vapor barrier underneath is increasing the impervious.

Chair Weathersby closed the public hearing at 7:29 p.m.

Vice-Chair Crapo stated there is already too much on the lot. He doesn't support adding this much coverage in an area that's well noted as being wet, disturbing it and focusing lot use into it. Instead of having the wetland at the edge of the property and having it as a buffer, this allows people to use and access a structure in it.

Member Piela agreed. The lot is already at 71% coverage. He suspects that is a contributing factor as to why that corner is wet. Building a deck over a wet spot isn't going to help the situation. Going to 75% coverage where 30% is allowed is a big ask.

Vice-Chair Crapo reminded the Board that even though this is considered an after-the-fact request, they are to evaluate the application as if it's fresh and nothing has been expended towards the project.

Alternate Mitchell stated that the intent of the codes is to avoid this type of congested situation. It's an encroachment on the abutters. It's already tight in that whole area. It would be filling every inch of the property. The deck is just inches away from the property line. Where there is already a large deck, it seems they are using the property very well right now. He reiterated that he thinks this was the intent of the code to avoid this type of situation.

Member Brousseau agreed. There are a few things he is uncomfortable with; such as, the coverage and not having a specific design. To take coverage that is already overdone and make it more so, starts to lose the spirit of the code.

Vice-Chair Crapo stated he is having trouble seeing it rise to a hardship level. There's already more than 70% lot coverage. This seems to be leveraging the turf that is already wet. He thinks there's more public benefit to protecting that area.

Chair Weathersby noted that the water has to go somewhere. There is already such a small area for it to go on this lot. She is not in favor of adding more impermeable surfaces to this lot, which has one of the highest lot coverages that she has seen. She is also concerned about having a play area a half foot away from the property line with potential disturbance to the neighbor. There's a 20' setback for a reason. The main issue is the lot coverage. She's not in support of the project. She pointed out that the deck that is on the house now is one of the biggest decks she has ever seen on a house. There's plenty of area for the kids to play. She understands that a muddy area in the back is not desirable, but with nice plantings, it will help beautify that area and make it more useable. Having a platform deck in that area is not the solution, as far as the zoning is concerned.

Chair Weathersby called for a vote on variances to 190-2.4.C(2); 190-2.4.C(1); 190-6.2; 190-6.3; 190-3.4.E; and 190-2.4.C(5):

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

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

2) The spirit of the ordinance is observed?

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No

Patricia Weathersby – No

3) Substantial justice is done?

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

4) The values of surrounding properties are not diminished?

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

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

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

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?

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

7) The proposed use is a reasonable one?

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

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

Michael Brousseau - No
Shawn Crapo – No
Chris Piela – No
John Mitchell - No
Patricia Weathersby – No

Motion by Chris Piela to deny the variances requested by Domenic Martingnetti and Phyllis Martignettti 68 Manchester St., Nashua NH for property owned and located at 4 Breakers Road, Tax Map 8.4, Lot 68, as advertised and presented.

Seconded by Shawn Crapo.

Vote: 5-0

Note: Patricia Weathersby recused herself for the following two applications for the property at 10 Shoals View Drive. Shawn Crapo stepped in as acting chair. Alternate Sandra Chororos was seated for the applications.

