

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

**Wednesday, February 2, 2022
7:00 p.m. – Rye Public Library**

***Members Present:* Acting Chair Shawn Crapo, Clerk Chris Piela, Patrick Driscoll, Sandra Chororos and John Mitchell**

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

I. CALL TO ORDER

Acting Chair Crapo called the meeting to order at 7:00 p.m.

II. BUSINESS

- **Minutes of January 5, 2022**

Motion by Chris Piela to approve the minutes of January 5, 2022 as amended. Seconded by Sandra Chororos. All in favor.

III. APPLICATIONS

- 1. Bradley & Bettyann Lemire of 26 Renee Lane, Enfield, CT for property owned and located at 1595 Ocean Blvd, Tax Map 13, Lot 30 request variances from §190-6.3.B to demolish a non-conforming dwelling and replace it with a new dwelling from §190-2.4.C(3) for a dwelling front steps 2.1', walkway 0.0' and the structure 9.4' from the front boundary where 30' is required; from §190-2.4.C(2) for a dwelling 10.1' from the right side boundary where 20' is required; from §190-2.4.C(7) and §190-3.4.D for a dwelling height of 30.78 where 30' is allowed; and from §190-3.1.H.2(a)(b)(f) and (g) for the dwelling, septic and driveway in the wetland buffer. **Property is in the General Residence District and Coastal Overlay District. SFHA Zone (AE8). Case #04a-2022.****
- 2. Bradley & Bettyann Lemire of 26 Renee Lane, Enfield, CT for property owned and located at 1595 Ocean Blvd, Tax Map 13, Lot 30 request a special exception from §190-3.1.H.(f) and 190-3.1.G(2) or a driveway in the wetland buffer. **Property is in the General Residence District and Coastal Overlay District. SFHA Zone (AE8). Case #04b-2022.****

Attorney John Bosen, representing the applicants, presented to the Board. He noted that the request is to demolish the existing three-bedroom home and detached garage located at 1595 Ocean Boulevard, in order to build a new home with attached garage. The new home will

remain three bedrooms. The square footage is increasing to allow for wider hallways and an elevator to accommodate the Lemires' daughter, who is wheelchair bound. The home with modern amenities will be code compliant. It will reduce the wetland impacts and will comply with the recently updated FEMA guidelines. It will substantially decrease the existing impervious surface on the site. The property sits in the General Residence Zone and Coastal Overlay District. The lot is non-conforming. It has 114ft of frontage, where 150ft is required. The lot size is 20,650sf where 44,000sf is required. Because of this, it's impossible to redevelop this property to conform to these requirements. A 100ft wetland setback encumbers the property, so both the current house and detached garage do not comply. Under the new plans, the detached garage that sits within the buffer, will be removed and the existing house will be replaced with a new house, which was designed by DeStefano Mangel Architects. The existing gravel driveway will also be removed and replaced with pervious pavers; thereby, decreasing the total lot impervious coverage from 36.6% to 14.5%. The total structure footprint will be 11%, well under the 15% maximum.

Attorney Bosen pointed out that the Board's packets contain a letter of support from the Rye Conservation Commission, which is dated January 20, 2022. In addition to the wetland buffer relief, the proposal requires dimensional relief. Attorney Bosen reviewed the criteria for granting the variances:

- Granting the requested variances will not be contrary to the spirit and intent of the ordinance or contrary to the public interest. The test is whether granting the variance would substantially alter the characteristics of the neighborhood or threaten the safety and welfare of the public. If the variances are approved, the new home will be a modern, compliant home. It will meet the 2021 FEMA requirements and will be out of the flood zone. Impervious surfaces will be substantially reduced. The impact to the wetlands will be reduced. The existing non-conformities for setback and wetland buffer will be improved. So, there will be no threat to the public health, safety and welfare in granting the variances.
- The existing home is about 100 years old and is very much out of code. It will require a substantial investment to improve the property to accommodate the applicants' needs and those of their handicapped daughter. Any improvements to this lot will require very similar relief as being requested. As for the height of the home, it's being driven by the need for the elevator and the need to meet FEMA requirements. With that being said, the denial of the variances would impose a great hardship on the applicants.
- The proposed home will be very tasteful and will enhance the neighborhood.
- The property is an irregularly shaped lot. It's presently non-conforming with respect to frontage and minimum lot size. The 100ft wetland setback significantly impacts this property. The present home already violates the wetlands setbacks and the detached garage is entirely within the wetland buffer. This lot is unique, which causes a hardship to exist.
- The use is reasonable. It will be a residential home and the use is consistent with other uses in the neighborhood.
- There is no way for this property to conform to the frontage and lot area, due to the size and shape. The present structure already encroaches into the wetland buffer, as well as the front, side and rear setbacks. The proposed project will reduce the

wetland impacts, by removing the existing garage and replacing the existing driveway with pervious pavers.

Attorney Bosen noted that for all those reasons, the criteria for granting the variances have been met. He respectfully asks for approval as advertised.

Attorney Bosen continued that they have also filed an application for a special exception to replace the existing gravel driveway with pervious pavers, which will have much less environmental impact than what presently exists. Without the driveway, there will be no access to the property, so the driveway is absolutely necessary.

Acting Chair Crapo opened to questions from the Board.

Referring to the elevation drawings, Member Driscoll stated that it shows a dimension from finished first floor to finished second floor. He asked the height of the ceiling, subtracting the floor joist system. He also asked for the ceiling height of the second floor.

The architect from DeStefano Maugle Architects noted that the first-floor ceiling height is 8.4ft and the second floor is 8.6ft. She pointed out that the second floor is sloped, following the roofline. The maximum height is 11ft.

Member Driscoll asked if there has been any thought for making sure the rainwater is not going off the property more than it is currently.

Steve Riker, Ambit Engineering, stated that the reduction in impervious from 39.6% to 14.5% is going to achieve a lot. A lesser amount of impervious is going to help with infiltration on the site. The house is also in a very similar location. It can be seen that the house does not require a lot of grading. The house is not being elevated where there would be severe grading around the foundation which would pitch water in any direction.

Member Driscoll asked if the front of the house is staying in the same location. He asked if the stairs are encroaching further because the first floor is going up higher.

Mr. Riker replied that he believes so. He noted the existing house has a finished floor of 14.9 and the proposed is 18.5. There will be a raising of the finished floor.

Acting Chair Crapo asked if the paver driveway is going to be at the same elevation as the existing driveway or at the height that's being retained. He pointed out that the existing driveway goes around the outside of the retaining wall.

Mr. Riker explained the existing driveway has a 10ft contour and slopes down to 9ft to 8ft where the curve begins. The proposed driveway is similar. Where the driveway wraps around towards the garage is about elevation 8, where existing conditions is about 7.4ft.

Acting Chair Crapo pointed out that right now there's a 4ft to 5ft retaining wall. He asked if that is going to be flush.

Mr. Riker replied no. He noted that right around the existing leach field, the elevation is 11.5ft. There's an 11ft contour coming from the house that ties into the retaining wall at 11.5ft. The area is about a half foot higher.

Acting Chair Crapo asked if the garage is coming up 4ft to 5ft. He commented that there is currently a chest height wall with a driveway below it. If the driveway is going to be up at that height, there's going to be a bunch of fill. He asked if the garage floor is going to be on a few feet of fill.

Mr. Riker explained the driveway slopes to the garage at a finished elevation of 8.2ft.

Attorney Bosen pointed out that the Rye Conservation Commission did a site walk. There is already a gravel driveway. The one that is being put in will be a smaller driveway and will be pervious pavers. It will reduce the impervious coverage on the site pretty significantly. There should be a positive impact on the wetlands.

Hearing no further questions from the Board, Acting Chair Crapo opened to the public.

Thomas Cochran, 1246 Ocean Blvd, spoke in support of the project, as it does not have any impact on anyone.

Mike Garvan, representing the Rye Conservation Commission, stated that the Conservation Commission felt this was actually an improvement in terms of protecting the resource over the existing structure. They're removing a garage that's not only in the buffer but also about 30ft from the wetland. Even though the actual living area is significantly larger, the actual footprint is only about 12% larger. When RCC is looking at non-conforming lots and non-conforming structures that are being torn down and improved upon, they do not like to see a huge change in the footprint; particular, if it does go towards the wetland. This proposal does go 13ft closer to the wetland at a certain point. However, the RCC feels this is a good tradeoff because the impervious coverage is decreasing by 25%. Also, the new septic system will be out of the buffer and FEMA compliant. RCC felt this was a reasonable design that would improve the conditions for the wetland.

Acting Chair Crapo commented that RCC's proposed conditions asked that a planting plan be approved by the Conservation Commission or ZBA. He noted that ZBA doesn't typically get into the mechanics of a plan. He may be looking for some change in that language.

