

**TOWN OF RYE – BOARD OF ADJUSMENT**

**Wednesday, April 6, 2022  
7:00 p.m. – Rye Public Library**

***Members Present:*** Shawn Crapo, Patrick Driscoll, Chris Piela, Jennifer Madden and John Tuttle

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

**I. CALL TO ORDER**

The meeting was called to order at 7:02 p.m.

**II. BUSINESS**

- **Minutes of March 2, 2022**

**Motion by Patrick Driscoll to approve the minutes of March 2, 2022 as amended.  
Seconded by Chris Piela. Vote: 3-0-2 Abstained: Jenn Madden and John Tuttle**

- **Appointment of Chair, Vice-Chair and Clerk**

**Motion by Patrick Driscoll to nominate Shawn Crapo as chair. Seconded by Chris Piela.  
All in favor.**

**Motion by Chris Piela to nominate Patrick Driscoll as chair. Seconded by Shawn Crapo.  
All in favor.**

**Motion by Patrick Driscoll to nominate Chris Piela as clerk. Seconded by Shawn Crapo.  
All in favor.**

- **Resignation of Dr. Burt Dibble as Alternate**

Chair Crapo noted that Dr. Burt Dibble has decided to resign his post as an alternate. Dr. Dibble has put in several years on the Board, both as an alternate and sitting member. His time was very well spent. He served as clerk and was very diligent in his editing abilities. Chair Crapo thanked him for his commitment and service to the Board.

- **Request for appointment as alternates: Patricia Weathersby and John Mitchell**

**Motion by Patrick Driscoll to appoint Patricia Weathersby as an alternate to the Board.  
Seconded by Shawn Crapo. All in favor.**

**Motion by Patrick Driscoll to appoint John Mitchell as an alternate to the Board.  
Seconded by Shawn Crapo. All in favor.**

Continuances:

**Motion by Patrick Driscoll to continue the administrative appeal and application of Jack and Mary Ellen Madden to the May 4, 2022 meeting. Seconded by Chris Piela. All in favor.**

### **III. APPLICATIONS**

- 1. 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.**

Chair Crapo noted that the application was continued from a previous meeting for further clarification.

**Attorney Colby Gamester, representing the applicant,** spoke to the Board. He explained that the Fregeaus are the owners of 1196 Ocean Boulevard. Mr. Fregeau previously presented this application at the February ZBA Meeting. The proposed project is to construct a very simple shed on the northern side of their condominium unit and within their limited common area. This condominium is part of the Surf Club of Rye Condominiums. Early in March, Attorney Durbin had submitted a supplemental narrative to the original application, as well as multiple exhibits. Based on comments and discussions with the Board from February, Attorney Durbin has submitted a detailed plan and representation as to where the shed is to be located. This plan is derived from the James Verra Survey and related condominium site plan from 20 years ago. The plan shows a 2.5' offset from the property boundary line, which was discussed during the February meeting because of the 2' notice in the agenda. Mr. Fregeau is pulling the shed back even further. The applicant has also provided an updated dimensional sketch showing what the shed will be changed to. The shed will have a sloped roof instead of a peak roof. There will be a decrease in height and a decrease in footprint. Currently, there is an 8.5 x 12 footprint, which will be changed to 7 x 11, which is a reduction of 19s.f. The proposed roof slopes from 8' at its highest point to 6' at its lowest, from south to north to create even less of an impact on abutting property and to be consist with the rooflines on that side of the house.

Attorney Gamester noted that the additional exhibits that Attorney Durbin had submitted are pictures from the 2019 listing of an abutting condominium unit; Unit #1 at 1182 Ocean Boulevard. Those show the different view corridors that property has and enjoys. He noted that the one-page photograph shows the western side of the shed as it's partially constructed right

now. Mr. Fregeau has superimposed the revised shed onto the photo which shows a great representation of the scaled down proposal.

Attorney Gamester stated that the two variances that are required are for lot coverage and side yards setback. With respect to lot coverage, it's important to note the deminimis impact the shed will create on the entire lot, that being the entire condominium association lot. The total impervious surface coverage on the association's property is 42,430s.f. The inclusion of the shed footprint of 77s.f. increases lot coverage from 43.1% to 43.2%. The shed is designed to set on cinderblocks placed on crushed stone. This will allow for water to naturally flow as the land currently lays. The addition of the shed will have no impact on the environment and will not otherwise affect public health, safety and welfare.