- 2. Lynch Family Revocable Trust, Carolyn J. & Daniel E. Lynch Trustees of 104 Pleasant Street, Apt 2. Concord, NH for property owned and located at 10 Shoals View Drive, Tax Map 20.2, Lot 82 request a special exception pursuant to §190-3.1.G(2) for a driveway with approximately 175+/- sq. ft. in the wetlands buffer and 7'+/- from the property boundary where 100' is required. **Property is in the General Residence, Coastal Overlay District and the SHFA, Zone (AO3). Case #01a-2022.****
- 3. Lynch Family Revocable Trust, Carolyn J. & Daniel E. Lynch Trustees of 104 Pleasant Street, Apt 2. Concord, NH for property owned and located at 10 Shoals View Drive, Tax Map 20.2, Lot 82 request variances from §190-6.3.A and §190-6.3.B for tear down and rebuild of a non-conforming structure on a nonconforming lot; from §190-2.4C(2) for mechanicals 18'+/- from the right side boundary, where 20' is required; from §190-2.4C(3) for a building 7.6'+/- from the front boundary, where 9.8' is the average of adjoining abutters is required; from §190-5.0.C for parking 7'+/- from the side boundary where 10' is required, 6'+/- from the front boundary where 10' is required and two spaces stacked; from §190-3.1.H(2)(a)(b)(f) and (g) for a leachfield 57'+/- and a septic tank 51'+/- from the wetland, for leachfield 64'+/- and septic tank 62'+/- from the pond, for house deck 71'+/- from wetland and 80'+/- from the pond, for a driveway 90'+/- from the pond and 85'+/- from the wetland where 100' from the wetland and 100' from the pond are required; and relief from Building Code §35- 14.B(2)(a) for a septic tank 51'+/- and 64'+/- for receiving area from the wetland; from §35-14.D(1)(a) and §35-14.F for proposed "Clean Solutions" septic system 51'+/- and 64' +/-for receiving area from the wetland where 100' is required. **Property is in the General Residence, Coastal Overlay District and the SHFA, Zone (AO3). Case #01b-2022.****

Attorney David Brown, representing the applicants, presented to the Board. He stated that the Board has three votes tonight; special exception for the driveway, variances and building code. He noted that there was a denial letter in 2010. The building inspector's denial letter referred to prior denials, so that question has to be addressed.

Acting Chair Crapo asked to address that first.

Attorney Brown stated that the Fisher v. City of Dover Case was thirty years ago. The applicant in that case was denied by the zoning board and they went back to the zoning board with the same plan to try again. It went all the way to State Supreme Court and they ruled that the applicant can't keep coming back with the same proposal because it is unfair to the board, abutters and the town to keep dealing with the same issues. The applicant can only come back if it's substantially different. He continued that in 2010, the owner at that time, was going to build the same house with a full second-story. Tonight, the application is to tear down the existing house, and center the building in the middle of the lot, with a partial second-story. He thinks this alone makes it substantially different. The minutes from 2010, show that the Board thought it was too much and too close to the westerly abutters and would block their views. He noted that new home will be in the center of the lot, about 10' away, and will improve the situation with the westerly abutter. There's also a state-of-the-art septic system. The Conservation Commission supports the proposal. The town recently adopted the flood zone ordinance, which makes it hard to do a remodel anyways. He hopes the Board will agree that the Fisher Case does not apply here and the application is substantially different.

Speaking to the Board, Acting Chair Crapo explained that they need to decide if the application is different enough to consider this a separate application. He opened to the public in regards to the issue of whether the application is materially different.

Daniel Lynch, applicant, noted that they tried to make sure the front profile was much different than the front profile of the original structure, so it wouldn't impeded on people's views. They also don't have a full second-floor, but just a loft area so it won't be as high as a full structure.

No further public comments were heard. No questions were heard from the Board.

Acting Chair Crapo called for a vote on whether the application is materially different from the application of 2010:

Sandra Chororos – Yes; John Mitchell – Yes; Chris Piela – Yes; Michael Brousseau – Yes; Shawn Crapo – Yes

Attorney Brown continued it's a modest proposal. The Conservation Commission has sent a letter of support. The lot is unique in some ways because the pond curves in to the back of the lot, which leads to the request for relief. There are also two large condominium developments in the area. There's one on the easterly side with a large parking lot along the bounds of the Lynch property. Across Shoals View Drive is another condominium development with a large parking area. He pointed out it's a small house and will still be a small house as proposed. Some non-conformities are improved. There are no issues with lot or building coverage. The new septic is

good for the environment. The improvements being made will protect the pond, based on recommendations from the Conservation Commission.

Mr. Lynch thanked the Board for considering their request. He also thanked the Conservation Commission for being in support. He noted that they have been coming to Rye for over thirty-one years. They would like to relocate to Rye. The original plan was to refurbish the existing cottage. However, the floodplain changed the plans because the structure has to be taken off and the foundation has to be raised. The builder said he was not comfortable with the stability of the structure and he recommended starting from scratch. He commented the proposal is modest and they are trying to be as respectable to the neighborhood as possible.

