

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

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

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Patrick Driscoll, Gregg Mikolaities, Sandra Chororos and Burt Dibble**

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

**I. CALL TO ORDER**

Acting Chair Crapo called the meeting to order at 7:05 p.m. and led the pledge of allegiance.

**II. BUSINESS**

- Minutes of February 2, 2022

**Motion by Shawn Crapo to approve the minutes of February 2, 2022 as amended.  
Seconded by Patrick Driscoll. Vote: 3-0-2 Abstained: Gregg Mikolaities, Burt Dibble,  
Patricia Weathersby  
Motion passed**

- Resignation of Kevin Mealey

Chair Weathersby noted that Kevin Mealey has resigned as an alternate to the Board. The Board regretfully accepts his resignation and thanks him for his service.

Chair Weathersby announced that this is her last meeting as chair and full board member, as her term is ending and she will not be running again. She stated that it's been a pleasure and honor to serve on the Board. She has enjoyed getting to know all the board members and alternates through the years.

The Board thanked Chair Weathersby for her guidance and service to the Board.

**Continuance:**

**Motion by Patricia Weathersby to continue the application of Peter Fregeau to the April meeting. Seconded by Shawn Crapo. Vote: 5-0 Recused: Burt Dibble  
Motion passed**

### III. APPLICATIONS

**Seated for the following application:** *Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Sandra Chororos and Gregg Mikolaities*

- 1. 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 and expansion 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 Residence District. Case #09-2022.**

**David Caswell, applicant**, spoke to the Board. He explained that he is asking for a variance to the front yard setback. The house is a small cape with an L-shaped addition in the back. It was built in the mid 1700's. At that time, Wallis Road was probably a one-horse path, so several homes are built close to the road and this is one of them. The house was purchased in 1953 by his father in-law and his wife grew up in the home. He continued that they put in for a permit last year to do the interior demolition in January/February. About ninety percent of the demo on the interior has been completed. The plan is to bring the house up to code. He pointed out that the bedrooms on the second floor of the house are small and the ceiling height is very low. The hope is to expand and put on a dormer on the back side of the house to raise the roof in pitch to get a better height on the second floor. The intent is to renovate the interior of the house, while still maintaining the character on the outside with minimal changes. The addition of the dormer will allow for a full bathroom on the second floor with the bedrooms. Mr. Caswell noted that it was a three-bedroom home, two upstairs and one down. The floorplan being proposed is a two-bedroom home with both bedrooms on the second floor and an open concept on the first floor.

Mr. Caswell stated that his application is for a variance to the front setback, which is about 13.5' to the lot line. The house is about 15' to the pavement at the edge of the road. There is a three-bay garage on the property, which is in excess of 50' to the front lot line.

Mr. Caswell noted that they are not changing anything, but are just going up a bit to add maybe 30% for the dormer. The proposal will not change the character of the neighborhood. The dormer will be on the back of the house. The front of the house will not be changed and the historic flavor of the house will remain the same. The house has not been renovated since about 1955. The electrical and plumbing will be updated. There will also be a new septic system, which will be located behind the house. The proposed renovations won't affect the surrounding neighborhood. The value of surrounding properties will not be diminished. The proposed use is reasonable, as the house itself is not being changed or moved. The roof line will essentially be the same, except for the dormers on the back. He pointed out that the house is not close to any wetland setbacks. He met with the Heritage Commission and they are fine with the proposal, as the character of the house is not being changed to any great degree.

Vice-Chair Crapo asked how the building inspector got a 13' measurement.

Mr. Caswell explained that measuring a straight line from the sill to the two corner posts is just about 13.5'. That line sets off the road.

Chair Weathersby asked if this is the front wall or peak of the roof.

Mr. Caswell replied the front wall.

Vice-Chair Crapo noted that the back side of the roof looks like it's more than 13' away, but it may not be more than 30'.

Mr. Caswell commented that 40' falls right about where the "L" comes off the back of the house. He was using the 40' as a measurement.

Member Driscoll stated that some setback relief would be needed. Taking the 40' from where the add-on is and it's roughly 15' to the front edge, it's about 25' or so to the ridge.

Mr. Caswell noted that he measured from the front clapboards of the house to the road.

Vice-Chair Crapo commented that the front drip edge of the house is probably 13'. He asked Mr. Caswell the distance from the property line to the front drip edge.

Mr. Caswell replied it's just about 13'.

Chair Weathersby clarified that front setback relief is needed to put a dormer off the rear of the building per the plans.

Mr. Caswell pointed out that the house is not square to the road. He took the measurement from the nearest corner.

Member Driscoll asked if there will be new roof rafters for the front of the roof to support the dormer.

Mr. Caswell confirmed. He noted that there will be a completely new roof.

Chair Weathersby asked if the roof peak is going to be the same height.

Mr. Caswell explained that if the pitch is changed in order to get the proper height, it will raise the peak by a few inches.

Member Driscoll stated that he doesn't like the plus or minus versus giving a definitive measurement.

Chair Weathersby commented he's certain the closest point is 13'.

Vice-Chair Crapo noted that he's uncertain what the final pitch will be and it may end up being more drip edge than anticipated. He continued that the front wall of the house is not being moved. He would be comfortable saying 12'.

Chair Weathersby stated that plus or minus is fine based on the plans.

Mr. Caswell explained that the roof will not have a big overhang, as he is trying to keep the house historically correct.

Member Dibble stated that it seems that because the house is not parallel to the front of the road, it gets a little problematic. Normally, he likes to have accurate measurements. In this case, there may be no accurate measurement because of the configuration of the building. He is not opposed to plus or minus.

Chair Weathersby opened to the public for comments. Hearing no comments, the public hearing was closed at 7:30 p.m.

Vice-Chair Crapo stated it's a reasonable proposal. The actual project is within the existing building. The expansion is a small vertical expansion within the existing roof line.

Member Chororos agreed. There are no neighbors present objecting to the additional height, which is a consideration as well.

Member Driscoll stated it's a prudent plan. The proposal is within the same footprint and is keeping the historic character as much as possible. There will need be some balance with the new roof rafter. To have a little bit of flexibility will be a benefit.