Attorney Gamester continued that with respect to the left yard setback, the reason for the placement of the shed is due to the fact of existing constraints on the property. Currently, the only rationale and reasonable place to put a shed is next to the original septic tank and in front of the new holding tank that is buried, closer toward the parking lot and existing fence. Going back towards Ocean Boulevard is near impossible. The placement of the shed is in the middle of a windowless portion of the immediate abutting structure and is in the middle of the northern face of the Fregeau house. During the February meeting there were discussions about other places the shed could be located. Also, some comments have been submitted by the public regarding the same. In addition to the constraints of the septic tank and the holding tank, an important goal is to be as far away from the shoreline as possible. Moving the proposed shed any farther east, on any portion of the property, would be contrary to the shoreline and best practices relative to the same. The shed should not be placed on the southern side of the house for a variety of reasons. First, that is the front of the house. It's common in practice for sheds to be in a side yard or in a back yard. The shed the Fregeaus would like to construct would be in their back yard. Furthermore, there's landscaping and hardscaping in front of the house. The area is used to access the front of the house and other portions of the property. It's not logical to locate the shed in that area of the property. The proposed location is the most reasonable and rationale location for the shed, as it creates the least amount of impact to the property, shoreline, abutters and from the beach and Ocean Boulevard. It's the least impacting alternative for the shed.

He stated that given its size and placement, the shed will have any impact to anyone's light, air or space. Sheds are common throughout beachfront properties in Rye. It will be architecturally consistent with the house. It will be constructed with quality materials and best practices. It will blend in with the property. For all those reasons, the shed will not alter the essential character of the neighborhood or otherwise threaten or harm the public health, safety or welfare.

Attorney Gamester pointed out that the Surf Club property is already nonconforming with respect to lot coverage. The change in lot coverage will be deminimis at best. The shed has been designed to have minimal impact on the abutters. The garage associated with the applicants' condominium, is occupied solely by their vehicles. Storage of equipment outside is not ideal, as it would be subject to the elements and unsightly on the property. If the variances are denied, the applicants would essentially have no storage, as they utilize both parking spaces in the garage. The loss to the applicant and this property vastly outweighs any perceived gain by the public by denying the variances for this reasonable and modest shed. It would be difficult to

argue that this 77s.f. shed with a highest point of 8' sloping to 6' and will be designed in continuity to the existing main structure, will provide any diminishing affect to any surrounding property value. Sheds are not uncommon in any municipality, specifically not in the Rye Beach area. The size of the shed and the location to the close property line between two buildings is going to have no impact on light, air and space. It's always questionable whether zoning boards should talk about views. Views are not really affected unless there is an easement, covenant, or some other restriction imposed privately. If this board does choose to discuss them, it needs to be taken into great consideration that the abutting owner has views from multiple areas, windows and floors from their condominium. The fact that the shed can simply be seen from one or two rooms is a deminimis concern at best and one that will not affect property value. The shed is being used to improve the property, which will often improve surrounding properties as well. It will declutter the property and keep things tidy.

Attorney Gamester continued that this property is unique. It's unique with respect to the overall condominium association, how it's divided, and its limited common area. When the condominium development was approved by the Planning Board 20 years ago, it was designed and approved with parking allocated in the garage with no other storage. The applicant, and any other person who lives at this property, will use their garage to store their vehicles, which is reasonable and expected. This eliminates the ability to store anything else therein. It's also reasonable to not expect, nor want, property owners to store everything outside because of the potential to look cluttered and the fact that personal property would suffer from the elements. All of these items demonstrate the property is unique, which creates special conditions.

Attorney Gamester noted that letters have support have been received from the Surf Club, and the McSharry's at 1210 Ocean Boulevard, Unit 3. He respectfully requests that the Board find the proposal satisfies the criteria for the two variances.

Chair Crapo stated that in Rye, the measurement is to the drip edge. The measurements look like they are from the walls.

**Peter Fregeau, applicant,** replied that the 2.5' measurement is from the drip edge.

Attorney Gamester noted that this was brought up at the February meeting. The drip edge will be the outer barrier of the setback.

Chair Crapo stated that it was pointed out that the Board may or may not consider views. When it's in the side setback, the views come in to play. When it's in the building envelope is when the views would be off limit.

Attorney Gamester stated that if the Board considers and discusses it, he still thinks it's a deminimis impact given the other views and the view they currently have of this narrow corridor.

Vice-Chair Driscoll asked if a surveyor has checked the side yard setback.