Eric Weinrieb, Altus Engineering, commented there are a lot of variances being requested; however, it's a very modest proposal and the site is being improved in every aspect. He continued that before the engineering process started, Joe Noel mapped the wetlands and Jim Verra completed an existing conditions survey of the site. The house is shifted towards the west side, so it's very close to the abutting property and is not centered on the property. The existing driveway is almost entirely in the right-of-way, so parking is noncompliant. The building is noncompliant. The existing septic system is a traditional system that is not very old, but was before treatment systems. The septic is currently located in the buffer. The existing building isn't floodplain compliant. In working with the design team, it was determined to be a better scenario to start over.

Mr. Weinrieb continued that the proposed home will have a slightly larger footprint. The house will be slid slightly forward a bit to move further away from the resource area. That is the reason for the slight front yard setback request. The driveway will be permeable material. There will be enough room for the entire driveway to be on the property, but it's still in the setback area. The AOS tank will be in the buffer area and the leach field is as far away from the resource as possible. They are not requesting any relief for the location of the septic system from the side yard or from seasonal high-water table. The house has to be raised to be compliant with the AO3 Zone, so the septic system blends in with the house. The flood elevation is 3' above highest adjacent grade. The lowest joist has to be 2' above that, so it pushes the house up substantially. He noted that they are not asking for a height variance. The applicants met with the Conservation Commission in November on site. Mr. Weinrieb pointed out that the lawn is mowed right up to the edge of the wetland. What was discussed with the Conservation Commission was to follow the tree-lined area and let the area close to the wetland re-naturalize. The proposal is to replant that area. He noted that they thought the agreement was to provide twenty to twenty-five one-gallon minimum plantings, which is noted on the plans. He pointed out that the Conservation Commission's letter said it was five-gallon plants, which would be big for a small shrub. He knows Mr. and Mrs. Lynch have hired a landscape architect to help enhance the plantings. They are going to listen to the direction of the Board and RCC, as to how to balance the plantings in that restoration area.

Acting Chair Crapo asked if the one-gallon versus five-gallon would change the choice in plantings.

Mr. Weinrieb replied he doesn't think it will change anything. It's the size. When at the site, it was more about planting shrubs, which would normally be in a small container.

Acting Chair Crapo asked for the established benchmark in regards to the height. He asked if the established benchmark has been agreed to by the Building Inspector.

Mr. Weinrieb stated that the Building Inspector has reviewed the plans. If he had an issue with the height, it would have been in his notice of decision.

Alternate Chororos asked how the water will flow under the house.

Mr. Weinrieb explained that there's 2' of freeboard under the lowest joist to elevation 3'. He believes they can have a concrete foundation, but there has to be flow through gates to allow the water to escape. This will be handled through the building permit process with a structural engineer.

Alternate Chororos asked if it's assured that it's not going to the abutter's property.

Mr. Weinrieb confirmed. He pointed out it's flowing through.

Acting Chair Crapo opened to the public for comments. No comments were heard. He closed to public comment at 8:02 p.m. and asked Attorney Brown to address the criteria.

Attorney Brown reviewed the criteria for the special exception for the driveway:

- 1.) Essential to productive use as a driveway.
- 2.) It has minimal impact because it's replacing an existing driveway that has been there for about 60 years.
- 3.) There is no alternative route that is feasible. This is the best location in the front corner.
- 4.) This is not being done for economic advantage. It's simply to utilize one has as allowed.
- 5.) It's not injurious nor detrimental to the neighborhood. It's simply replacing a long-standing driveway and getting it out of the right-of-way.
- 6.) It's in harmony with the general purpose and intent of the zoning to allow for a driveway for the house and getting the parking out of the right-of-way.
- 7.) There are no other special rules that apply here.

Attorney Brown reviewed the criteria for granting the variances:

- 1.) Granting the variances would not be contrary to the public interest.
- 2.) It would observe the spirit of the ordinance.
- 3.) It would do substantial justice.
- 4.) It will not diminish surrounding property values.
- 5.) It would be an unnecessary hardship on the applicants if the variances were denied because there are special conditions of the property. It's a unique setting with the pond and large condominiums on two sides.
- 6.) There's no fair and substantial relationship for this type of minor relief. There are many public benefits with a new septic for protecting the pond. Conservation has agreed this is something they support.

- 7.) It's a reasonable use.
- 8.) The hardship tests have been met.