Chair Weathersby called for a vote on variances to §190-2.3.C(3) and §190-6.3.A:

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

**4) The values of surrounding properties are not diminished?**

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

**Motion by Shawn Crapo to grant the request of David and Paula Caswell for variances to §190-2.3.C(3) for the renovation and expansion of a dormer 13' +/- from the front setback**

**and §190-6.3.A for expansion of a nonconforming structure, as presented. Seconded by Gregg Mikolaities. All in favor.**

- 2. 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' from 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. Request continuance to the April 6, 2022 meeting.**

- Continued to the April meeting as requested (see motion above).

***Note: Patricia Weathersby recused herself from the application of Ryan and Linsay Kaplan. Sandra Chororos also recused herself from the application.***

**Seated for the following application (4-person Board): Shawn Crapo (acting as chair); Patrick Driscoll; Gregg Mikolaities and Burt Dibble.**

- 3. Ryan & Linsay Kaplan for property owned and located at 371 Washington Road, Tax Map 16, Lot 119** request a variance from §190-3.1.H.2(a) & (g) for an 8' extension to barn within the 75' wetland buffer and installation of a 33-panel, 13.2kW solar array. **Property is in the Single Residence District. Case #10-2022.**

**Ryan Kaplan, applicant,** stated that the request is for an 8' extension to an existing barn. When the house was purchased in 2019, the barn was in disrepair on one side and the roof had significant holes. The windows were broken and the sills were rotted. The building inspector approved the restoration of the barn, which was phase 1. The restoration has been completed. He is now seeking an 8' extension on the barn. The building inspector requested a wetlands delineation, followed by Rye Conservation Commission review. It was found that the 8' extension is within the 75' wetland setback. In addition to the 8' extension, the project includes a 33-panel solar array on the barn roof.

Mr. Kaplan noted that on the left side of the property, the entire wooded area that loops around is wetlands. He noted that most of the 5.4-acre lot is wetland. On the right side of the property is a septic and leach field. The actual dwelling is at the side setback. The barn is not changing location. They are just asking for an extension of 8'. He continued there is no basement to the house because the water table is about 30". There is a two-car garage that just fits the cars. The barn is used for storage space and as a workshop. It's on a stone foundation with a rock floor. There is a back room with a wood floor that was used prior as a workshop, which is the area where the 8' extension would be going. Besides the 8' bump-out, the barn will look exactly the same. The height and width of the existing barn is not being changed.

Mr. Kaplan stated they looked at three different options for solar. Two of them were a solar ground array. One of them would have been in the actual wetlands, so that was not a consideration. The other ground array would have sat at the front of the property and would've been at the 75' point. It would not have required a variance. However, it would have been more intrusive in terms of running wire into the house. It also would've been an eyesore to the abutter

to the front of this property, as well as to people on the property. Revision Energy saw the restoration of the Barn and said that the array on the roof of the barn is the least invasive to the property and will also give the best return. He noted that page 14 of the submittals has the exact measurements from the wetlands. Page 12 is a letter from the Rye Conservation Commission with their recommendations, which he agrees with.

Referring to the building inspector's denial letter, Acting Chair Crapo stated that at that point, it looks like the ground array system was proposed. He asked if the revised plans have gone back to the building inspector. He is not sure that relief is needed for the roof mounted array, except that it may cause dredge and excavation for related lines in the buffer.

Mr. Kaplan explained that he has had numerous conversations with the building inspector. The building inspector has seen the change. Because it's on the existing barn and is being extended, he requested that the wetlands be delineated and it go through the RCC process.

Acting Chair Crapo pointed out that in the building inspector's denial letter, he said there would be a separate approval for the solar array. The application would still be before the Board because of the digging and line running. Where the building inspector hasn't seen final plans, there may be a risk that another variance is needed.

Member Mikolaities clarified that the existing barn is 75' and 8' is being added.

Mr. Kaplan confirmed.

Member Mikolaities noted the extra 8' is triggering the variance. It's the structure, not the roof mount.

Member Driscoll clarified the structure is 24.10' away from the closest wetland.

Mr. Kaplan confirmed.

Member Driscoll commented the 8' extension is not getting any closer to the wetland.

Acting Chair Crapo noted the relief that was put in the letter is for surface alteration with fill, excavation and dredging. The solar panels are not really before the Board. It's the expansion of the barn and the conduit.

Member Dibble asked if there is actually going to be an extension of the building with the walls and roof being continuous.

Mr. Kaplan noted that the 8' extension is shown on page 16. The extension is from the existing barn. It will not be a separate structure.

Member Dibble asked if there is a reason the 8' couldn't be added to the other end of the barn.

Mr. Kaplan explained it would've been much more invasive and would take 8' off the existing driveway. The lot has a 20' road frontage and the space in the driveway is really needed for cars to park and for the turnaround of vehicles.

Member Dibble asked if the tree at the back of the barn will be removed.

Mr. Kaplan replied that he thinks it may need to go, as it would diminish the solar benefit.

Member Driscoll stated there is a tree located in the area of where the extension is proposed. He asked if that tree will come down.

Mr. Kaplan confirmed.

Member Driscoll asked about the larger tree that maybe shadowing the solar array.

Mr. Kaplan noted that the tree is not being removed, but he might do some selective pruning. He reiterated that the tree on the back side of the barn will likely go away.

Member Dibble asked the diameter of the tree in back of the barn. He asked if it's more than 4".

Mr. Kaplan replied yes.

Member Driscoll noted that relief is needed to remove that tree.

Mr. Kaplan stated that the tree doesn't have to go. It could be pruned. The tree is not in the way of the 8' extension. The 8' extension can be built, as the tree is probably 2' beyond.

Member Driscoll commented that he thinks it can be added to the request right now. He pointed out that zoning relief is needed for any removal of a tree in the wetlands buffer more than 4.5".

Mr. Kaplan requested that to be added. He noted that would be the only tree that is affected. There is no foundation. The extension is going to sit on sonotubes.

Acting Chair Crapo noted that the tree cutting would fall under Zoning Ordinance §190-3.1.H2(e)[2]. Unless the Board has any objection, he will make an amendment to add 3.1.H2(e)[2] to the relief.

The Board had no objections.