Mr. Fregeau replied no. He noted that he went off the old plans. A surveyor reviewed the old plans.

Attorney Gamester stated that the measurements are taken from the original site plan from an engineer. He believes the chair had said if not a surveyor, something "rock solid" to be used to show where it is going to be located. The location is 2.5' from the drip edge.

Vice-Chair Driscoll noted that they have received other materials from an abutter.

Chair Crapo clarified the proposal is to reduce the width a foot and the length a foot. He asked if the size is being taken off the ocean side or inland side.

Mr. Fregeau replied the intent is to take it from the ocean side. The reason being is to move it off the property line more. If there is any sight impact in those directions, it would give the most alleviation.

Member Madden asked why the shed is there now.

Mr. Fregeau explained that the shed is there in error. He was given bad information and was told that the shed would not need a permit because of its size. He spoke with Mr. Ruddick who lives in the unit closest to his about putting in a storage shed. Mr. Ruddick did not have any issues or problems with it. He continued that he started putting in the shed. The Building Inspector saw the shed and noted that a permit was needed.

Chair Crapo explained to the Board that this is considered an after-the-fact variance. However, the Board is supposed to view this as if they came in fresh applying for it new and whether it would be approved in that case. The cost to remove or remediate the situation is really not a factor.

Member Madden asked about the photos that were submitted.

Attorney Gamester explained that those are a trio of photos based on the written comments from the abutting property owners about the fence. The first photo is taken standing on Mr. Fregeau's property nearest the beach. The property pin is beyond the chain-link fence with the orange tag. The second photo is an overhead shot showing that the pin is on the other side of the fence. The third photo is a broad picture to show where this is on the property, which is the northeast portion of the property. He continued that they looked closer at pins on the property line, as well as the chain-link fence. There are two chain-link fences that run back to Ocean Boulevard. Two-thirds to three quarters of that fence has been there since the 1987 condominium site plan for the abutting condominium development. There is a second chain-link fence that jogs out about 10". That fence was installed by Mr. Fregeau's predecessor in interest. Half the length of that fence is easily on Mr. Fregeau's property and crosses over mere inches. That fence and the property line are almost one in the same. However, the shed will be 2.5' off the property line to the drip edge.

Member Madden noted that one of the abutters, Colleen, called her about property values, as she is a realtor. She told the abutter that she is now on the Board, but she did go and look at the abutter's property. She just wanted to make this known.

Attorney Gamester asked if there was any discussion about property value.

Member Madden replied no. She asked why the shed cannot be pushed closer to Ocean Boulevard.

Attorney Gamester noted that there is a leachfield that was discontinued closer to the shoreline. The septic tank is located right off the steps. The Fregeaus now tie into a shared leachfield with the condominium association, which is in the parking lot. It would be difficult to pull the shed closer because the holding tank is there. Also, soil would need to be added so it would be more visible above the fence line. The ground can't be shaved any lower in that area because of the holding tank.

Member Tuttle asked if relief is needed for Coastal Overlay. In looking through the ordinance (190-3.4.F(7)) it says "all buildings, including parking structures and accessory buildings, shall be separated by at least 25'." In looking at the map, it looks like it's in the Coastal Overlay.

Attorney Gamester noted that this has not come up in conversation yet with the Town.

Mr. Fregeau pointed out that he was working off the Building Inspector's denial letter.

Referring to §190-3.4.F(7), Chair Crapo pointed out that this section is for tourist accommodations and uses. He doesn't think it applies. All they can really appeal from is what is in the Building Inspector's denial letter. Although, the Board has the ability to make some edits. However, if it materially changes the application, there would have to be a continuation for new abutters' notices, etc.

Chair Crapo opened to the public.

**Colleen Penacho, 1182 Ocean Boulevard Unit #1**, stated that she and her husband were at the February meeting to oppose the variances for the shed that is currently in place without a permit. She continues to oppose the variances for the proposed shed. At the February meeting, the Board voted to continue the application in order to clarify the property line. Several board members suggested that a survey might be appropriate in order to determine the property line. At that meeting, Mr. Fregeau indicated that he did not think it was worth getting a survey and he didn't want to get a survey. She has provided two surveys which show that part of the fence is on the Rye Point Condominium property. The property actually extends beyond the fence towards the Fregeaus' house. This survey was recently done for the Rye Point Condominium property, as well as a survey was done for the Surf Club property which was done by James Verra. Surveys for both properties show the fence and the additional property on the Rye Point Condominium property.