Attorney Brown reviewed the criteria for the building code waivers:

- A denial would manifest injustice.
- Relief is needed because a denial would be contrary to the spirit and purpose of the code and public interest. It's minor relief. It's better protection of the pond and groundwater with the new septic.

He summarized that the criteria have all been met and all relief should be granted. Case law would say that relief should be granted because there's no real public benefit to deny this. It would put an unnecessary hardship on the applicants to not grant them relief. It's a modest proposal and will fit in well within the neighborhood. He hopes the Board will agree and grant the relief as advertised.

Acting Chair Crapo opened to the Conservation Commission for comments.

Suzanne McFarland, representing RCC, stated that it was a pleasure working with the applicants right from the beginning. She noted that RCC is usually not in favor of leach fields this close the wetland. In this case, they are in favor. In regards to the plantings, it was the understanding of the Rye Conservation Commission that there would be ten trees and ten bushes or shrubs. The RCC would agree to two to three gallon for bushes. She's hoping there will be an agreement for not little saplings for trees.

Mr. Weinrieb suggested ten shrubs at two to three gallon minimum and ten trees at a minimum of 2" in caliper.

Acting Chair Crapo commented that he would say 2" or five gallon, as some species start off with a skinnier trunk. The intent is to not have little saplings that need twenty years to have any affect.

Ms. McFarland stated that they were also willing to no weed whacking or mulching in that area.

Alternate Chororos asked if RCC would want a condition of no fertilizer given the proximity to the water.

Ms. McFarland replied it can be limited.

Mr. Weinrieb stated that he has an issue with that because of establishing the vegetation. There needs to be a good growth quickly, so there is good vegetation. Once it's established, Mr. and Mrs. Lynch are agreeable to limiting or not even having fertilizer.

Ms. McFarland noted that RCC has asked for an 85% survival rate within the first year. The letter does not say within the first year, so she wanted to clarify.

Hearing no further questions, Acting Chair Crapo closed the public session at 8:13 p.m. and opened to the Board for comments.

Member Piela stated that he usually takes a balance approach when he looks at applications. The only thing that is getting worse from existing to proposed is the driveway. That's because the driveway was within the right-of-way in front of the house and now it's getting closer to the pond and wetland; however, the driveway can't be located anywhere else. His general impression is he's in favor of the plan.

Member Mitchell agreed. Between the presentation and what the applicants have invested to this point, is really great. It answered all the questions and was very predictive of what the Board was thinking. This is a cottage replacing a cottage that is on a buildable lot of record. It's making a lot of improvements to the lot. In looking at the abutting property and the dumpster, the driveway doesn't seem to be a bother for the abutters. Technically, the layout is pretty much where the driveway has to go. He doesn't see an alternative. It's a better situation than parking cars in the right-of-way. The comments from RCC and Ms. McFarland are all helpful. He really can't find any issues and all his questions have been answered. He is in favor of the project.

Both Alternate Chororos and Alternate Brousseau agreed.

Member Piela stated that he is sometimes wondering how the recommendations of the Rye Conservation Commission can be enforced. In this case, he does not have any concerns whatsoever.

Acting Chair Crapo stated that he is in agreement with the Board. To Member Piela's point on the driveway, there are properties that don't have a formal driveway and they park on the lawn with cars that leak fluid. This is a more formal structure but designed as impervious. There's some validity that possible contaminants will go down through the stone to get treatment. It will leach down through rather than run off into the resource. As far as a cottage replacing a cottage, in his mind this is not a huge ask. In this case, the length of the notice is somewhat deceiving as it's not an absorbent project. Where it sits and the way it's laid out hits many marks in the town's code.

Alternate Chororos commented it's nice that the house is being moved away from the abutter.

Member Piela stated that the front yard setback is getting slightly worse. However, he would rather see the house move forward away from the wetland.

Acting Chair Crapo commented he sees less harm to the road by the house being close, rather than it being closer to the resource. He reviewed the conditions of the RCC:

- 1.) Ten trees 2" minimum or five gallon, and minimum of ten bushes or shrubs two to three gallon size to be planted in the area of the row of mature trees to the edge of the wetland.
- 2.) Planting area will not be mowed, weed whacked or mulched, except maintenance as needed but not as a lawn.
- 3.) An 85% or greater first year survival rate of the planted vegetation is required.
- 4.) Limited to no fertilizer after the plantings are established in the first year.