Mr. Kaplan summarized that the hardship is clear, given the layout of the property. This will not be visible from the road, nor in the 5.4-acres of the lot. It will add value to the property. It does not alter the essential character of the neighborhood. The barn extension is continuing the existing structure. There is no height or width being added, just the 8' off the back. The spirit of the ordinance is observed because of limited storage on the property and not having a basement. Because of the length of the driveway and the size of the lot to mow, there are a lot of tools and materials needed just to care for the property. The expansion does not affect surrounding

properties. The RCC was on site. They support the expansion and solar array as proposed. Their recommendations were to plant native plantings and cease mowing. The values of surrounding properties will not be diminished. There are special conditions of the property that distinguish it from other properties. There is a 75' wetland buffer that exists on multiple sides of the property. The lot is a "pork chop" lot with a 500' long driveway. With the location of the wetlands and the setback of the town, there is no way for this proposal to conform to the existing zoning. Mr. Kaplan noted that he approached surrounding abutters. They support the barn roof, as it is less invasive. The proposed use is reasonable. The barn and dwelling presently exist. Relief is going to allow for increased storage. The solar array will allow the property to come off the electrical grid. With the barn and property within the 75' wetland buffer, there is no reasonable way, under the ordinance, to allow for the increased storage outside of the wetland buffer.

Member Mikolaities asked if the entire barn is in the wetland buffer.

Mr. Kaplan confirmed.

Member Mikolaities asked if there is other equipment going in the ground.

Mr. Kaplan replied no. He explained there will be trenching to the crawl space to connect to the meter inside the house.

Acting Chair Crapo opened to the public.

**Susan Shepcaro, Rye Conservation Commission**, stated that she attended the site walk with RCC. At the time, the array was not going on the barn. The array was on the side. RCC's letter says "on the ground".

Mr. Kaplan explained that he went to Suzanne McFarland and Sally King (RCC chair and vice-chair) who amended the letter.

Member Shepcaro noted that RCC spoke with Mr. Kaplan about the tree in the back. RCC is aware that it's to be determined if it has to come out. She continued that it's very clearly marked where the back of the barn will be. RCC is looking for a 2' planting along the swale, as most of the property is in the wetland buffer. RCC supports the project.

Acting Chair Crapo commented that the construction of the extension is going to be on sonotubes, so there wouldn't necessarily be excavation that might affect the root of the tree.

Mr. Kaplan noted there will be two sonotubes and they're actually existing. That is the extent of any disruption to the soil.

Member Dibble asked if there is ever any flowing water in the swale.

Mr. Kaplan confirmed it's active. He noted that the lot sets down, so there is water coming from both sides of Washington into the swale.

Acting Chair Crapo asked if he is comfortable with the requests from RCC.

Mr. Kaplan confirmed.

Hearing no further comments, Acting Chair Crapo closed to the public at 8:10 p.m.

Member Mikolaities stated it's a modest expansion. The energy savings with the solar panels is more than offsetting the addition. He doesn't have a problem with the proposal.

Member Driscoll noted that they would be adding 190-3.1.H2(e)[2] and including the recommendations of the Rye Conservation Commission, as stated in their letter amended January 28<sup>th</sup>.

The Board had no concerns with the proposal.

Acting Chair Crapo called for a vote on the variance to §190-3.1.H2(a), (g) and (e)[2] with the recommendations of the Rye Conservation Commission:

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

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

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

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

**3) Substantial justice is done?**

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

**4) The values of surrounding properties are not diminished?**

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

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

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – 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?**

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

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

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

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

Burt Dibble – Yes  
Patrick Driscoll – Yes  
Gregg Mikolaities – Yes  
Shawn Crapo - Yes

**Motion by Patrick Driscoll to approve the application of Ryan and Linsay Kaplan for property owned and located at 371 Washington Road, Tax Map 16, Lot 119 for variances from §190-3.1.H2(a), (g) and (e)[2] for an 8' extension to barn within the 75' wetland buffer and installation of a 33-panel, 13.2kW solar array, including the Rye Conservation Commission's recommendations in the amended letter of January 28, 2022. Seconded by Burt Dibble. All in favor.**

**Note: Sandra Chororos was reseated for the following application.**

**Seated for application: *Shawn Crapo; Patrick Driscoll; Sandra Chororos; Gregg Mikolaities and Burt Dibble***

4. **Tate & Foss Sotheby's International Realty for property owned by Airfield Village at rye, LLC d/b/a Village at Rye Place located at 0 Airfield Drive, Tax**

**Map 10, Lot 15-04** requests a special exception from §190-5.1. and §190-7.1 for a non-illuminated advertisement sign not to exceed 64 square feet in area where 25 square feet is allowed. **Property is in the Commercial District, Multi-Family Dwelling Overlay District. Case #13-2022.**

**Patricia Weathersby, as a member of the public representing the applicant,** presented to the Board. She noted that The Housing Partnership is developing 40 homes across from the old skate park on Airfield Drive. It's a 10-acre parcel and is zoned commercial. Tate and Foss will be selling the units at Village at Rye Place. The request is to erect a sign, typical to what would be seen on new developments advertising the homes for sale with contact information. She noted that there is a picture in the Board's packets that show what the sign will look like. It will be a horizontal sign with posts on either end. In the Commercial District, under §190-5.1 in the Zoning Ordinance, the sign can't be larger than 25s.f. Given the size of this development, it was decided that a larger sign would be more appropriate. Under 5.1.B, in the Commercial District, the Board may allow as a special exception a sign not to exceed 64s.f. She pointed out that the sign is not going to be that large. The largest it would be is 50s.f. The sign will be either 5x10 or 4x8. (She pointed out the proposed location for the sign on the plan.)

Mrs. Weathersby noted it's not injurious nor detrimental to the neighborhood. It's a real estate development sign and will be taken down when the units are sold. The development is going to be done in two phases, so it could be up for two to three years. It's not a permanent sign. The sign will not be illuminated. It will just be a stagnant sign.

Acting Chair Crapo asked if the location is on Airfield Drive versus Route 1.

Mrs. Weathersby confirmed the sign will be along Airfield Drive. She continued it's not going to affect the neighboring properties. Marty Chapman from The Housing Partnership has had discussions about the sign with the owner of the old skate park, so he is aware. The only people coming down that road right now are going to White Birch or the conservation land at the end. The sign is just to alert people to what is going on and to tell them where to get more information. She pointed out it may be visible from Random Road or from behind 'Rye Country Day', but it's not going to be injurious or detrimental to the neighborhood. The most affected abutter is the owner of the skate park and they are aware of the sign. Mrs. Weathersby stated that by special exception the sign can be up to 64s.f.; however, this sign will be smaller. It's not going to affect light and air, public safety or general welfare.