Mrs. Penacho continued that the Fregeaus have not provided a survey. They have not defined where the property line is. They are saying that the proposed shed will be 2.5' from the property line, but the original plan says the shed is 2' from the property line. The existing shed is anywhere from 10" to 12" from the fence. It is not at all clear that the current shed is 2' from the property line. She is not sure how the Fregeaus are going to guarantee that the shed is 2.5' from

the property line when they have not defined where the property line is located. The plan showing the proposed shed is a parking as-built plan. The plan is intended to show the parking layout of the Surf Club. It is not a boundary survey. She doesn't think the Fregeaus have met the requirement of the Board to clarify the property line and to show the shed in relation to that property line. The current plan shows that all improvements are approximate. They are not showing that the shed will not encroach on the Rye Point property. With the density of the area and the closeness of the fence, she doesn't think it's good enough to show approximate locations to build a shed in the setback very close to the abutters' property.

She stated that in addition, the Fregeaus narrative indicates that the shed will be 1' farther away from the abutters' property than the current shed. Again, the current shed appears to be on the Rye Point property. There is no guarantee that the property encroachment will be corrected. For that reason, she does not think the variances should be granted. There is no guarantee that her property will not be encroached upon. Additionally, she doesn't think the Fregeaus have met the criteria for demonstrating the need for the variances. Granting the variances is contrary to the public interest and is inconsistent with the spirit of the ordinance because it violates the ordinance's basic zoning objectives. The courts look to different things in determining if these criteria are met. They normally look to altering the essential character of the locality and threatening the public health, safety and welfare. The Board can also consider other factors. A variance can be inconsistent with zoning objectives if it violates zoning purpose to limit density. Courts have upheld that a variance is contrary to public interest and violate the spirit of the ordinance where a shed adds to congestion already in the area. She pointed out that this is already a congested and tight area. The shed is "squeezed" between the Fregeau residence and one of the houses on the Rye Point property. It's in the beach district. The Rye Zoning Ordinance recognizes that the coastal area requires special protection. She understands that there are other sheds in the beach area, but those were built in previous times when there may not have been the concerns about the congestion. The Board can look now at the current congestion and the zoning ordinance has said that one of the goals is to preserve that area. Increasing the congestion would violate the public interest and spirit of the ordinance.

Mrs. Penacho stated that in regard to substantial justice criterion, boards can look at whether there is harm to abutters to determine if substantial justice is being done. The proposed shed is wedged between the two properties, which could possibly cause a safety issue to the Ruddick's home. The existing shed is very tall at 9', which does not include the cinderblocks that the shed is on. She understands that the shed is going to be reduced by a foot, but it will still be up on cinderblocks. It will be higher than 8' because it's up on cinderblocks. The shed blocks a number of the abutters' views. The value of her property is reduced because of the reduced views. (She submitted photos to the Board showing the views from inside her property looking out towards the shed.)

She continued that it seems the shed could be located elsewhere on the property or sized so it does not impact the abutters. She knows there is talk about moving it closer to Ocean Boulevard and that there is a holding tank there. In looking at the Surf Club property records, her understanding is that the original septic tank for the Fregeaus property was going to continue to be used until it failed; at which time, it would be connected to the Surf Club property. She didn't see anything in the record saying that there had to be any tie in to the Surf Club property. As far

as moving the shed closer to Ocean Boulevard and the discussion about how it would then be more visible, the shed is visible from Ocean Boulevard right now. She doesn't see that moving it forward would make it any more visible. She reiterated that the shed is obstructing views from her house and it makes it more closed in because it's in between the two properties. Further, views have been a consideration for this Board when something is being built within the setback. Years ago, when the Board was considering the building of the Surf Club, there was discussion from abutters about a fence that was going to be built and block their ocean views. At that time, the Board said they did not support the exception because of the obstruction of the abutters' views. It is appropriate under the criteria to look at views. It impacts whether or not to grant a variance because it can impact the value of surrounding properties and also impact other variance criteria. She pointed out that the setback ordinance is meant to prevent overcrowding and this is already an overcrowded area. The Fregeaus knew when they purchased the property, what the zoning restrictions are or they're deemed to have known them under N.H. Law. They knew the parking and storage areas were limited and that the area was densely built. As they were aware of the restrictions, they can't now ask for relief for something they created on their own. The Fregeaus have the burden of proof under all the criteria. They have to meet every criterion of the variances. This includes the burden to demonstrate that the shed will not decrease the values of abutting properties. She doesn't think they have presented evidence to this. Because they have not demonstrated that the proposed shed will not encroach on the Rye Point property and they have not shown that they will meet the five criteria, she is requesting that the variances be denied.