Acting Chair Crapo called for a vote on the special exception to 190-3.1.G(2) for the driveway:

- **Is it neither injurious nor detrimental to the neighborhood?**

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – 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 with the zoning ordinance?**

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

Acting Chair Crapo called for a vote on variances to 190-6.3.A; 190-6.3.B; 190-2.4.C(2); 190-2.4.C(3); 190-5.0.C; and 190-33.1.H(2)(a)(b)(f) and (g):

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

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

- 3) **Substantial justice is done?**

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

4) The values of surrounding properties are not diminished?

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – 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?

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

7) The proposed use is a reasonable one?

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
John Mitchell – Yes
Chris Piela – Yes
Michael Brousseau – Yes
Shawn Crapo – Yes

Acting Chair Crapo called for a vote on requested relief to Building Code 35-14.B(2); 35-14.D(1)(a); and 35-14.F:

- **Would enforcement of the specific provisions do manifest injustice and be contrary to the spirit and purpose of the Building Code and public interest?**

Sandra Chororos – Yes

John Mitchell – Yes

Chris Piela – Yes

Michael Brousseau – Yes

Shawn Crapo – Yes

Motion by Chris Piela to approve the application of the Lynch Family Revocable Trust Lynch Family Revocable Trust, Carolyn J. & Daniel E. Lynch Trustees of 104 Pleasant Street, Apt 2, Concord, NH for property owned and located at 10 Shoals View Drive, Tax Map 20.2, Lot 82 for a special exception, variances and building code relief, as advertised and presented, with the provisions as documented by the Rye Conservation Commission and amended by Vice-Chair Crapo.

Seconded by Sandra Chororos.

Vote: 5-0

Note: Sandra Chororos was unseated. Patricia Weathersby was reseated as chair.

- 4. Meaghan & Chris Barretto for property owned and located at 1 Rand Lane, Tax Map 19, Lot 7 requests a variance from §190-3.1.H(2)(a) and (g) for a permeable patio that ranges from 22' to 50' and for a walkway partially within the 75' wetland buffer where 75' is required. Property is in the Single Residence District. Case #02-2022.**

Chris Barretto, applicant, spoke to the Board. He explained that he and his wife are requesting variances, as it relates to wetlands, for a 500sf permeable bluestone patio, which will exist within the 75' wetland buffer ranging from 22' to 50'. After meeting with the Conservation Commission and getting their input, the plan was revised to support the purpose and mission of the RCC. It adds a substantial amount of native plants throughout the property that does not exist today and throughout the buffer to help navigate impacts to the wetlands at the rear of the property. The patio will be constructed of permeable materials to help minimize runoff impact. It will replace areas of lawn and grass. The plants will also replace lawn and grass, especially along the rear of the property along the wetland border. The esthetic and conservation improvements of the property will be in the public interest because they will be improvements to both the wetlands and the wet areas on the property through the addition of plants, while allowing his family to further enjoy the property by having a rear yard that is more useable.

Chair Weathersby stated that when she thinks of bluestone, she thinks of big pieces of stone. To her that's not permeable. She asked how the bluestone is permeable.

Mr. Barretto noted this is something they looked into. When he envisions bluestone, he envisions the impermeable stone. He continued that there are impermeable bluestone products.

His understanding is they aren't the traditional bluestone, but an artificial alternative to bluestone.

Vice-Chair Crapo pointed out that it's more to do with the base. If it doesn't have a compacted base, as in a traditional setting, and the water is going through the stone cross sections, it's percolating down. In a normal, old-school production, the soil would be compacted underneath to a minimum of 96% compaction. In this case, it would be open void crushed stone.

Chair Weathersby opened to the public for comments.