Mr. Garvan explained there is a border of *Rosa Rugosa* that is right on the wetland boundary. However, because of the rising tides, RCC thought it would be reasonable to have a 10ft buffer of plantings at the edge of the existing lawn and in the location of the existing garage. The owner was at the site walk and agreed that was reasonable. She felt that they may want to plant even more in the lawn area, which would protect the resource and the property.

Referring to RCC's request #2 from their letter of January 20, 2022, Acting Chair Crapo stated that he is hesitant to put the ZBA in a position to need another meeting to approve a planting

plan. He noted there are other conditions that they plant from the approved planting list. Request #2 gets across RCC's desire for certain shrubs and trees of 3-inch caliper and 10ft depth.

Mr. Garvan pointed out there are three large pines that have to be removed for safety and construction purposes. RCC would like to see larger trees planted in that area as replacements. In the 10ft range, they would just like to be sure it's off the NH DES list of plantings.

Acting Chair Crapo asked if RCC would be comfortable if ZBA doesn't get into the planting plan parameters.

Mr. Garvan confirmed.

Attorney Bosen noted that his clients fully accept the recommendations of the Conservation Commission.

David Choate, 108 Washington Road, stated that he is present to speak as an individual; however, he is a member of several preservation boards. He is speaking against this, as someone has to speak up for the history of Rye.

Acting Chair Crapo noted that where he is not a direct abutter, the Board will need to decide if he has standing to speak. There has to be standing in the matter.

Mr. Choate stated that he does a lot of land use work throughout N.H. He has never had any board say that someone can't speak if they are not an abutter.

Acting Chair Crapo explained the Rye ZBA limits it to abutters or those who have standing in regards to the particular proposed project. He asked Mr. Choate if he lives in one of the abutting properties.

Mr. Choate replied no.

Acting Chair Crapo explained that Mr. Choate would be a town member at large. He further explained the Conservation Commission has a standing on all properties abutting the wetland resource. He polled the Board on whether to grant Mr. Choate standing and allow him to speak. He commented that he does not see there would be any standing here that would be any different than any town individual.

Member Chororos stated that she is interested to hear what the historical significance is.

Member Driscoll commented it's case by case. In this case, he thinks they should limit it to two minutes with it being kept in mind that he's not someone who is directly affected by the property.

Motion by Patrick Driscoll to give Mr. Choate standing. Seconded by Sandra Chororos. Vote: 4-1. Shawn Crapo opposed. Motion passed.

Mr. Choate continued that he serves on the Historic District Commission, Heritage Commission and chairs the Demolition Review Committee. He pointed out that if the applicants get the variances, the Demolition Review Committee will get this application; however, they have no “teeth” and are just an advisory board. He is also a member of a group called Rye Advocates, which was formed to raise awareness of the importance of historic houses throughout Rye to support preservation. He noted that 99% of the applications received by the Demolition Review Committee are only because people have received a number of variances to tear down the home. The Historic District is very small and is only in the center of town. However, there are a hundred important structures in the Town of Rye and this is one of them. It’s an iconic seaside cottage that was built along Ocean Boulevard in 1920. He noted that one thing that is done with the Demolition Review Committee is they will bring in a restoration contractor to give an assessment of the property. The restoration contractor will look at whether the owner could have done what they wanted to do within the framework of the existing building. Nine times out of ten, the answer is “yes”. Most contractors will want to tear down a building because it’s easier to build something new; however, restoring to an owner’s wishes is often less expensive.

Bettyann Lemire, applicant, stated that her husband grew up in N.H. and they have spent many summers in Rye. It was a dream to come this way, not only for herself but for also their children. They bought the house because the house was beautiful. Shortly after, her daughter had two massive strokes and is currently disabled. She noted that they contracted with DeStefano Architects to work on renovations for the house. It’s not that they just decided to tear the house down. It’s a 100-year-old house and she would love to keep a 100-year-old house. The fact is the FEMA maps have changed. It was felt that it was important to improve the lot itself. It was also felt it was important to improve the land, as it relates to the wetland resource. In working out a few options with the architect and looking at the structure of the house, the ability to lift the existing home would have been impossible. Thoughts then shifted to looking at building a new house. She commented that they are not coming in and disregarding history or the property.

Attorney Bosen stated that he appreciates Mr. Choate’s comments, but he hasn’t seen the plans. Historic significance is not zoning criteria. Anything that is done with this property, given the size, is going to bring it back to the ZBA anyway.

Hearing no further comments, Acting Chair Crapo closed the public session at 7:41 p.m. He opened discussion to the Board in regards to the variances requested.

Member Chororos stated that overall, it’s a thoughtful project. She is particularly pleased that it will have less impact on the wetlands. Her concern was that it seemed like the project was encroaching a bit more on the marsh, which is a beautiful and significant marsh. However, if the owners are agreeable with the RCC recommendations, it shows they are good stewards of the property. Getting the septic out of the wetland buffer is excellent. The significant reduction in impervious surface is significant. She would say that overall, she is in favor of the proposal.

Member Piela agreed. In looking at plans, he looks at them in a balance of give and take. He is always in favor of protecting the wetland resource and sacrificing the front yard setback. The height allowance, in his mind, is a relatively minor ask, as it’s a fraction of a foot. The reason

for that ask is a hardship and he has great sympathy for the owners' situation. The requirement of the elevator is a good reason for the height variance. He also agrees with the comments about better protection of the resources with this proposal by providing more pervious and a better septic. Overall, he is in favor of the proposal with the RCC's recommendations.

Member Mitchell stated that he looks at the hardship to the property owners to bring a property like this up to code, especially with the new floodplain regulations. He had a bit of a concern about the height of the building; however, after hearing the reason, it really isn't a big ask. He always gives a lot of weight to RCC when there is close proximity to wetlands and the marsh. He would like to see something in the conditions about adhering to their wishes for landscaping and replacement of those trees. He also looks to the abutters, as well. If there are no objections from the abutters, it says a lot about the proposal.

Member Driscoll stated he is favor of the application. There is no one behind the property who would be negatively affected by less than a foot of height. That's usually a "hard sell" for him, but it seems to pass easily on this one. In terms of the historic significance of the home, a large-scale renovation (Class 3) has to be brought up to current codes. To do that to a house like this is going to cost substantially more than building new. With the plans presented, it has been tastefully done and it's going to be a more attractive home. As far as the Conservation Commission, he would like to see on the next case that RCC needs to approve the planting plan. This would put the onus on the applicant. It's not for the ZBA to do but RCC is a thoughtful board and he would approve that on most cases going forward. He commented the plans are tastefully done and he does not have a problem with the proposal. He pointed out that he doesn't like zero lot line setbacks. However, they are doing everything they can. The house doesn't seem extravagant and it seems to satisfy all the criteria to him.

Acting Chair Crapo pointed out that the zero is on the walkway, which is up against Ocean Boulevard, which is much wider than the actual driven surface.

Referring to Sheet C-3, Member Driscoll noted there is a walkway that goes beyond their property. ZBA can't approve anything outside of their property. He asked if there should be a condition to make sure it's clear that the Board is not approving anything beyond their property line.

Acting Chair Crapo pointed out that the plan shows a paver apron and walkway that appear to be beyond the pipes marking the front walkway. All that is in the Board's jurisdiction is within their property lines. He opened to the public to ask Attorney Bosen if his applicants are in agreement that they need to strike anything beyond the bottom of the steps. He noted that the ground step is proposed to go up to the walkway. It's manmade material on land, so it qualifies as a structure under certain definitions.

Reviewing the plan with Acting Chair Crapo, Attorney Bosen commented they will agree to keep it as grass or natural material. He noted that they will abide by whatever NH DOT says.

Acting Chair Crapo noted as part of the record, that none of the Board's approval addresses anything with the DOT setback, whether it be existing or not.

Acting Chair Crapo opened to Mr. Garvan from RCC.

Referring to RCC recommendation #3, Mr. Garvan stated that it says “the Conservation Commission or ZBA approve the plan”. He suggested striking ZBA.

Acting Chair Crapo re-closed the public session. He commented that zoning wise, the appearance of most structures is not before the Board. It’s down to the dimensional requirements. On this application, they are asking for certain variance criteria to replace what’s there. There are new floodplain regulations and FEMA maps. Those regulations are causing quite the structural appearance changes. When it comes to the height variance, this one part of the roof is less than a foot above. Member Driscoll had asked a question earlier about the ceiling height. If there were “monster” ceiling heights, he could see holding the line on the height limit; however, he thinks it makes sense in this case. Keeping the project farther from the resource has its merits. He sees some topographic challenges in getting around the elevations of the property. However, he can’t see any reason to not move forward with the project.

Member Driscoll asked if the Board is in agreement that they want to say the Conservation Commission needs to approve the planting plan.

Acting Chair Crapo noted that the applicant said they were agreeable to all recommendations of the Conservation Commission. He wouldn’t want to put the burden on them to try to reconvene Conservation to get an approval. He would be in favor of just striking out “or ZBA”.