Vice-Chair Crapo commented this is for a small community for the initial sale. He asked if the community will end up wanting a sign for the community's name in this location.

Mrs. Weathersby stated that she does not know what the community will ultimately decide. They would have to come back and ask for a permanent sign.

Member Mikolaities asked if the applicant would be okay with a temporary sign to be removed 30 days after the last occupancy permit is signed.

Mrs. Weathersby confirmed.

Referring to Section 5.1, Member Driscoll asked if the interpretation is that the one-year period is only applicable to the residential sign.

Chair Weathersby replied this is her interpretation. She wants to be clear that it is more than a year.

Acting Chair Crapo stated that the way he interprets it is if the development was before the Board asking for a permanent sign of 64s.f., with the special exception it could be permanent. In this case, as a temporary measure, they would agree to some sort of condition to limit the time.

Referring to the proposed location of the sign, Mrs. Weathersby noted that Driveway B is going to be built out first (Phase 1).

Acting Chair Crapo asked if the sign will move to Driveway A at some point in the process.

Mrs. Weathersby replied no.

Acting Chair Crapo opened to the public for comments.

Speaking to Mrs. Weathersby, Acting Chair Crapo stated that he was going to suggest something like four years.

Mrs. Weathersby stated that her only thought is it would probably be good to be tied to the sale of the last unit. Her only concern is if the ground is frozen, it can't come out.

Acting Chair Crapo suggested four years would give it an end point.

Hearing no further comments, Acting Chair Crapo closed the public hearing at 8:31 p.m.

Member Dibble stated he is slightly conflicted about the four years versus connecting it to the last day of sale. If the sales go well, the sign could disappear sooner. He would prefer to tie it to thirty days after the last sale.

Member Mikolaities agreed. It could be four years, but it could be sooner.

Acting Chair Crapo suggested the condition "thirty days after the issuance of the last occupancy permit, providing weather conditions allow it to be removed".

Member Chororos commented that it says not to exceed 64s.f. The applicant is saying it will be 50s.f. She asked if the Board wants to say it be no more than 50s.f.

Acting Chair Crapo re-opened the public hearing.

Mrs. Weathersby commented that the sign won't be more than 50s.f. She is fine with it being limited to that size. Referring to the last occupancy permit, she stated that the occupancy permit can be issued and the house deemed finished, but it may not be sold.

Acting Chair Crapo suggested “the last unit conveyed by the applicant”.

The Board agreed to limit the size to 50s.f.

Acting Chair Crapo called for a vote for a special exception to §190-5.1 and §190-7.1:

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

Burt Dibble – Yes; Sandra Chororos – Yes; Patrick Driscoll – Yes; Gregg Mikolaities – Yes;  
Shawn Crapo - Yes

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

Burt Dibble – Yes; Sandra Chororos – Yes; Patrick Driscoll – Yes; Gregg Mikolaities – Yes;  
Shawn Crapo - Yes

**Motion by Patrick Driscoll to approve the application of Tate & Foss Sotheby’s International Realty for property owned by Airfield Village at Rye, LLC d/b/a Village at Rye Place located at 0 Airfield Drive, Tax Map 10, Lot 15-04 for a special exception from §190-5.1. and §190-7.1 for a non-illuminated advertisement sign not to exceed 50 square feet in area where 25 square feet is allowed with the condition that it be removed within thirty (30) days of the last deed conveyance of the property owner.  
Seconded by Burt Dibble. All in favor.**

**Note: Patricia Weathersby was reseated as chair for the remainder of the meeting.**

**Seated for the remainder of the meeting: *Patricia Weathersby; Shawn Crapo; Patrick Driscoll; Sandra Chororos and Gregg Mikolaities***

- 5. Timothy Day of 8 Fraser Drive, Andover MA for property owned and located at 25 Breakers Road, Tax Map 8.4, Lot 60 requests variances from §190-6.3.A for expansion of a nonconforming structure; from §190-2.4.C(2) for front entry deck 9.7’ from the side boundary where 20’ is required; from §190-2.4.C(3) for a front entry deck 12.7’/13.4’ from the front boundary where 30’ is required; from §190-2.4.C(5)/§190-3.4.E for lot coverage approximately 31% +/- where 30% is allowed. Property is in the General Residence, Coastal Overlay District. Case #11-2022.**

**Timothy Day, applicant,** spoke to the Board about his request to add a front porch to his home at 25 Breakers Road. He noted that the porch will be located in the location of the existing front steps, but will actually be closer to the house than the steps. The structure is going to be wider than the stairs, but is going to stay within the frame of the home. The existing landing is small and it has been challenging accessing the home. He pointed out that there are four front porches in the community where his home is located. The intent is to maximize the space and sit outside

in the summer. He also pointed out that the roof will remain the same. The porch is not going to be covered.

Member Chororos asked where the parking is located.

Mr. Day noted it's in front of the house. When he purchased the home, the pavement was taken out and replaced with crushed stone.

Member Chororos asked if the porch is only going to be on the front of the house, versus a wraparound porch.

Mr. Day confirmed the porch will only be on the front.

Member Chororos pointed out there are multiple decks on the back side of the house.

Mr. Day noted the decks are not very big. The top deck is not really used because of safety reasons. He also noted it's a matter of having more space, as he and his wife have four children under the age of 9, and it's only a 1400s.f. house.

Referring to the new plot plan in the Board's packets, Vice-Chair Crapo stated that this is not showing where the new deck is going. He asked if the deck is going where the walkway and steps are located.

Mr. Day confirmed.

Vice-Chair Crapo stated that his concern is that right now, there's room on either side of the stairs for vehicles that can take the whole space. That is going to be shortened up, so the rear of the cars will be closer to the street.

Mr. Day stated that they own a Chevy Tahoe and a Lincoln Navigator, which are just about as long as vehicles can get. When they pull up, they don't come to the front steps. The cars will actually be closer to the house. If anything, there will be more space for the cars. He commented they don't have an issue.

Member Mikolaities asked the width of the porch.

Mr. Day replied 5' and the current stairs are 7'.