The Penachos approached the Board to show the location of the fences.

Speaking to Mr. and Mrs. Penacho, Vice-Chair Driscoll asked if they dispute the pins.

**John Penacho, 1182 Ocean Boulevard Unit #1**, noted that they are saying the existing boundaries as defined by the plan are correct. There's a chain-link fence that goes from the Atlantic Ocean to the wooden fence. The chain-link fence goes across the property to Ocean Boulevard.

There was discussion in regards to the fences.

Mr. Penacho stated that where the shed is right now is on Rye Point property. It's almost a 1.10' beyond the fence, which is the property line. The fence is 1.5' from the property line. He pointed out it's a very congested area.

Speaking to the applicant, Chair Crapo stated that he's not psyched that there isn't a more conclusive survey. That's the whole reason this was moved down the road.

Attorney Gamester pointed out that the property line is not in question. The depiction of the fence is what seems to be confusing everyone. He continued that they are seeking a 2.5' offset from the property line. There are property boundary markers along that line. Having the shed pulled 2.5' from the property line is something that Mr. Fregeau has to adhere to. When the Building Inspector issues a permit and confirms it, Mr. Fregeau will have to prove that it's 2.5' away from the property line. He will not be using the fence past the utility pole because that is



not the property line. The property line does not need to be clearly marked. There is no ordinance or statute that says the entirety of the property line needs to be purely marked. Usually, the deed is from point to point. As long as Mr. Fregeau can satisfy and prove once it's built that the drip edge is 2.5' away from the property line, then he's fulfilled the grant of the variance.

Chair Crapo stated that the existing shed appears to be much closer than 2'.

Mr. Fregeau noted that where ever there needs to be "shrinking" to get the shed to 2.5' to the drip edge, that's maybe what has to happen. The important representation is the 2.5' to the drip edge, which he will adhere to. He does not dispute the fact that the original plan doesn't look like it's 2' from the property line. At the end of the day, that shed is coming down and being dismantled. Whatever this Board approves would be put in its place with the appropriate setbacks.

Attorney Gamester stated there are no coastal affects for a 77s.f. shed. In regards to congestion and density, those are more related to size and number of dwelling units and residences. A shed is not uncommon to be associated with any size single family residence. He thinks it would be unreasonable for the Board, on this project and others, to try to consider and protect every single view from every single window, for every single purpose. The shed clearly pops up a bit over the fence line and some of their views will include the shed. He pointed out that any type of landscaping from 6' to 8' could easily grow over time and the views could be potentially affected. With respect to unsightly looking, he doesn't think Mr. Fregeau would build something on his property that is unsightly looking. Regardless of where it is located, Mr. Fregeau would have to use it and look at it. If it were in front of the house, it would look odd to be in that location and it would diminish the use of other portions of the property. Purchasing a property in of itself is not creating a hardship. Once it's purchased, the owner understands the use of it and how it might be used. Since owning the property, Mr. Fregeau has understood a limitation and he's coming for a reasonable request. The garage only fits the vehicles. It would be very difficult to store a lawnmower or something of that nature in there.

Mr. Fregeau stated that he bought the property two years ago. It has always been a year-round property. It comes with a particular hardship, which has been outlined. The property sat vacant for a number of years. Over time, he's tried to make overall improvements that are beneficial to the property and to the neighborhood as a whole. Even prior to the first meeting, he was aware of the Penachos' objection to the shed. He spoke with them and tried to come up with a reasonable modification. He has considered all the options and thinks this is the most reasonable option. With the proposed shape and frame, if there is any impact, it will only be minimal.

Chair Crapo asked if the new design has gone back to the Building Inspector.

Mr. Fregeau replied no.

Chair Crapo pointed out that potentially he could review it and give further denial criteria.

Mr. Fregeau noted that the roof slope is going to be minimal and rainwater is going to fall into crushed stone below.

Vice-Chair Driscoll stated that the amount of water going onto abutting property cannot be increased. This is based on the Building Inspector's professional take on it. If this goes through, it would probably be continued upon the ridge height that is on the plan. The shed would be confined to that from a zoning perspective.