The Board agreed.

Acting Chair Crapo called for a vote on variances to §190-6.3.B; 190-2.4.C(3); 190-2.4.C(2); 190-2.4.C(7); 190-3.4.D; and 190-3.1.H.2(a)(b)(f) and (g):

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

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

2) The spirit of the ordinance is observed?

Sandra Chororos – Yes
Chris Piela – Yes
John Mitchell – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

7) The proposed use is a reasonable one?

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

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

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

Motion by Patrick Driscoll to approve the application of Bradley and Bettyann Lemire of 26 Renee Lane, Enfield, CT for property owned and located at 1596 Ocean Boulevard, as advertised, with the conditions laid out in the Rye Conservation Commission's letter as follows;

- 1.) **The satellite dish and all the debris are removed from the area near the marsh.**
- 2.) **A planting plan is developed that replaces the three pine trees with at least three native trees of 3" caliper or greater. The plan should also include native plants installed to a dept of 10 feet along the edge of the lawn and the back edge of where the garage existing. See the NH Native Plants list.**
- 3.) **The Conservation Commission approves the planting plan.**
- 4.) **There is an 85% plant survival rate after one year.**

Seconded by Chris Piela.

Vote: 5-0. All in favor.

Acting Chair Crapo called for a vote for a special exception requested from §190-3.1.H(f) and 190-3.1.G(2):

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

Sandra Chororos – Yes
Chris Piela – Yes
John Mitchell – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
Chris Piela – Yes
John Mitchell – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes

**Motion by Patrick Driscoll to approve the request for a special exception, as advertised.
Seconded by Chris Piela. Vote: 5-0. All in favor.**

3. **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 §190-2.3.C(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 #05-2022.**

Attorney Monica Kieser, representing the applicant, spoke to the Board. She noted that the property was before this Board in either August or September. The previous approval is in the Board's packets; Exhibit A. This is for the Board's reference; however, she noted that they are seeking relief again.

Acting Chair Crapo asked if this is taking the place of what was approved before.

Attorney Kieser explained they are moving forward with the special exception that was previously obtained. They have not asked for a new special exception for the driveway because that was granted the last time and the driveway is the same. She continued that the driveway received a special exception for 6.9ft from the wetland and it received a variance for 6.9ft from the wetland. The driveway is the same size and a bit further from the wetland, so it was not asked for this time.

Attorney Kieser noted that previously they were before the Board to add on to an existing building. It was primarily an addition of an attached garage with living space above to the existing home. Upon further examination of the structure itself and the structural integrity, it was determined that the proposed renovations could not be supported with the current structure.

Acting Chair Crapo clarified that in the event the approvals are received, the first proposal and variances are going away and not being combined with this project.

Attorney Kieser confirmed; except for the special exception and variance for the driveway, which will be retained. Anything related to the house will go away. (Attorney Kieser reviewed the proposed conditions plan before the Board.) She pointed out that the property is located down the street from The Ice House, heading towards the bridge. The property is on the right and the second to the last property before the bridge. The current house is a small modest house. The property extends towards the next property; however, the only developable area is in the triangle that the plan focuses on. The triangle is the only buildable area on the lot. The whole property is within the tidal wetland buffer. She noted that there is an existing short driveway. There was a previous approval for a longer driveway that comes further into the property to get the cars off the road and out of the right-of-way. There's an existing shed on the property that will be removed. There's an existing patio to the back of the house that will be removed and replaced with pervious material. There are a number of plantings proposed for the whole property and there is a retaining wall proposed around the new addition. The retaining wall contains some stormwater management infrastructure. Right now, on the property, there is no

stormwater treatment of any kind. The proposal would offer the stormwater treatment to improve existing conditions.

Attorney Kieser noted that Rye Conservation Commission reviewed the previous proposal and it did not win their support. They have also reviewed the current proposal. RCC has noted there are significant improvements in terms of stormwater management, removal of invasive species and plantings. However, RCC remains concerned about the size of the proposed home. Respectfully, the applicant disagrees with their assessment. The existing conditions have a dwelling coverage of 5.6%. The proposed dwelling coverage is increasing, but it's only going up to 9%, where 15% is permitted in the zone. Dwelling coverage relief is not needed. Overall impervious coverage is 11.84% and the proposed is 11.93%, so there is a .09% increase over existing conditions and .27% over what was previously approved, which was 11.66%. The size of the dwelling is not particularly relevant to the analysis, when the overall impervious coverage is only increasing .09%. The reason why that is happening is because there is a fair amount of impervious surface on site that is going to be removed and replaced with pervious materials. There's an existing paved driveway that's not as long as what is proposed, but what is there is paved. The shed and driveway in the back are all going to be converted to pervious material.

Member Driscoll commented that on the first application, one of the things he disliked the most was the size and location of the patio. He asked if the pervious patio has changed in size from the previously approved proposal. He also asked about the location of the patio.

Attorney Kieser replied that the distance to the wetlands has increased over the previous proposal for everything. Previously, the patio was 19.1ft from the wetland and now it's 22.1ft. She explained the size of the house has been tweaked a bit. The previous approval was for a 2,011sf house and the current proposal is for a 1,970sf house. She believes the rear patio is a bit larger by expanding in width a bit, but it has not expanded closer to the wetland. The reorientation and slight shift to the proposed home will require front setback relief, but will bring the rear corner of the house further from the wetland and brings the patio further from the wetland, as well.

Acting Chair Crapo asked if the existing home is one-story.

Attorney Kieser noted it's a two-story, three-bedroom home.

Acting Chair Crapo stated that the RCC letter says the proposed heated square footage is 3274, which is 54% greater than the existing heated area of 2120. It was just represented that the footprint is 1970sf. This only really leaves a few hundred square feet of heated area on the second floor of the existing home.

Attorney Kieser explained the existing house footprint is 1222sf. In looking at the existing conditions plan, it's a bit of an L-shaped house. The three-season porch is being removed entirely. The remainder of the house is proposed as new. That impacts how the numbers work. In the previous proposal, something was being taken away and then a garage was being built and connected to a newly reconstructed area that had been a screened porch. She pointed out that the garage is a certain number of square feet. The entire 1970sf is going to be the whole outline, but

approximately 500sf is the garage. This was all taken into consideration with the dwelling coverage calculations.

Acting Chair Crapo stated he is trying to reconcile the numbers and they don't seem to add up. He's trying to determine if RCC's comment about 2120sf of existing heated living space is accurate. RCC is saying that the proposal is increasing by 54%. Their comment is that they don't like to see more than 50% growth on the lot. With certain lots, when going from 5% to 9%, it can seem high.

Attorney Kieser noted that when starting with low numbers, it can seem like a big increase. However, this is 3.4% increase and is still 6% under the required coverage of 15%. She continued that it's certainly in the RCC's purview to talk about footprint and increasing square footage. Where they lose her is overall living area. To her, the analogy should be about overall footprint and the impact on the ground, not the overall living space. In focusing on the footprint on the ground, it is an increase; however, it's minimal at .09% of the overall impervious coverage. The dwelling coverage is a 3.4% increase. Overall, it's going from 11.84% to 11.93%. She pointed out that there will be a significant stormwater management system that doesn't exist currently. The home is being moved further from the wetland. Invasive species are being eradicated and native plantings are being added. She is not hearing that this proposal will negatively affect the wetland.

Referring to the RCC comment about the increase in size, Attorney Tim Phoenix pointed out that it is more living space, but the proper comparison is to what was already approved. The footprint of what was approved is 2,011sf and this proposal is 1970sf, so it's a bit smaller. He's not saying that volume or living space has no bearing on anything, but what they are looking at is ground coverage. If something hits the roof, whether it be one, two or three-stories, the question is what will happen with the water when it hits that roof.

Charlie Hoyt, Architect, stated that when he was figuring out the calculations, he compared it against what was approved. This proposal is a building that's set back from the original location by 2.2ft from the river side. It's also 1ft back from the side facing Wentworth by the Sea. It's also about 1ft in from the side facing the golf course. Overall, the footprint is about 46sf smaller. Mr. Hoyt point out that the proposed ridge height is not taller than what was accepted last year, so a height variance is not being sought. The volume has been kept down as much as possible. The home is a gambrel design. It's a lot simpler to look at, as well as to build. He continued that in looking at the existing home, it was determined that the whole first floor would have to be rebuilt. He reiterated they tried to keep the volume down as much as possible with the new proposal. (He reviewed the elevation plans before the Board.)

Referring to the footprint calculations, Acting Chair Crapo asked if this is from foundation to foundation or drip edge to drip edge.

Mr. Hoyt replied that it's the gross square footage using the edge of foundation. In regards to the decision to rebuild, he noted that it was a hard choice, but there would be a great extent to renovate the existing house to bring it up to code.