Vice-Chair Crapo commented that the proposed elevations show the deck across the front of the house. He would think the deck and stairs would have to be at least 3' wide for code. It will still be 6' out from the building at a minimum.

Chair Weathersby clarified that coming out the front door, there will be a wooden deck with a landing for the stairs on either side.

Mr. Day confirmed.

Chair Weathersby asked the dimensions of the deck.

**Doug Warnick, contractor**, explained that the proposed alterations are for a 5' landing across the front of the house with stairs going down to the side, which will be 4'. It will be 9' out from the front of the house to the edge of the steps. Right now, the existing steps come out about 10'. By having the stairs go off to the side, there will be more room for parking.

Chair Weathersby asked the length of the deck.

Mr. Warnick replied 27'. It will stay within the existing footprint of the house.

Chair Weathersby asked if it is 12' from the side property line or 9.7'.

Mr. Warnick explained the deck is going to be inset from the house by 1'. The house is 28' wide and the deck will be 27'.

Member Mikolaities pointed out that the survey plans say 12.7'. He just heard that it's a 5' deck and 4' of stairs, so it's a 9' width.

Vice-Chair Crapo commented that he believes a good portion of the parking area is actually in the right-of-way. This will almost eliminate any of the parking on either side of the stairs, which would be actually inside the property line. This would be pushing the parking all into the right-of-way.

Chair Weathersby noted that it's a requirement to have parking on the lot. She pointed out this is pre-zoning.

The Board reviewed the distance from the front boundary.

Chair Weathersby opened to the public for comments.

**John Todisco, 19 Breakers Road**, stated that he hasn't had the benefit of seeing the plan. He asked if there is a plan that actually shows the location of the steps and how far the porch comes out from the existing building. He would also like to know how this is going to be installed. He commented that a porch would be nice across the front. He can't say he objects because he doesn't have enough information.

Chair Weathersby explained that Mr. Day submitted plans to the Board several weeks ago that were open to the public for review at the zoning and planning office. She noted that the plan is to take out the front steps and put in a 5' width deck off the front, which will be 27' long. There will be a set of stairs on the front that go down on either side that are 4' wide.

Mr. Todisco asked if the proposal extends it further than the existing front steps.

Chair Weathersby explained there was testimony saying that it's going to be a little less; however, there's more volume. It doesn't come out as far as the full flight of stairs.

Hearing no further comments from the public, Chair Weathersby closed the public hearing at 8:57 p.m.

Chair Weathersby commented that they haven't talked about lot coverage. She reopened the public hearing to ask how the porch and stairs are going to be supported.

Mr. Warnick replied that it's going to be on 8" concrete sonotube footings. It will be Azek decking and handrails. He noted that the steps that are there now are probably over 30 years old and will have to be redone at some point. This will be an improvement over what is there now. He continued that there was something in the denial letter about drainage. This is not going to affect the existing drainage at all.

Chair Weathersby stated the request is for 31% lot coverage, due to the larger deck. She asked how this was calculated. She asked if the number came from the building department.

Mr. Day replied probably. He commented it could be from the survey.

Member Mikolaities noted that the problem with the survey is that it's not really a survey.

Vice-Chair Crapo suggested continuing the application for further information. The Board doesn't know where the 31% came from. There also needs to be more clarity on the front and side setbacks. The building inspector may need to review the parking.

Chair Weathersby agreed that there needs to be clarification on a number of items. She would be in favor of a continuance.

The Board agreed.

**Motion by Shawn Crapo to continue the application of Timothy Day for 25 Breakers Road, to the April 2022 meeting, for clarification of the front and side setbacks, how the lot coverage is calculated and whether any relief is needed for parking.**

Mr. Day asked for further clarification.

Chair Weathersby explained that the Board needs a plan that shows the proposal and the dimensions to the side and front boundaries.

Mr. Day asked if this has to be done by a surveyor.

Chair Weathersby replied it should be a plan. It doesn't need a licensed surveyor.

Mr. Day stated it's concerning because he has spent \$3,000 and waited a year and a half for a plot plan. Now, someone on the Board is saying it's not valid.

Member Mikolaities pointed out that the survey has notes that say "approximate". It may be fine; however, the Board doesn't know.

Vice-Chair Crapo pointed out there may be other plans on file with the building department that can help.

**Gregg Mikolaities second the motion to continue the application to the April meeting. All in favor.**

- 6. Dorothea E. Guyton Trust, Dorothea & Joseph Guyton Trustees for property owned and located at 1459 Ocean Blvd, Tax Map 17, Lot 80 request an equitable waiver of dimensional requirements pursuant to §190-7.1.A(4) from §190-2.4.C(2) for a patio/walkway 15' from the left side boundary where 20' is required. Property is in the General Residence District and Coastal Overlay District. Case #14a-2022.**
- 7. Dorothea E. Guyton Trust, Dorothea & Joseph Guyton Trustees for property owned and located at 1459 Ocean Blvd, Tax Map 17, Lot 80 request a variance from §190-2.4.C(2) for a patio/walkway 15' from the left side boundary where 20' is required. Property is in the General Residence District and Coastal Overlay District. Case #14b-2022.**

**Attorney Tim Phoenix, representing the applicant,** commented that he will go with the variance or the equitable waiver, depending on how the Board would like to handle it.

Chair Weathersby stated that she doesn't think the equitable waiver would be strong. She would suggest going with the variance.

Attorney Phoenix agreed to present the variance application. He explained the application is for 1459 Ocean Blvd. The lot is 19,000s.f. with 109' of frontage. He noted that the original house is no longer on the lot. It was a ranch house that slightly violated the left side setback by about 3'. The development plan originally called for a patio around the pool with a retaining wall. That plan is dated December 2019. The patio and pool did not violate the side property line; however, the retaining wall violated the side setback. The septic plan was prepared by John Chagnon and is dated April 10, 2020. As part of this plan set, there was a proposed condition site plan which showed the patio and retaining wall extending into the line. The other plan showed the patio and retaining wall right up against the pool and now there's extra footing. He confirmed with the architect that this is the plan set that was submitted to the building inspector. A denial letter was issued from the building inspector on June 26, 2020. The letter said "he proposed to place structures within the side setback. This will require relief from the side setback requirements." The applicants' understanding was that the problem was the retaining wall. They were of the understanding that the patio was not a problem. Attorney Phoenix noted that the denial letter doesn't say specifically what the "structures" are. The ordinance is a bit confusing because a driveway doesn't have to have a setback, but a patio or walkway does. The driveway regulations require the driveway to be 10' off the property line, but the zoning ordinance does not. It's a little odd that a driveway, which is usually more impactful, doesn't need a variance, but the patio does.