Diane Maxim, 254 Wallis Road, stated that before that property was developed it was a farm. It was cow fields and had a very elaborate drainage system, which took care of the water. When the property was developed, it was built up substantially. An elaborate system was supposed to be put in. One thing that was supposed to be put in was a swale between her property and this property. Some of the drainage was put in, but the swale was never put in. She continued the property has been built up quite a bit. There's been a huge impact on her property. She never had any water in her basement or on her front lawn and now she does, since the property was developed. She doesn't have an objection to the patio. Her hope is that there will be an assurance that there won't be anything more added to the elevation. It's a huge difference between the natural elevation and what exists there now. She pointed out that she paid to have the swale put in after the fact. Unfortunately, doing something after the fact is never as successful as it could be. Her property is impacted by the water. She needs to know that nothing will be done to make it worse by building up or filling in the area between the properties.

Speaking to the applicant, Chair Weathersby asked if any fill is being added to the property.

Mr. Barretto replied no.

Meaghan Barretto, applicant, noted that it will be staying at the same elevation and grade.

Mr. Barretto commented there would be no addition of fill to the property. He has heard some of the history about the filling in the property and the existing swale. It's been made clear to the landscapers and the people who work on the property that this is not to be done. This is something that they would commit to. No additional fill will be brought in for this project. Knowing there is a drainage swale with the intent of moving water away from Ms. Maxim's property, nothing will be done to obstruct that.

Vice-Chair Crapo asked the location of the swale.

Mrs. Barretto replied it's right along the stone wall.

Mr. Barretto commented it's right at the wetlands line.

Ms. Maxim noted the location on the plan for the Board.

Mr. Barretto stated that they do see the water. Part of the reason they are so amenable to adding plantings at the rear of the property along that line is because it's only going to help the situation for their benefit, as well. It's a wet yard. Having the additional plantings will only improve the situation.

Mike Horn, 281 Wallis Road, stated that since the Barretts have moved in, they have painted the outside of the house and have cleaned up the property. Having the patio in the backyard is going to protect their children from playing in front of the house. He's in favor of the proposal.

Suzanne McFarland, RCC, complimented the Barretts, as they called the Conservation Commission even before they had a plan. The yard is very wet. There's a foundation drain right in the middle of the lawn that is contributing to this. The Conservation Commission advised native plants to a depth of 5' to 10' with an average depth no smaller than 7'. The plantings will help the property and they will have a useable yard.

Chair Weathersby noted the Board has received the RCC's recommendation letter, dated October 13, 2021. Hearing no further comments, the public hearing was closed at 8:44 p.m.

Vice-Chair Crapo stated that the applicants are definitely of the mindset to try to do things right here. They're trying to gain a patio. They've gone through the steps of making it impermeable. It's an extensive planting plan. The applicants have done everything they can to do the right thing, achieve the purpose of the patio and address the wetlands. When it is done, with the plantings, it will likely improve the situation. He doesn't see them making anything worse.

Member Mitchell agreed. There's a lot of feedback in the two conditions from RCC. It's definitely not making anything worse. They will be able to use a part of their yard that they can't use now, so it's beneficial to everyone.

Member Brousseau agreed they are getting a benefit, as well as benefiting the surrounding area.

Chair Weathersby agreed. The site is certainly challenged. She thinks the plantings will make a big difference. She doesn't see that the patio will have a detrimental affect whatsoever. She loves the fact that they made it permeable. Lot coverage wise, she doesn't think they needed to; however, they still went ahead and did that so the water would drain. Being that close to the wetlands, it was the right way to go and she appreciates they did that.

Chair Weathersby called for a vote on variances to 1903.H(2)(a) and (g) with the conditions as recommended by the RCC:

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - 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?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

7) The proposed use is a reasonable one?

Michael Brousseau - Yes

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

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the requested relief for property at 1 Rand Lane, as presented and advertised, with the conditions requested in the October 13, 2021 rye Conservation Commission letter; 1) The edge of lawn and wetland be densely planted with a vegetative buffer of native plants to a depth of 5' to 10' with the average being no smaller than 7'; and 2) Other native plants be added in the patio area, as desired.

Seconded by Chris Piela.