Corey Colwell, TF Moran, noted that stormwater management does not exist on the property today. (He pointed out on the plan the direction of the stormwater running off the roof.) He noted that about three-quarters of the roof runoff is picked up by the pervious patio, which is designed for stormwater infiltration. He noted that portions of the existing driveway are being removed and replaced with a pervious driveway that is slightly pitched back towards Wentworth Road. It will pick up all the runoff from the roof, as well as the runoff from the front half of the garage. During a storm event, the water will sheet across the pervious driveway and most will go into the ground. To capture the additional runoff during a large storm, a grass swale is being proposed to convey the stormwater into a level spreader. (He pointed out the location of the grass swale on the plans.) Mr. Colwell explained that a level spreader is basically a rock lined bottom depression in the ground. It infiltrates stormwater, so post construction there will be a reduction in stormwater coming from the site to Little Harbor. The practice of a pervious driveway, pervious patio, and grass swales, as well as a stone drip edge, will significantly reduce the runoff that is leaving the site to Little Harbor.

Mr. Colwell noted that there is a situation now where vehicles are parking in the right-of-way. The vehicles have to back out into the right-of-way when leaving the site. There's really no sight distance in either direction. It's a dangerous situation. What drove the whole project early on was the need for a new garage. With the garage and a longer driveway, vehicles will be able to back down to the turnaround and head straight out of the site, which will be much safer than backing out onto Wentworth Road. The existing vegetation is basically grass right up to the edge of the resource. The planting plan will introduce native plantings with a 5ft to 10ft wide landscape buffer. It will run from the edge of the property line, along the edge of the resource. There will also be some landscaping to the back and side of the house, so the lawn area is being reduced. The plantings will allow more absorption of rainwater and will reduce the lawn area, so there will be less fertilizer, nitrogen and nutrients going into the harbor. He summarized there's a major increase in the reduction of stormwater runoff. There's a reduction in lawn area and an increase in native plantings. Also, there will be a much safer exit from the property to Wentworth Road.

Member Driscoll asked if the level spreader is a smaller version of a raingarden. He also asked if it helps to filter out fertilizers and chemicals so they are not going into the harbor.

Mr. Colwell replied that it is similar to a raingarden. The only difference is that there are no plantings in a level spreader. It's a stormwater technique to allow infiltration into the ground and reduce erosion. He pointed out there's a very steep slope in some areas on the property. The level spreader is going to the top of the bank. All the stormwater will go in and infiltrate, so it won't continue to the resource and erode that bank. He noted there's a lot of erosion going on in that area now. Currently, the runoff is coming off the roof and going right down into the resource. He explained the raingarden is usually shallower and is filled with plantings and grass. This is more of a stormwater technique for reduced erosion and infiltration of stormwater. In regards to the question about the fertilizers, Mr. Colwell commented the ground is the best filter. By creating that depression, it allows for infiltration into the earth itself, which will filter out the nutrients before it filters down into the resource.

Member Driscoll asked about the maintenance of the level spreader.

Mr. Colwell replied that the maintenance is to really just keep the plants out and make sure there is stone. If it fills up with sediment, some of that sediment will need to be removed. There is very little maintenance with a level spreader.

Marc Jacobs, Wetland Scientist, noted that given that the swale and level spreader are serving a large area of impervious surface, he wouldn't expect that the level spreader will see a significant amount of sediment over its lifetime. Maintenance for this level spreader will largely be keeping it free of leaves in the fall.

Mr. Colwell pointed out there's a lot of grass swale that conveys the stormwater to the level spreader. Most of the sediment is filtering out in the grass swale. What reaches the level spreader is primarily water.

Acting Chair Crapo asked if the level spreader is designed for future compaction of the swale. How is the level spreader sized in relation to that?

Mr. Colwell explained the swale is in lawn. There will not be much compaction over time in the lawn. If the lawn is compacted, the grass won't grow. That will be the same situation here. There will be very little compaction happening in the swale.

Acting Chair Crapo commented that the Conservation Commission expresses a concern on the septic from a loading standpoint if this is used year-round. He asked about the septic replacement plan.

Attorney Kieser noted there is a septic approval on file. The system was permitted and installed in the past. The house is served now by an existing four-bedroom septic system and the leach field is on the golf course.

Mr. Colwell explained the system comes out of the house into the tank. There's a force main that pumps it from the tank out of the driveway to the road, down the edge of the road past Sander's Point, past the green, takes a left at the 16th green to a leach field on the Wentworth by the See Country Club property, which was designed out of the shoreland, more than 250ft from the water's edge.

Attorney Kieser stated there is no indication that the existing system is in failure. The submission the Board has is a letter to the Building Inspector discussing some of these issues. The Building Inspector has been provided with the previously approved septic plan and a copy of the construction and operating approval. The operating approval is for a four-bedroom house. There is a three-bedroom house there now and a three-bedroom house is being proposed. The system that exists is an oversized system for the use that exists now and for the use when this build is complete.

Attorney Phoenix stated that the building code in Rye requires a new design for new construction, unless there's an approved permitted septic system on file with the State. He noted that for the past five years the home has been fully occupied. The nature of the use for the past five years, won't be any different going forward if it's used fulltime by residents.

Mr. Jacobs stated that he compared this proposal to the previous proposal. He had previously compared the proposal that was approved last year to the existing conditions. The newly proposed changes are minimal, and in some cases, represent minor improvements over the previous design. If this were a vacant property, in an ideal world, it would be nice if it could remain vacant and completely undeveloped, between the road and Little Harbor. However, he thinks from an environmental perspective, it's a net improvement over the existing situation, given that it is currently developed. This proposal represents an improvement on mass balance of the current situation.

No further questions were heard from the Board.

Attorney Kieser addressed the criteria for granting the variances.

- The purpose of the Rye Zoning Ordinance is to lessen congestion in the street. This is a three-bedroom home now and it will be replaced with a more functional three-bedroom home. A garage is going to be incorporated that is going to offer interior parking and allow for guest parking. The parking situation will be improved by allowing for parking on site. It will also provide a safer situation by allowing for cars to turnaround to head out straight onto Route 1B without having to back out onto the road. It will be a new code compliant home. The existing home is slightly in the flood hazard zone. The proposed home is entirely outside the flood hazard zone.
- There will be added on site parking. Additional pervious materials. A stormwater management plan. All that will not undermine the purposes of the ordinance.
- More front setback relief is being requested from the previous proposal. The reason is because of the slight tweaking and rotation of the home. In order to get further from the wetland, by necessity, the house will have to get closer to the front lot line.
- The proposed retaining wall is not going to negatively impact anyone. The house is already naturally buffered from the right-of-way and from the travelled portion of the right-of-way by the ledge outcropping and trees. The house is going to remain screened. Although, a retaining wall and house will be closer to the lot line than the previous proposal, it will be over 30ft to the travelled portion of the road. In thinking about the purpose of the front setback, which is for visibility, those purposes are not undermined by the proposal. Adequate light, air and visibility is maintained.
- The proposal doesn't overcrowd the land because it's essentially taking out one single family home and putting in another. Dwelling and lot coverage is being kept compliant. There is a net benefit with the implementation of the stormwater management plan, the eradication of the invasive species and the addition of the native plantings.
- The variances are required because of the shape of the lot and the overlapping buffers. There really isn't any possibility to do anything on the lot without requiring relief.
- There are special conditions of the property that distinguish it from other properties in the area; the tidal wetland buffer, shape of the lot, the triangular home site and shallow depth, greater reduces the building envelope on the lot. Anything that is done on the lot is going to require relief.

- What is being proposed has been demonstrated to be a net benefit to the wetland. This is a previously disturbed lot with no stormwater management. There's evidence of erosion in the area that is proposed for the level spreader and there is ample evidence of invasive species. A stormwater treatment is being proposed that is essentially three-fold; drainage swale, level spreader and the addition of native plantings.

Acting Chair Crapo asked if the landscape plan has changed from what was presented before.

Attorney Kieser stated that because the house is being moved forward, an additional four trees have to be removed. Relief has been requested to take down eighteen trees. The last proposal asked for fourteen trees.

Acting Chair Crapo pointed out there were four conditions attached to the prior approval. One of those was the stormwater management plan and the plantings, which referenced the old plan. He suggested that the conditions be carried forward. He asked if there would be any issues with carrying that forward with those being updated to tonight's plan.

Attorney Kieser replied there are no issues. She believes the current plan has been updated to address the saltmarsh. She noted that they have no issue with a condition of approval being that they comply with the stormwater management plan and landscape plan that has been submitted in the packets. There is also no objection to the requirement that the ledge removal be done in accordance to best management practices. There is also no problem with the condition that the pavers be installed and maintained to remain pervious.

Attorney Kieser continued to review the variances criteria.