Attorney Phoenix continued that after the building inspector's denial, there were some further plan revisions. The landscape architect has a design where the edge of the pool meets the

setback, but there is a walkway to the back. A letter from John Chagnon says that he reviewed the landscape plan and found that the proposed revision is in keeping with the originally approved site plan and coverage permits. Attorney Phoenix noted that he spoke with John Chagnon who said he was really thinking about coverage, not setbacks. However, the letter says that it meets the requirements. The Guytons thought they met the requirements. They knew the walkway and pool surround was in the setback, they just didn't think a permit was needed. During construction, a decision was made to widen out the area around the pool by a few feet and extend the sidewalk to the back. As-built plans are required to see if it was built to what was originally approved. It was found that it wasn't. He noted that the new house has already been built. That is why he thought an equitable waiver is proper. He also thinks a variance is proper because the walkway has to be right outside the building. The building is right at the setback, so the walkway is in the setback.

Attorney Phoenix pointed out that the patio/walkway is at ground level. It's hundreds of feet from the nearest neighbor to the left. He believes Mr. Guyton has contacted the neighbor who says he has no problem with the proposal. There's also a hedge row between the neighbor's house and where the walkway is located. There's another neighbor to the back who cannot see it. Attorney Phoenix stated that there were different plans showing different things. Different assumptions were made about what happened and the building inspector never responded to John Chagnon's letter saying that a variance was needed. It just fell through the cracks.

Attorney Phoenix reviewed the criteria for granting the variances.

- There won't be any congestion in the streets. This is not going to negatively affect fire, safety, panic and other dangers. Light and air is not affected. There will be no change to the land, so there will be no overcrowding. There is no change to transportation, solid waste, water and sewer. The proposal will not alter the central character of the locality or threaten the public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. The overall project is a beautiful new home. It's enhanced even further with the pool and pavers. The applicants' home value will increase. A patio at ground level will not decrease anyone else's property.
- Special conditions exist that distinguish the property from others in the area. It's a very narrow lot. To have a decent size home, it's going to go to the side lines. They worked hard to better the encroachment of the old house by meeting the side setback on the lot. The house has been built. The only way to have a patio and walkway is to go closer to the lot line.
- The proposed use is reasonable, as it's a residential use.
- There is no harm to the public or to the nearest neighbor by allowing this. There will be great harm to the Guyton Family if it had to be removed because they would have to go through the expense of removing something they already paid for and redo it. It will slightly decrease their ability to safely traverse around the house. If the house wasn't there, they may be able to work around it.

Attorney Phoenix stated that he believes the ordinance should be changed so that patios and walkways are given the same treatment and status as a driveway, but it doesn't. For those reasons, a variance is being requested.

Chair Weathersby asked if lot coverage has been calculated with the revised plan.

Attorney Phoenix noted that John Chagnon's letter says that the coverage does not change.

Member Mikolaities stated that the original plans of July 2020 does not show a walkway. It clearly shows a dimension of 21.4' to the retaining wall. That is what was approved and was going to be built (Exhibit A). Exhibit B, dated 5/21/21, doesn't show a walkway on that side of the pool. Referring to Exhibit C, he noted there is one sentence that bothers him; "a slight relocation of the approved pool". He asked where the pool was located on the approved plans (21.4' off the property line). He also asked where the pool is on the as-built plan (Exhibit D, 1/5/22). He asked if the pool and house are in the right place. What caused this walkway? In 2019, the plans were started and revised four times into 2020. There was no walkway. The landscape plans of 2021 do not show a walkway. The plans tonight show a walkway. It seems "fishy" to him and dimensions are missing.

Chair Weathersby commented that they don't want to spend a lot of time on how this got here. However, they do want to know where the pool is located.

Member Mikolaities stated he wants to know if everything is 15' because there are no dimensions on the as-built plan.

Attorney Phoenix noted the original plan shows the dotted line as the setback. The house is right up to that line. The pool, at that point, shows the retaining wall right up against it. The applicant understood that the retaining wall was a little closer than 15'. On April 4, 2020, John Chagnon has a plan that shows the pool with a deck on the left side and retaining wall. This is what went to the building inspector. The building inspector's denial letter says there are structures in the setback. The Guytons understood that to mean the retaining wall was what was being referred to and there wasn't a problem with the patio at ground level. The landscape plan shows no patio next to the pool, but shows the walkway and stepping stones to the back.

Vice-Chair Crapo asked if the house plan has changed. In looking at Sheet C-3 of Exhibit A, there are two little boxes that say "a/c pads". Looking at the as-built in that back corner, there are granite steps going to the patio. He would guess that something with the house changed because there were no steps out of that area and now there's stairs to a patio. That patio wraps all the way around with a walkway that goes to the pool.

Attorney Phoenix stated that he doesn't know any of those details. It looks like they took the opportunity to fill the area in with the pavers. He noted that the landing and the pavers in that area meet the setback. The house is up to the edge and they built a walkway. He understands the questions and concern about how this happened. The plans don't match up. He pointed out that his clients relied on the professionals, including their builder and landscaper. They understood that the walkway and patio area was closer than 20'. However, they didn't know it wasn't okay until they got the building inspector's notice of violation after the as-built was done.

Member Mikolaities pointed out that Exhibits A and B have dimensions. The as-built plan doesn't have dimensions.

Chair Weathersby clarified the relief being sought is for the walkway that goes around the left side of the pool and extends back. It's approximately 15' from the left side boundary. She continued that her concern is lot coverage.

Vice-Chair Crapo stated that it looks like a lot of it is labelled as pervious. It may not affect the lot coverage. There's definitely more square footage of pavers, whether they be permeable or impervious. It looks like the porous pavers for the driveway replaced the porous asphalt.

Chair Weathersby reiterated that what they are asking for right now is relief for the walkway on the left side of the pool to the back. She opened to the public for comments.

**Susan Shepcaro, representing Rye Conservation Commission**, asked what part of the property is in the 250' shoreland protection area. She also asked if there is a way to verify that the pavers are actually permeable. If they're not permeable, water will run right down Ocean Blvd.