Vote: 5-0

- 5. Victory A.M. Bastable for property owned and located at 50 Brackett Road, Tax Map 22, Lot 91 requests a variance from §190-3.1.H(2)(a) and (g) for a generator 40' from the wetland where 75' is required. Property is in the Single Residence District. Case #3-2022.**

Victory Bastable, applicant, spoke to the Board in regards to her request to install a generator 40' from the wetland. The company where the generator is being purchased came out to the site and recommended the site for the generator. The generator has been delivered to the house, but has not been hooked up. When the electrician went to pull a permit to do the work, he was told that a generator permit was also needed. It was also determined that variances were needed due to the wetlands buffer. She continued that the Conservation Commission visited the site to view the proposed location for the generator. There was some discussion about whether there was a better place for the generator that would not be within the buffer. However, the whole property is so close to the wetland that no matter where it was located it would still be within the buffer zone. She noted that they are open to putting the generator in a better location, if there is one.

Chair Weathersby opened to RCC for comments.

Suzanne McFarland, RCC, stated that the Commission went to the site to review. To the best of their knowledge, there isn't a better place for the generator. It's the highest and driest area of the lot. The only question that the Commission had is if someone had looked at the propane tank, as it is close.

Ms. Bastable replied that they bought the house in February of 2020. At that time, they did a renovation project and the propane tank was installed as part of that project. She has contacted the builder and he said it was approved by the building department. The building inspector has visited the site. She assumes that if there was an issue, it would've been brought to their attention.

Vice-Chair Crapo commented it's not so much the setback from the house, it's the setback from the generator. Often, propane tanks are right up by the house but they have to be a certain distance from windows, doors and vents.

Chair Weathersby closed the public session at 8:56 p.m. She commented that it seems like the generator is in a good location. If it goes anywhere else on the property, it's going to still be in the wetlands buffer. It's in a logical place and RCC is fine with the location.

Chair Weathersby called for a vote for variances to 190-3.1.H(2)(a) and (g):

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

2) The spirit of the ordinance is observed?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

3) Substantial justice is done?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

4) The values of surrounding properties are not diminished?

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes

Patricia Weathersby – Yes

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - 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?**

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

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

Michael Brousseau - Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Mitchell - Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the relief requested for a generator 40' from the wetland where 75' is required under §190-3.1.H(2)(a) and (g) for 50 Brackett Road as presented and advertised. Seconded by Chris Piela.

Vote: 5-0

6. **16 Wentworth Road, SPC, LLC of 126 Daniel Street, Suite 200, Portsmouth NH for property owned and located at 16 Wentworth Road, Tax Map 26, Lot 18** requests variances from §190-2.3C(3) for a garage 11.5' and a retaining wall 5.1' from the front boundary where 40' is required; from §190-6.3.B for demolition of a 2-story dwelling and garage and replace with new dwelling and incorporated garage; from §190-3.1.H.2(a)(e) and (g) for a house overhang 18.3'/20', wall 20.2'/21.6', a pervious patio 20.1', a retaining wall 7' and removal of 18 trees >4.5" from the wetland boundary where 100' is required. **Property is in the Single Residence District and SFHA, Zone VE(17). Case #5-2022.**

IV. OTHER BUSINESS

Chair Weathersby noted that there will be a full member seat up for election in March. Signups to run for that seat are between January 19th to the 28th.

ADJOURNMENT

Motion by Patricia Weathersby to adjourn at 9:02 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: Lynch Family Revocable Trust, Carolyn J. & Daniel E. Lynch Trustees of 104 Pleasant Street, Apt 2, Concord, NH

Property: 10 Shoals View Drive, Tax Map 20.2, Lot 82
Property is in the General Residence, Coastal Overlay District and the SHFA, Zone (AO3). Case# 01a-2022.

Application case: Case #01a-2022 and 01b-2022

Date of decision: January 5, 2022

Decision: The Board voted 5-0 that the application was materially different than the application denied in 2010.

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

- §190-3.1.G(2) for a driveway with approximately 175+/- sq. ft. in the wetlands buffer.

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

- §190-6.3.A and §190-6.3.B for tear down and rebuild of a non-conforming structure on a non-conforming lot;
- §190-2.4C(2) for mechanicals 18'+/- from the right side boundary;
- §190-2.4C(3) for a building 7.6'+/- from the front boundary;
- §190-5.0.C for parking 7'+/- from the side boundary;
- §190-3.1.H(2)(a)(b)(f) and (g) for a leachfield 57'+/- from the wetland;
- §190-3.1.H(2)(a)(b)(f) and (g) for a septic tank 51'+/- from the wetland;
- §190-3.1.H(2)(a)(b)(f) and (g) for a for leachfield 64'+/- from a pond;
- §190-3.1.H(2)(a)(b)(f) and (g) for a septic tank 62'+/- from the pond;
- §190-3.1.H(2)(a)(b)(f) and (g) for a for house deck 71'+/- from wetland and 80'+/- from the pond; and
- §190-3.1.H(2)(a)(b)(f) and (g) for a for a driveway 90'+/- from the pond and 85'+/- from the wetland.