- The proposed use is reasonable. The use is going to remain that of a single-family house. Wanting and incorporating a garage is generally reasonable. In this case, it provides a specific benefit by allowing some interior parking in a wetland buffer and allowing parking space on the property.
- Substantial justice will be done by granting the variances. There is no benefit to the public from denial. However, a denial would be a significant hardship to the applicant. A relief chart has been submitted, which shows the previous proposal, existing conditions and what is being requested today. The most significant change is the distance to the front yard. It has been demonstrated that this is important in terms of what is gained in distance to the wetland.

Acting Chair Crapo commented that he does not see any generators or air conditioners on the plans.

Mr. Colwell replied there is no plan for a generator. Condensers are not contemplated because ductless splits are being used on the interior. He pointed out that there is a propane tank shown on the drawing.

Attorney Phoenix noted that the only thing that is not getting better, under zoning requirements, as compared to what was approved last year, is the distance of the house from the front lot line. Everything else is the same or a slight improvement.

Mr. Hoyt stated that when he redesigned the house, it had to be better than was initially approved by the Board. He had to do everything possible to shrink the house down, but still have it look nice. It was pushed forward 16". By making it smaller, it's 2.2ft away from the river.

Acting Chair Crapo opened to the public.

Mike Garvan, representing RCC, stated that it's a non-conforming lot, which is totally in the tidal buffer with a very unique configuration. The existing home is on ledge which sticks out into the harbor. In regards to the building coverage, it is a small number in terms of percentage, but it is an increase of 64%. This lot is only half an acre. The buildable area is so small that to create this project they have to drill ledge of some 10,000 cubic feet. The Conservation Commission said in the letter that there are improvements to the wetland situation and the Commission applauds those; however, all those improvements could still be in place with a smaller structure. When the Conservation Commission is looking at a non-conforming lot and variances are needed, the commission struggles with what's reasonable and what isn't reasonable. The commission tries to look at projects on a case-by-case basis. In this case, the opinion of the Conservation Commission is that the scope of the project is too large. The commission does not support the project at this scale.

Attorney Kieser noted that all the houses in this area are generously developed. What is proposed here is imminently reasonable. The project is before the Board to ask for relief to construct something that is a bit larger than what's there, but it improves many of the non-conformities that exist now. Subjective opinions about how big something should be doesn't provide any evidence that there is a harm to the wetland from this proposal. She understands that the temporary effect of any construction is disruptive. However, with the conditions that have been crafted and the efforts to protect the wetland from construction, and the acknowledgement that best management practices will be used for the removal of the ledge, she doesn't think the construction itself is a basis for a denial. She doesn't think the evidence presented demonstrates that there's going to be 10,000 cubic feet of ledge being removed.

Attorney Phoenix stated that he asked a technical person how much more ledge is coming out now versus what was presented before. The answer was "a little bit". The reason a little more is coming out is because the home is being moved towards the street more in order to be more protective of the wetland. He fully respects the Conservation Commission's role. They try to find a balance and try to say "yes" to support projects. Attorney Phoenix pointed out that this house is larger in floor area. It is smaller in footprint. There's two ways to get living space. The house can be spread out to cover more land or it can go up. The concern expressed by the Conservation Commission on that issue seems to be non-existent. Stormwater issues are less because there is less coverage. The existing total impervious coverage is 11.84%. The Board approved last year 11.86% and this project is 11.93%, which is less than 1/10th of 1%. He pointed out that the Rye Ordinance doesn't have a limit on floor area. Rye deals with that issue

indirectly by having limits on setbacks, lot coverage and height. Those combined create the limitations on how much floor area or volume there can be on a particular project.

Acting Chair Crapo commented there's a significant number of trees coming out. Trees don't grow directly out of the ledge. He asked how much ledge is coming out versus the soils that hold the trees.

Mr. Hoyt stated that it was hard to pin down the exact cubic feet of ledge coming out. Not only does any irregular ledge have to be calculated, but what is being taken out underneath also has to be figured out. He thinks that 10,000csf is the number they were working with. He pointed out that they are also taking out stuff from below to set the forms and pour the walls. It wasn't what was just visible on the outside.

Mr. Colwell reviewed the area on the plan where ledge will be removed. He also pointed out the area where trees will be removed, which are growing on the ledge outcrop.

Mr. Hoyt noted that the ledge removal number was just an estimate.

Hearing no further comments, Acting Chair Crapo closed to the public at 9:16 p.m.

Member Mitchell stated there are some improvements. His guide is really Sheet C-2 because it shows what has to be removed and what was approved prior. He just wonders why a similar structure isn't being replaced in the same spot. He asked what they are looking at. Should they be looking at this as compared to the prior approval?

Acting Chair Crapo pointed out that they are carrying over some of the existing prior approvals. With the prior approval, the main structural change was the addition of a garage with pieces of the existing structure being taken off. Now they are scrapping those plans and putting in a new foundation with the existing plans.

Member Piela stated that he remembers the original application and the debates the Board had regarding granting the variances. He's trying to view this proposal as a change from what was allowed. He's looking at the balance of whether this request is an improvement over what was previously approved. He's trying to ignore existing conditions because they are no longer relevant. Member Piela pointed out that they have an approved project plan that could be executed tomorrow. They're coming back with a request. He's looking at what was previously approved to proposed, not existing to proposed.

Member Mitchell commented this is what he was getting at. He can't consider the existing structure. He's looking at what was approved and the difference now.

Acting Chair Crapo stated that what is before the Board are these plans, with the understanding that they are going to use some of the approvals from the last time.

Member Piela stated this is an improvement on what was previously approved. He will sacrifice front yard setback for wetland distance and that's what's being done here. In his mind, this is an acceptable tradeoff.

Acting Chair Crapo opened the public session for a question. He commented that the ledge being taken out is adjacent to the roadway. It's not an insignificant roadway in that area. He asked if there will be a need to work with DOT to make sure the removal of the ledge does not have an effect on the structural integrity of the adjacent road.

Mr. Colwell replied no. He explained that they don't have to collaborate with DOT because they are not taking out any ledge on DOT property. All ledge being removed is on this property.

Acting Chair Crapo asked if the distance is enough so it will not affect the road.

Mr. Colwell confirmed. (He reviewed the area on the plans where the ledge is located.)

The public session was reclosed at 9:30 p.m.

Member Driscoll stated that he understands what Member Piela and Member Mitchell are saying. He also thinks the Conservation Commission is looking at it as a new application from what's existing and that's where they're making their comparison. When he looks at a house that's existing and there's a modification with an addition, to him there are less barriers for an approval. In looking at the five criteria, if there is an existing home, that's an additional special condition. If the home is being razed with a new home being built, he becomes a lot more critical of the property. In looking at this proposal, they got approval before and now it's new construction. In looking at the house, they could go with the last variances and build it. They've done a really good job and it seems to be beneficial for the lot. They've done their due diligence. He wishes they didn't ask for so much. He would want to be sure the two conditions that are added are maintenance for the swale, level spreader and other water management systems to be sure they are maintained. He would also like a condition for best practices for site work, including ledge removal. He thinks there needs to be some verbiage for movement and sourcing of fill. There has to be some conscious thought as to where the fill is coming from and what effect it will have on the surrounding environment.

Acting Chair Crapo opened to Marc Jacobs for a point of clarification.

Speaking to Member Driscoll, Mr. Jacobs asked if the concern with regards to fill is the invasive species.

Member Driscoll confirmed.

Acting Chair Crapo pointed out there could be some other contaminants in the fill.

The public session was reclosed at 9:34 p.m.

Member Chororos stated that on balance, this is a more thoughtful approach to protecting the natural resources. There are improvements to a lot of the non-conformities. The idea that they pushed the home back away from the wetlands is significant. There's certainly a significant stormwater management plan with the plantings, swale, level spreader and more pervious area. She pointed out that there is a 46% smaller footprint and it's being pushed back from the harbor. For all those considerations, she's okay with the proposal.

Acting Chair Crapo commented that this could not be done if it was an empty lot. Adding on to the existing means the older existing is that much older. At some point, the older portion is going to become dilapidated and there will be more construction in the future. In this case, there will be one tear down and reconstruction. It will be a structure that's safe with new technology for stormwater. It will be able to endure many decades going forward. He can get behind the steps that have gone into the process with this proposal. He doesn't think it was necessarily planned to get part of the project and swap it for another. He thinks it has genuinely evolved.

Acting Chair Crapo reviewed the conditions:

1. The stormwater plan to be implemented as presented to the Board of Adjustment on 2-2-2022.
2. The plantings be installed as per the plan presented to the Board of Adjustment on 2-2-2022.
3. Ledge removal, site work, and sourcing and movement of fill shall be done with best management practices to minimize noise, destruction to the area and maintain health of the environment.
4. The pavers to be installed and maintained so as to remain pervious.
5. Maintenance of swale and level spreader as needed to maintain functionality.