Chair Weathersby noted the plans show the 150' tidal buffer zone. Sheet C-3 shows the 250' shoreland protection area goes up to the garage. She pointed out that the ZBA doesn't get involved in shoreland issues.

Mrs. Shepcaro commented that she's wondering if the Conservation Commission should've seen this property. The Commission has not seen the property.

Member Mikolaities pointed out that 8% has been added to the impervious from 20% to 28%, as shown on the as-built plans.

Attorney Phoenix stated the plan shows less than 30%. John Chagnon's letter says it's still compliant. He continued that for shoreland purposes it's nothing within 50' and some things within 100'. Between 100' and 250', the State has to know what is being built. He doesn't know what the Conservation Commission believes it's jurisdiction is on all of that.

Chair Weathersby closed the public hearing at 9:43 p.m.

Vice-Chair Crapo stated they are to treat this as if it wasn't there and is something new. He hates project creep where they ask for forgiveness later; however, it's there now. As far as the setbacks and affecting neighbors, or property values of neighbors, he does not see it being detrimental in this location, as it's not going to block anyone's light or view. There's a house to the rear where the view could be blocked if this were a tall structure. However, that's not the case here.

Chair Weathersby pointed out this is a walkway. People are going to walk there anyways. It's good that the surface is better maintained. It's still porous. It's still 15'. She doesn't think it's a big ask. She doesn't have a problem with it. It's safer to have a deck around the pool. She doesn't like the "submission creep". However, if she looks at it fresh, as if it were just coming in, the walkway makes sense.

Member Driscoll commented he doesn't see how he can vote against it in applying the five criteria. It seems pretty minimal. He doesn't like the way they went about it. He also doesn't like that there is a bit of blame put upon the building department. They've thrown a lot of plans at the building department with limited resources. They went about it wrong. If he is looking at this with the five criteria, he is in favor of voting for it.

Member Chororos stated that the only question is that the RCC hasn't seen or had an opportunity to weigh-in on this. She wonders if there needs to be more conversation around plantings. They're putting in something that otherwise would've just been lawn.

Chair Weathersby explained the zoning ordinance only deals with wetlands. It doesn't deal with setbacks from the ocean. There's a whole DES process that is involved. The zoning doesn't make them go to the RCC before going to the ZBA for something to do with shoreland issues.

Attorney Phoenix stated they didn't avoid going to RCC. It just never occurred to him. He's not sure what the Conservation Commission's view of their role is when it comes to State.

Member Mikolaities stated he just questions the as-built. The approved plans show 26.7% impervious and it goes to 26.8%. There looks to be a lot more hardscape and there are no dimensions. He's okay with the walkway. He would somehow like to tie it in that another as-built is done that has dimensions because the Board is just going by faith right now. There are dimensions on every single plan but the as-built. It doesn't make sense to him and he questions the plan.

Member Driscoll stated that he understands Member Mikolaities' point. The purpose of an as-built is to verify dimensions and everything that is on the lot. It's not fulfilling the purpose of the as-built.

Vice-Chair Crapo suggested that they make a condition that the building inspector receives an as-built with dimensions.

Chair Weathersby agreed they could add that condition.

Member Mikolaities pointed out this would ensure that it doesn't creep anymore, as it's still under construction.

Chair Weathersby called for a vote on the variance to §190-2.4.C(2):

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

**4) The values of surrounding properties are not diminished?**

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes

Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Sandra Chororos – Yes  
Patricia Weathersby - Yes

**Motion by Patricia Weathersby to grant the variance requested by Dorothea E. Guyton Trust, Dorothea and Guyton Trustees for property owned and located at 1459 Ocean Boulevard that being a variance to §190-2.4.C(2) for a patio/walkway 15' from the left side boundary provided a new as-built plan be submitted to the Building Department that contains setback dimensions. Seconded by Shawn Crapo. All in favor.**

Attorney Phoenix requested to withdraw the equitable waiver without prejudice. The Board agreed.

- 8. Allen Cumings, Jr. of 114 Patterson Lane, Newington, NH for property owned and located at 46 Appledore Ave, Tax Map 19.4, Lot 47 requests variances from §190-6.3.A for expansion of a nonconforming home; from §190-2.4.C(1) for dormers 15.5' from the rear boundary where 17.5' is required; and from §190-2.4.C(2) for dormers 15' from the side boundary where 20' is required. Property is in the General Residence and Coastal Overlay District. Case #15-2022.**

**Attorney Peter Loughlin, representing the applicant,** noted that he outlined most of the facts in the letter for the Board. This is a modest addition. The chart in the packets show the setback. The distance from the setback is 15.5'. The rear setback requires 17.5' to the property line. This home as it exists is 15.5' and this is just going up on the dormer. On the front, the triangular section is 15' from the side setback. As indicated, the front dormer has been started. The building inspector noted that the rules were not being followed and that is why this is before the ZBA. He continued it's not impacting the water because it's just going up, so it is not disturbing land. The intent is to add a bit more living space and volume, but there will be no change in the building footprint. It meets the five criteria.

- Granting would not be contrary to the public interest. There would be no threat to the public health by this little addition. The spirit of the ordinance is observed, as the idea for setbacks is open space and the area on the lot really isn't impacted.
- Substantial justice is done. There's really no benefit in denying this relief and it would prevent the applicant from making more effective use of the second story of the home.
- There will be no decrease in the values of surrounding properties.

- The property is unique, as there was a road that arched around at the end of the 1909 subdivision. This lot was at the end. In 2014, the property on the western side was before the ZBA to move it 20' further to try to balance the size of the lots. The applicant's family owned that lot at that time. That balanced the two side setbacks more evenly. The house was located closer to the marsh to get away from the side setback. Also, the end of the lot is uniquely shaped because of the road coming through.

Chair Weathersby asked if the part of the house that is in the setback is 32s.f.

Member Driscoll pointed out it's 32s.f. for each, so 64s.f.

Attorney Loughlin confirmed.

Chair Weathersby opened to the public for comments.

**Susan Shepcaro, RCC**, stated that upon visual inspection, Members Mike Garvan and Jaci Grote concluded that the project was within the existing footprint and that no damage was being done to the buffer or the adjacent marsh. The RCC has no objection to the project.