The Board voted 5-0 to grant relief from the following section of the building code:

- §35-14.B(2)(a) for a septic tank 51'+/- and 64'+/- for receiving area from the wetland;

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.

- §35-14.D(1)(a) and §35-14.F for proposed "Clean Solutions" septic system 51' +/- and 64' +/- for receiving area from the wetland.

The special exception, variances and building code relief were granted with the following conditions from the Rye Conservation Commission letter dated 1-2-2022 and as amended by the Board of Adjustment on 1-5-2022.

1. A minimum of ten trees 2 inches in diameter or 5 gallon; and a minimum of ten bushes and shrubs in the 2-3 gallon in size to be planted in the area from the row of mature trees to the edge of the wetland.
2. This planted area will not be mowed, weed whacked or mulched except maintenance as needed but not as a lawn.
3. The RCC believes that an 85% or greater survival rate of the planted vegetation adequate within the first year.
4. Fertilizers limited to Best Management Practices.

Kimberly M. Reed

Shawn Crap, Chairman

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:

January 5, 2022

Decision:

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

- §190-2.4.C(1) for a platform deck 4.2' from the rear boundary;
- §190-2.4.C(2) for an platform deck .6' from the side boundary;
- §190-6.2 and §190-6.3 for expansion of existing structure; and
- §190-2.4.C(5) for lot coverage of 75%.

The reasons the variances were denied include:

1. There is no unnecessary hardship to the applicants in denying the variances.
2. Proposed lot coverage of 75% is too high and leaves little surface area of the lot for water to be absorbed.
3. The lot already contains a very large deck for the use of the applicants and their family and guests.
4. A deck positioned 4.2' and .6" from abutting properties in a rather congested neighborhood will likely interfere with abutters' enjoyment of their properties.
5. The variances are contrary to the public interest and not in keeping with the spirit of the Zoning Ordinance.
6. Values of surrounding properties are likely to be diminished if the variances were granted.
7. The proposed deck is not a reasonable use.



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: Meaghan & Chris Barretto

Property: 1 Rand Lane, Tax Map 19, Lot 7
Property is in the Single Residence District.

Application case: Case #02-2022

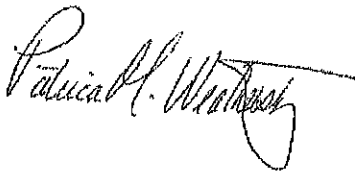
Date of decision: January 5, 2022

Decision: The Board voted 5-0 to grant the following variance relief from the Rye Zoning Ordinance:

- §190-3.1.H(2)(a) and (g) for a 500+/- s.f. permeable patio that ranges from 22' to 50' from the wetland and for a walkway partially within the 75' wetland buffer as per plan.

The variances were granted upon continued compliance with the following conditions:

1. The edge of the lawn/wetland is densely planted with a vegetative buffer of native plants to a depth of the five to ten feet with the average depth being no smaller than seven feet.
2. Other native plants are added in the patio area as desired.



Patty 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: Victory A.M. Bastable

Property: 50 Brackett Road, Tax Map 22, Lot 91
Property is in the Single Residence District.

Application case: Case #03-2022

Date of decision: January 5, 2022

Decision: The Board voted 5-0 to grant the following variance relief from the Rye Zoning Ordinance:
§190-3.1.H(2)(a) and (g) for a generator 40' from the wetland.



Patty 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 70.3 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: 16 Wentworth Road, SPC, LLC of 126 Daniel Street, Suite 200,
Portsmouth NH

Property: 16 Wentworth Road, Tax Map 26, Lot 18
Property is in the Single Residence District and SFHA, Zone VE(17).

Application case: Case #05-2022

Date of decision: January 5, 2022

Decision: The Board voted 5-0 to continue the application to the February 2, 2022 meeting.



Patty 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.