Acting Chair Crapo called for a vote on variances to 190-2.3.C(3); 190-6.3.B; and 190-3.1.H.2(a)(e) and (g):

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

7) The proposed use is a reasonable one?

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

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

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

Motion by Patrick Driscoll to approve the application for 16 Wentworth Road as advertised with the following conditions:

- 1. The stormwater plan to be implemented as presented to the Board of Adjustment on 2-2-2022.**
- 2. The plantings be installed as per the plan presented to the Board of Adjustment on 2-2-2022.**
- 3. Ledge removal, site work, and sourcing and movement of fill shall be done with best management practices to minimize noise, destruction to the area and maintain health of the environment.**
- 4. The pavers to be installed and maintained so as to remain pervious.**
- 5. Maintenance of swale and level spreader as needed to maintain functionality.**

Seconded by Sandra Chororos. Vote: 5-0. All in favor.

- 4. Brian Lewton on behalf of Albeo & Christina Desjardins of 203 North Adams Street, Manchester, NH for property owned and located at 19 Glendale Road, Tax Map 20.2, Lot 004-01 requests a variance from §190-2.4.C(2) for a generator 19' from the side boundary where 20' is required. Property is in the General Residence District. Case #06-2022.**

Brian Lewton, representing the applicants, spoke to the Board in regards to the request for a variance to locate a generator 19ft from the side setback. He noted that anywhere the generator is located on the property will violate a setback. This side setback is the one that violated the setbacks the least. He noted that the property has a severe water problem in the basement with constant sump pump use. This is not the applicants' permanent residence, so a lot of times they are not at the home. If the sump pump were to fail, the water in the basement would cause a lot of damage. He pointed out that there are other standby generators and portable generators used in the neighborhood. The noise would not increase by any noticeable amount. The property that is being infringed upon is the applicant's mother, so she is fine with the proposal.

Acting Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 9:48 p.m.

The Board did not have any issues or concerns with the request.

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

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

Sandra Chororos – Yes
Chris Piela – Yes
John Mitchell – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes

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

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

7) The proposed use is a reasonable one?

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

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

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

Motion by Patrick Driscoll to approve the application of Brian Lewton for property located at 19 Glendale Road as advertised. Seconded by Chris Piela.

Vote: 5-0 All in favor.

- 5. Joel & Lauren Feid for property owned and located at 705 Brackett Road, Tax Map 17, Lot 34-02, request an administrative appeal from the building inspector's 11-22-2021 letter stating that a swingset was installed in violation of 190-3.1.H. Property is in the Single Residence District. Case #07a-2022.**

Joel Feid, applicant, stated that he erected a swing set for his children in April of 2021. In March of 2021, he had emailed the Building Inspector to check on the permit requirements for a swing set. The Building Inspector's response was that no permit was required, so the swing set was put up. Mr. Feid continued there were other projects going on at the property. There was a deck extension that had to go through the ZBA and was approved. In October of 2021, the Building Inspector was on site to check on the deck and the build out. At that time, there was no mention of the swing set. Mr. Feid commented that there seems to be some confusion on whether a permit is required for a swing set in town. However, he proceeded per the Building Inspector's response at that time, which was a permit was not required.

Acting Chair Crapo explained that with an administrative appeal, the question that has to be answered is whether there has been an error in any order, requirement, decision or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16. The ZBA must take its literal interpretation of the ordinance and reverse in whole or part or modify the order requirement. If denied, the applicant may request a variance.

Referring to the email to the Building Inspector, Member Driscoll asked if this was the only interaction before putting up the playset.

Mr. Feid confirmed.

Acting Chair Crapo noted that letters of support, which will pertain to the variance, have been received from Natasha and Matt Goyette, 750 Brackett Road, and Chris and Sue Reaney, 691 Brackett Road. He opened to the public for comments.

Mike Garvan, RCC, stated that the Conservation Commission was informed by the Building Inspector because of the potential wetland violation. The issue is whether a swing set is a structure and needs a variance in a wetland buffer. The Board will have to decide if the Building Inspector is correct that the playset is a structure.

Member Chororos commented there is further confusion with the emails. Mr. Feid asked very directly if a permit was required and he was told no. That's a consideration as well, not just whether it's a structure. There is miscommunication on the Building Inspector's behalf.

Hearing no further comments from the public, Acting Chair Crapo closed the public hearing at 9:56 p.m.

Acting Chair Crapo stated that since the email exchange, there was another situation in town where there was legal opinion from counsel that the playset was a structure. He continued that the Building Inspector's email was in error because he told them they didn't need a permit. He thinks it satisfies the criteria to be an error. He noted that the Board can amend a notice of decision or denial. In this case, the Board can't really amend it and say a permit is not needed because it's a structure and does need a permit.

Member Piela pointed out that the notice of violation was dated November of 2021. The email was dated March 2021. Between March and November, the definition of a structure was clarified. He doesn't see an error in the notice of violation. If the Board is viewing swing sets and playsets as structures, Mr. Feid was misinformed about not needing a permit. However, he doesn't know that the notice of violation was a mistake because it's operating under the clarification that a playset is a structure. With that said, he has no issue granting a variance from the ordinance to rectify the "wrong".

Member Chororos concurred.

Member Driscoll agreed. His take is that the Building Inspector didn't err, but he has no problem going at it with a variance.

Acting Chair Crapo stated that he would go with this thought if this property had not been before the ZBA for construction in the last couple of years and for the modification to the deck. The Building Inspector is familiar with the property and the layout. It's not like it was some random property that he got an email on that he wasn't familiar with. With that being said, he thinks the email was an error. The applicant is challenging the November 22, 2021 decision.

Member Piela stated that if the applicants are appealing the notice of violation, he doesn't see that the appeal should be granted because the notice of violation is in keeping with the Town's definition of structures in a wetland. He commented that he would grant the applicant a variance for the playset for it to reside where it's currently sitting.

Acting Chair Crapo stated if the email was appealed, he could see an error. He thinks there are some technicalities in this case. He thinks they will get to the end result that's desired just a little bit differently. At this point, he thinks the Building Inspector has guidance on swing sets in moving forward. The question on the November 22, 2021 letter is has there been an error in any order, requirement, decision or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16?

Member Chororos stated she disagrees. The email existing, in terms of information and because another scenario came forth and there was a designation that the playset is a structure, does not mean that the Building Inspector did not err.

Acting Chair Crapo pointed out that the appeal is not to the email. It's to the November 22, 2021 letter.

Acting Chair Crapo called for a vote on the request for appeal to the November 22, 2021 Building Inspector's letter:

- **Has there been an error in any order, requirement, decision or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16?**

Sandra Chororos – No; Chris Piela – No; John Mitchell – Yes; Patrick Driscoll – No; Shawn Crapo – No

Member Mitchell noted that the letter states that the swing set was installed in violation of 190-3.1.H. However, when it was installed, it wasn't in violation. He thinks the letter was in error.

Acting Chair Crapo commented that there can't just be a modification of the letter to get them the swing set.

Motion by Chris Piela to deny the administrative appeal as advertised. Seconded by Sandra Chororos. Vote: 4-1 Opposed: John Mitchell
Motion passed.

- 6. Joel & Lauren Feid for property owned and located at 705 Brackett Road, Tax Map 17, Lot 34-02, requests a variance from §190-3.1.H.2(g) for a swingset in the 75' wetlands buffer. Property is in the Single Residence District. Case #07b-2022.**

Acting Chair Crapo opened to the applicant with regard to the variance request.

Joel Feid, applicant, stated there has not been clarity in town. In September, he was before the ZBA for the deck and the swing set came up. Most of the board members did not have clarity. It's been an unusual topic in town. He feels like he's been singled out. He asked the Building Department how many other notices of violation have been issued and not another notice has been issued since then. He thinks a lot of property owners are watching this to see what the decision of the town will be. As a taxpayer, he doesn't want resources to be wound up in chasing swing sets that were erected in the past.

Acting Chair Crapo noted that the main issue here is that the swing set is in the wetland buffer. It's been established by counsel that it is a structure and needs a variance.

Mr. Feid stated there are some existing conditions with the 75ft wetlands setback. There's really no place to put the swing set without going in the side yard wetlands buffer. It was placed in the side yard near the shed. It's in the furthest spot away from neighbors, who may have noise concerns. Mr. Feid reviewed the criteria for granting the variance:

- The variance is not contrary to the public interest. This is an existing swing set in a buffer. It's consistent with others in town. The swing set does not threaten public health, safety or welfare. The variance will not violate basic zoning objectives to a marked degree. There are many homes in the area with swing sets in the setbacks. Additionally, it was said that no permit was required in March of 2021.
- There is no public benefit in denial of this request. The relief being requested is minimal and supported by most abutters.
- The values of surrounding properties will not be diminished.
- There are special conditions of the property that distinguish it from other properties. The property is now roughly 1.5-acres. The lot is essentially cut in half due to a seasonal stream. The 75ft wetland buffer limits the options for a placement of a swing set.
- Wetland setbacks are intended to protect the wetlands and minimize surface alteration. The existing location required no excavation. The swing set is on native lawn. There are also numerous plantings between the swing set and buffer.
- The proposed use is reasonable. There are many other swing sets in town.
- Literal enforcement of the ordinance would create an unnecessary hardship. There are many swing sets in town that are within setbacks. It was said by the building department that a permit was not required. The Town needs to be consistent in their practices. If this becomes the practice, it will create an unnecessary hardship for property owners with existing swing sets and put a strain on town resources.