Hearing no further comments, Chair Weathersby closed the public hearing at 10:03 p.m.

The Board had no issues or concerns with the request.

Chair Weathersby called for a vote on variances to §190-6.3.A; §190-2.4.C(2) and §190-2.4.C(2):

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

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

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

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

**3) Substantial justice is done?**

**Gregg Mikolaities – Yes**

**Shawn Crapo – Yes**  
**Patrick Driscoll – Ye**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

**4) The values of surrounding properties are not diminished?**

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

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

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

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

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

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

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**  
**Patricia Weathersby - Yes**

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

**Gregg Mikolaities – Yes**  
**Shawn Crapo – Yes**  
**Patrick Driscoll – Yes**  
**Sandra Chororos – Yes**

**Patricia Weathersby - Yes**

**Motion by Patricia Weathersby to grant the variances requested by Allen Cumings, Jr. of 114 Patterson Lane, Newington, NH for property at 46 Appledore Avenue for variances from §190-6.3.A for expansion of a nonconforming home; §190-2.4.C(2) for dormers 15.5' from the rear boundary and §190-2.4.C(2) for dormers 15' from the side boundary. Seconded by Shawn Crapo. All in favor.**

**Adjournment**

**Motion by Patricia Weathersby to adjourn at 10:06 p.m. Seconded by Shawn Crapo. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Ryan & Linsay Kaplan

**Property:**

371 Washington Road, Tax Map 17.3, Lot 35  
Property is in the Single Residence District

**Application case:**

Cases #10 -2022

**Date of decision:**

03-02-2022

**Decision:**

The Board voted 4-0-0 to grant variances from the following section of the Rye Zoning Ordinance:

- §190-3.1.H.2(a), (e) and (g) for an 8' extension of a barn within the 75' wetland buffer and for cutting a tree greater than 4 ½ inches in diameter.

The above variances were granted conditioned upon compliance with the Rye Conservation Commission letter dated November 10, 2021, and as amended January 28, 2022:

- Plant native plantings along the 2' area at the top of the swale that accompanies the "contributory ditch" that runs through the property.
- Cease mowing in the wetland buffer of the far side of the swale.

***Shawn Crapo***

**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:** Tate & Foss Sotheby's International Realty

**Owner:** Airfield Village at Rye, LLC d/b/a Village at Rye Place

**Property:** 0 Airfield Drive, Tax Map 10, Lot 15-04  
Property is in the Commercial District, Multi-family Dwelling Overlay District.

**Application case:** Cases #13 -2022

**Date of decision:** 03-02-2022

**Decision:** The Board voted 5-0-0 to grant the special exception from the following sections of the Ordinance:

- §190-5.1 and §190-7.1 for a non-illuminated advertisement sign.

Each of the above special exception was granted conditioned upon the sign not to exceed 50 sq. ft and that the sign be removed within 30 days of the last unit being conveyed by original owner.

*Shawn Crapo*

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

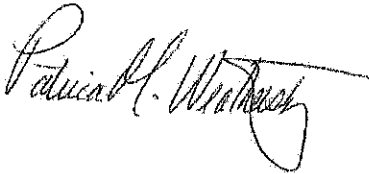
**Property:** 280 Wallis Road, Tax Map 19, lot 11  
Property is in the Single Residence District

**Application case:** Cases #9 -2022

**Date of decision:** 03-02-2022

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

- §190-2.3.C(3) for expansion of a the home (new roofline and dormer) 13' +/- from the front boundary; and
- §190-6.3.A for expansion of a non-conforming structure.



**Patricia Weathersby, 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

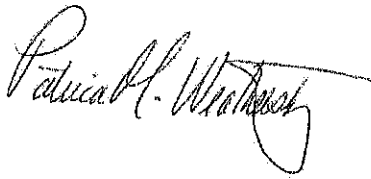
**Applicant/Owner:** Dorothea E. Guyton Trust, Dorothea & Joseph Guyton Trustees

**Property:** 1459 Ocean Blvd, Tax Map 17, Lot 80  
Property is in the General Residence District and Coastal Overlay District.

**Application case:** Cases #14 -2022

**Date of decision:** 03-02-2022

**Decision:** The applicant withdrew its application for an equitable waiver of dimensional requirements without prejudice.



**Patricia Weathersby, 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:** Timothy Day of 8 Fraser Drive, Andover MA

**Property:** 25 Breakers Road, Tax Map 8.4, Lot 60  
Property is in the General, Business and Coastal Overlay District.

**Application case:** Cases #11 -2022

**Date of decision:** 03-02-2022

**Decision:** The Board voted 5-0 to continue the application to the April 6, 2022 meeting so that the applicant can provide clarity on the proposed impervious lot coverage percentage and location for any required on-site parking and provide a plan which delineates the front and side setbacks for the proposed project.



**Patricia Weathersby, 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:** Dorothea E. Guyton Trust, Dorothea & Joseph Guyton Trustees

**Property:** 1459 Ocean Blvd, Tax Map 17, Lot 80  
Property is in the General Residence District and Coastal Overlay District.

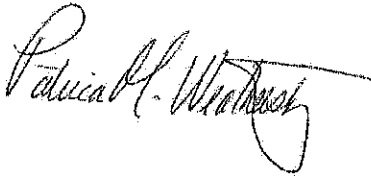
**Application case:** Cases #14 -2022

**Date of decision:** 03-02-2022

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

- §190-2.4.C(2) for a patio/walkway 15' from the left side boundary.

The above variance was granted conditioned upon the applicant providing the Building Inspector with a revised As-Built plan containing dimensions.



Patricia Weathersby, 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

**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:**

03-02-2022

**Decision:**

The Board voted 5-0 to continue the application to the April 6, 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.



**Patricia Weathersby, 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:** Allen Cummings, Jr. of 114 Patterson Lane, Newington NH

**Property:** 46 Appledore Ave, Tax Map 19.4, Lot 47  
Property is in the General Residence District and Coastal Overlay District.

**Application case:** Cases #15 -2022

**Date of decision:** 03-02-2022

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

- §190-2.4.C(1) for dormer 15.5' from the rear boundary;
- §190-2.4.C(2) for dormer 15' from the south side boundary; and
- §190-6.3.A for expansion of a non-conforming structure.
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**Patricia Weathersby, 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.