Acting Chair Crapo opened to the public for comments.

Mr. Garvan, RCC, noted that Mr. Feid did not go to the Conservation Commission about the swing set and he knew it was in the buffer. Mr. Feid has gone to the Conservation Commission with other projects and more often than not, the Commission and/or ZBA has granted relief. Mr. Garvan continued that a lot of this could have been avoided if the proper channels were followed. With that being said, the playset is in the upland portion of the property. It's more than 50ft from an intermittent stream. That 50ft buffer is heavily wooded. The swing set is appropriately placed and is deserving of relief.

Hearing no further comments, Acting Chair Crapo closed the public hearing at 10:14 p.m. There were no issues or concerns noted by the Board.

Acting Chair Crapo called for a vote on the variance request to

Acting Chair Crapo called for a vote on variances to 190-3.1.H.2(g):

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

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

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

Motion by Chris Piela to approve the application of Joel and Lauren Feid for property owned and located at 705 Brackett Road, Tax Map 17, Lot 34-02 for a variance to §190-3.1.H.2(g) for a swing set, as advertised. Seconded by Sandra Chororos.

Vote: 5-0 All in favor. Motion passed.

- 7. Peter Fregeau for property owned and located at 1196 Ocean Blvd, Tax Map 17.3, Lot 35 requests variances from §190-2.4.C(2) for a shed 2' in the side boundary where 20' is required and from §190-2.4.C(5) for lot coverage of 47% where 30% is allowed. Property is in the General Residence, Business District and SFHA, Zone VE(14). Case #08-2022.**

Peter Fregeau, applicant, spoke to the Board in regards to his request for variances for a storage shed. He noted that a couple of days ago, his neighbors expressed concerns about different aspects of the shed. Based on those concerns, some revisions have been made. (He submitted the revisions to the Board.)

Acting Chair Crapo noted that the Board generally likes submissions ahead of time. However, collaboration with the neighbors is often to everyone's benefit, so they will accept the paperwork.

Mr. Fregeau explained that he is looking to put a storage shed on the property. The location that was chosen is the most appropriate for several reasons. He pointed out the lot is very restricting and it's part of a larger condo association. The limited common area is pretty well defined. There is a two-car garage which is used for parking, as there is no other parking. He continued that he spoke with one of the neighbors previously (Mr. Rudick), who did not express any concerns at the time so he moved forward on that basis.

Acting Chair Crapo noted that a letter has been received from Mr. Rudick and he is not in support. He asked if Mr. Rudick has seen the new plan.

Mr. Fregeau replied that he has not had a chance to present it to Mr. Rudick.

Referring to the proposed changes, Acting Chair Crapo pointed out there's a reduction of the center peak height of 2.5ft and it's moved to the right.

Mr. Fregeau explained that he shrunk the overall size of the shed from 8x12 to 7x11. The primary concern that he heard from his neighbors was line of sight. They felt it infringed upon the view. Any movement to the right would conceptually open up more sight line, along with dropping the peak down 2.5ft. It would also bring the shed a foot further from Mr. Rudick's house.

Acting Chair Crapo asked if there is approval from the condo association.

Mr. Fregeau pointed out that he submitted a letter from the condo association.

Acting Chair Crapo commented that he would not want the Board to approve something if it was in direct opposition to the will of the association.

Planning/Zoning Administrator Kim Reed confirmed that a letter was received from the condo association. She noted that the association accepted the proposal for the shed.

Acting Chair Crapo asked if the proposed movement of the shed is away from the property line.

Mr. Fregeau confirmed. The right side stayed where it is, but the left side shrunk by a foot. It changed from a peaked roof to a sloped roof. What is there now will be dismantled and a new shed will be built.

Acting Chair Crapo read a letter received from Mark Rudick, dated January 31, 2022, expressing his concerns on the proposal for the shed.

Acting Chair Crapo stated that he's trying to figure out how it can be 6ft away but 1ft from the Rudicks' fence with the eave of the roof over the fence.

Mr. Fregeau stated that he believes the fence being referred to is his fence and was installed by the previous owners. He doesn't think the eave overhangs the fence.

Acting Chair Crapo pointed out there are some dimensional discrepancies. Either a new survey is needed or this is more than 6ft from the property line. He pointed out the notice was for 2ft and it's being reduced by a foot, so it would now be 3ft.

Mr. Fregeau confirmed.

Member Piela asked if the 7.6ft wall is on the fence side.

Mr. Fregeau noted it's on his side of the property.

Member Chororos asked how the shed will be secured to the ground, as she's concerned about flooding.

Mr. Fregeau explained the shed will be on cinder blocks with crushed stone underneath. It would be a tough scenario to anchor it to the ground.

Acting Chair Crapo noted that's how most sheds area. Speaking to Planning/Zoning Administrator Reed, he asked about the FEMA requirements for sheds.

Administrator Reed stated that the shed is going to be above ground, so the water can flow through. FEMA does have a requirement that it has to have four walls and a roof; however, this is not a living space and it's above the base elevation. She is not sure of any shed requirements with FEMA.

Acting Chair Crapo opened to the public for comments.

Coleen Penacho, 1182 Ocean Blvd. Unit 1, noted that she is an abutter directly behind Mr. Fregeau. She doesn't think this meets the criteria for a variance. It's contrary to the public interest and inconsistent with the spirit of the ordinance. One of the objectives of the ordinance is to prevent the overcrowding of the land. This is the Coastal Overlay District, which the ordinance notes is built up to a much greater density. The ordinance states that preservation of coastal resources is a high local, state and federal priority. The management of the land use in the coastal area requires a special regulatory approach. Adding an additional shed to the land goes against the spirit of ordinance. Increasing impervious surface in the Coastal Overlay also goes against the spirit of the ordinance and is contrary to the public interest.

Mrs. Penacho continued that she doesn't think there's a hardship. It's a residential property that's not used year-round. It's been a residential property for over 50 years without a shed. There is a garage and a basement area. There's also a gravel parking space outside the house. It seems there are other areas available for storage. It seems like there is other space on that limited common area where the shed could be located that would not block anyone's view. Right now, the location of the shed blocks the light coming into her home. On the other side of the property is a large wooden fence. The shed wouldn't be seen if it was on that side of the property. There's also some space back from where the current shed is located that would not impact her house. The shed will block the sunlight from coming into her house and will block the views to the ocean, which will diminish the value of her property. She pointed out that they used to have a view right out to the water. The shed is now blocking that view. She understands that Mr. Fregeau is willing to cut down the size of the shed and move it over a bit, but that's not going to bring the view back and increase the sunlight to what it previously was.

Referring to the fence, Mrs. Penacho noted there is a pin at the end of the fence marking the boundary. She believes the fence is the property line between the two properties. Right now, the shed is a little less than a foot from the fence, right next to Mr. Rudick's property.

John Penacho, 1182 Ocean Blvd. Unit 1, commented that the Building Inspector measured 10 inches from the shed. The shed just doesn't fit. He is not against the shed; however, the placement of the shed is in a very bad location. It affects his condo unit. It's right against the house. Any rain coming off the roof of the shed would go right into Mr. Rudick's yard. He commented that it's a very inappropriate place to put the shed.

Member Driscoll asked if a change in the size of the shed, with a small change in location, would make a difference.

Mr. Penacho replied it wouldn't. He commented that there would be some benefit, but it will still block their view to the ocean.

Acting Chair Crapo stated that he is trying to figure out how there is a view of the ocean from unit 1.

Mrs. Penacho noted there is a view from the deck and there's a view to the right. Previously, there was a view from the first floor without the shed.

Speaking to Mr. Fregeau, Acting Chair Crapo clarified that the request is to be 2ft from the side boundary. It was heard that the Building Inspector measured 1 ft. He asked if the shed is proposed to be located where the footings are located.

Mr. Fregeau explained the shed is 8ft wide. He is proposing to bring the shed in a foot and the roof would slope to 6ft.

Acting Chair Crapo noted he is trying to figure out how far the shed is off the property line.

In regards to Mrs. Penacho's comment about the sunlight being blocked, Mr. Fregeau stated that he can't see how that's possible. There's about a 40ft to 50ft distance between the shed and the windows on her home. She doesn't think the shed can cast that kind of shadow. With respect to the location, he thinks the modifications will greatly improve the sight lines for everyone. He pointed out that there are no windows from that side of Mr. Rudick's home where the shed will be located. In regards to putting the shed on the other side of the property, that's really the front of the house. There's a walkway that runs from the front steps of the house to the backyard. There is a fence between his property and the Surf Club; however, it's pretty tight in that area and it will be unsightly in the front.

Acting Chair Crapo asked if there is a possibility to move the shed towards Ocean Boulevard and towards the home to open up the view corridor.

Mr. Fregeau stated that he thought this might be a solution. However, when he looked at it more, it became unfeasible because of the location of the septic. It's a pump system with a shared leach field with the Surf Club. There's also an elevation change, so the shed would have to be elevated and it would overhang the parking lot of the Surf Club. It would become visible from Ocean Boulevard. He didn't see this as being a real alternative. He reiterated that storage is a necessity because of the way the house is laid out. It was originally a single-family home. When it was converted to a condo, it basically eliminated any ability to park vehicles outside of the garage. This is actually written into the by-laws of the condo association.

Acting Chair Crapo commented that in looking at one of the photos, it seems to be more than 2ft off the fence.

Member Piela commented that it's unknown who owns the fence.

Member Driscoll pointed out it's also unknown where the other pin is located.

Acting Chair Crapo commented that typically a fence is 1ft in from the property line. The question is whether this one is on the property line or not.

Member Piela stated that he would have liked to have seen a survey to give clarity, given the sensitivity of the neighbors and value of abutting properties.

Mr. Fregeau stated that this is literally dealing with inches. He would be willing to work off the fence. To him, it's not worth getting a survey done. This shed is 1ft or 2ft off the property line. If the ZBA wants it to come in another foot, it could probably happen.

Acting Chair Crapo stated that given all the arguments and the fact that there are some ambiguities, he would be more comfortable getting answers to the survey question and the exact distance being proposed. Even with the new proposal with the sloped roof, any runoff is heading right at the property line. He noted that the measurement should be from the drip edge. All the setbacks have to be from the edge of the roof. There is just too much unclarity here. He is of the mind to continue this for a survey or a solid layout plan.

Mr. Fregeau commented that it seems to be overkill to go through the process of a survey.

Member Driscoll noted that it would also give some more time because there seems to be a miscommunication with the neighbors.

Acting Chair Crapo suggested going as far away from the property line and as far back from Ocean Boulevard as possible.

Member Chororos stated that the other issue is lot coverage. In this area, 30% lot coverage is allowed and this proposal is for 47%. That's an issue for her.

Mr. Fregeau noted it's a condo association. His property is a 9% piece of the condo association. That coverage is just specific to his property versus the whole property, which is 2.5-acres of land. He's adding 77sf of coverage.

Acting Chair Crapo asked if the Building Inspector has said that the lot coverage should be specific to his section or the whole property.

Mr. Fregeau replied that the Building Inspector didn't bring up the lot coverage.

Planning/Zoning Administrator Reed noted this is something that she brought up to Mr. Fregeau. She told him that if he is going to change the lot coverage calculations, he had to figure out his portion of the condo. If something is going on the ground, he should probably look at lot coverage.

Acting Chair Crapo reiterated that he is favor of continuing this application. He would want the Building Inspector to weigh-in on whether it's to be the percentage of Mr. Fregeau's common area. He has a feeling, zoning wise, it's the whole parcel. He continued that he does not feel there's enough information to properly make a decision on this application. The lot line is enough in play here that he doesn't know that a proper representation of this is being derived at. He'd like to continue the application.

The Board agreed the application should be continued. They also agreed that a more specific to scale plot plan is needed to show the placement of the shed.

Motion by Patrick Driscoll to continue the application of Peter Fregeau for 1196 Ocean Boulevard to the March meeting. Seconded by Chris Piela. Vote: 5-0. All in favor.

- 8. David & Paula Caswell of 32 Ridgewood Drive, Eliot, ME for property owned and located at 280 Wallis Road, Tax Map 19, Lot 11 request variances from §190-2.3.C(3) for a renovation of a dormer 13'+/- from the front boundary where 30' is required and from §190-6.3.A for expansion of a non-conforming structure. Property is in the Single-Family Residence. Case #09-2022.**

Motion by Chris Piela to continue the application of David and Paula Caswell. Seconded by John Mitchell. Vote: 5-0 All In favor.

ADJOURNMENT

Motion by Shawn Crapo to adjourn at 11:17 p.m. Seconded by Chris Piela. All in favor.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Peter Fregeau

Property: 1196 Ocean Blvd, Tax Map 17.3, Lot 35
Property is in the General, Business and Coastal Overlay Districts and SFHA, Zone VE(14)

Application case: Cases #8 -2022

Date of decision: 02-02-2022

Decision: The Board voted 5-0 to continue the application to the March 2, 2022 meeting for clarity on the side property line and better detailed plan with the location of the shed updated to reflect the change in the shed size and design as presented 2-2-2022.


Shawn Crapo, Acting Chair

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 Fregeau

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Application case: Cases #8 -2022

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Shawn Crapo, Acting Chair

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: Bradley & Bettyann LeMire of 26 Renee Lane, Enfield, CT

Property: 1595 Ocean Blvd, Tax Map 13, Lot 30
Property is in the General Residence, Coastal Overlay District and SFHA, Zone (AE-8)

Application case: Cases #04-2022

Date of decision: February 2, 2022

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

- §190-6.3.B destruction of a nonconforming structure;
- §190-2.4.C(2) for a dwelling 10.1' from the right side boundary;
- §190-2.4C(3) for a dwelling front steps 2.1', walkway 0.0' and dwelling 9.4' from the front boundary;
- §190-2.4.C(7) and §190-3.4.D for a for a dwelling height of 30.78'; and
- §190-3.1.H.2(a)(b)(f) and (g) for the dwelling, septic and driveway in the wetland buffer.

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

- §§190-3.1.H.(f) and 190-3.1 G(2) for a driveway in the wetland buffer.

Each of the above special exception, variances were granted conditioned upon continued compliance with all the following conditions from the Rye Conservation Commission letter dated January 26, 2022:

1. The satellite dish and all debris are removed from the area near the marsh.
2. A planting plan is developed that replaces the three pine trees with at least three native trees of 3" caliper or greater. The plan should also include native plants installed to a depth of 10' along the edge of the lawn and the back edge of where the garage existed.
3. The Conservation Commission shall approve the planting plan.
4. There is an 85% plan survival rate after one year.


Shawn Crapo, Acting Chair

ote: 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: 16 Wentworth Road SPE, LLC of 126 Daniel Street, STE 200,
Portsmouth NH

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

Application case: Cases #05-2022

Date of decision: February 2, 2022

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

- §190-2.3C(3) for a garage 11.5' and a retaining wall 5.1' from the front boundary;
- §190-6.3.B for destruction of a nonconforming structure;
- §190-3.1.H.2(e) for removal of 18 trees >4.5" in diameter within the wetlands buffer; and
- §190-3.1.H.2(a)(g) for a house 18.3'/20', a wall 20.2'/21.6', a pervious patio 20.1' and a pervious patio 20.1' from the wetlands buffer.

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

1. The Stormwater plan to be implemented as presented to the Board of Adjustment on 2-02-2022;
2. The plantings be installed as per the plan presented to the Board of Adjustment on 2-02-2022 except for the salt marsh core grass which remain.
3. All site construction and ledge excavation shall be done with best management practices to minimize noise and destruction to the area.
4. The pavers be installed and maintained so as to remain pervious.
5. Maintain swale and level spreader.


Shawn Crapo, Acting Chair

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: Brian Lewton

Owner: Albeo & Christina Desjardins of 203 North Adams Street, Manchester NH

Property: 19 Glendale Road, Tax Map 20.2, Lot 004-01
Property is in the General Residence District

Application case: Cases #06-2022

Date of decision: February 2, 2022

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

- §190-2.4.C(2) for a generator 19' from the side boundary.


Shawn Crapo, Acting Chair

ote: 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:

Joel & Lauren Feid

Property:

705 Brackett Road, Tax Map 17, Lot 34-02
Property is in the Single Residence District.

Application case:

Cases #7-2022

Date of decision:

02-02-2022

Decision:

The Board voted 4-1 to deny the administrative appeal from the building inspector's 11-22-2021 notice of violation stating that a swingset was installed in violation of §190-3.1 (H).

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

- §190-3.1.H.2 (g) a swingset in the wetland buffer boundary.



Shawn Crapo, Acting Chair

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: David & Paula Caswell of 32 Ridgewood Drive, Eliot, ME

Property: 280 Wallis Road, Tax Map 19, Lot 11
Property is in the Single Residence District

Application case: Cases #9 -2022

Date of decision: 02-02-2022

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


Shawn Crapo, Acting Chair

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.