Mr. Fregeau stated that he'd like to speak to the view a bit, because it seems to be the primary objection. Having seen the view from the abutters' perspective, eighty plus percent of the view is really of the backyard of his property. Above and beyond, they can see the ocean and sky. If there's an impact by the shed being proposed, while it may interrupt some view into the backyard, he doesn't think it's significant beyond that.

Mrs. Penacho commented that she understands that if this is approved, Mr. Fregeau would have to move the shed 2.5' from the property line. She also understands that the property line wouldn't be entirely marked. She doesn't understand how he would demonstrate where his property is located. He has refused, up to this point, to get a survey. In an earlier meeting, he said it wasn't worth it.

Chair Crapo explained that Mr. Fregeau would need to demonstrate to the Building Inspector that it meets the setback. Once construction is finished, if there is a dispute between neighbors, it would become a civil matter over placement. Obviously, it would behoove the applicant to try to avoid being within a debatable margin of error. He pointed out that good fences make good neighbors. Good setbacks and adherence to a variance also helps with that.

Mrs. Penacho stated that Attorney Gamester said that it was slightly over the fence line. It's actually well over the current fence line, which can be seen from the photos.

Chair Crapo noted that the relief is from the property line, not from fences.

Mrs. Penacho clarified that she was speaking in terms of the view and the height of the shed over the fence line.

Mr. Penacho pointed out that along Pirate's Cove and Wallis Sands there are no sheds in between the houses. He has been around Rye and has not seen any shed that close to an abutter's house, which he feels is a safety issue. The attorney said that sheds are common. However, sheds are not common to be put five or six feet from an abutter's house. There's usually enough space between the houses to satisfy the 20' setback. Also, most sheds are put at the back of the lot in the backyard. He continued that Mr. Fregeau has understated the view. Mr. Penacho noted that he and his wife could see directly to the ocean; however, they have now lost that view. He commented that some of the enjoyment of his property has been taken away because the view has been taken.

Hearing no further comments, Chair Crapo closed the public hearing at 8:32 p.m.

In regards to the lot line, Vice-Chair Driscoll stated this is an obligation of the applicant. It's a lot less expensive to deal with that before recreating the shed than after. He thinks that polices itself. He looks at it as in the worst-case scenario, how close would that shed be to the abutting property. Everything beyond that, 1.10' to 2', doesn't change the way he would vote on the application. In looking at the criteria, the 2' doesn't change the way he would look at it. He continued that in looking at the criteria and public interest, his concern would be a safety path to the beach. He doesn't see that area being used for vehicles and there is a safe human path that gets down to the front of the building on the ocean side. The sticking point that he has is whether the loss of a small portion of the view will affect the property value of the neighborhood. He noted that it comes down to the fact that the abutters don't want the view of the shed. They want the view of the ocean. With the five criteria, where does that put it?

Member Madden stated that she went to the property and had to take the shed out of the picture because that is not the shed in question. She was trying to envision it down about a foot and back about a foot. In regards to the question about diminution of value, if someone went to that property to look at it today to purchase, if it was after the shed is completed, they wouldn't know what they missed. She doesn't believe that they wouldn't purchase the house because there might be a better view to the south.

Member Piela stated that it seems they are playing a game with lot coverage and location of the shed. In looking at lot coverage and using the entire Surf Club property, then why can't the entire Surf Club property be used for shed location? They are saying that the Fregeaus' limited common area dictates the shed location, yet the lot coverage is based on the entire Surf Club property.

Member Madden commented that the math is 33.5% if just the common area is considered for lot coverage. It is a very different number.

Member Piela stated that in using the entirety of the Surf Club property, which is already nonconforming, adding this shed, even though it's a small increase, is still increasing a nonconformance. He struggles with an increase in nonconformance. He drove around that area and could not find another shed that was located in between structures. He thinks this would be unusual, especially on the east side of Route 1A. There were some sheds sitting in front of the home closer to 1A and there were some free-standing garages. He commented this is a very congested area. While it may be argued that an abutter is not entitled to a view, they are entitled to space between buildings. In his mind, this is an unusual situation that would be impacting the neighbors.

Chair Crapo commented that when something is being proposed in the setback, the Board is fully allowed to look at the view impacts. If something is in the building envelope and they are not asking for a height variance, the view would be taken out of the Board's purview.

Member Piela stated that he is taking the view into consideration. Unfortunately, the applicant built something that is very obvious. People have to really use their imagination to figure out what it would look like if it were smaller and slightly moved. He's not sure how obvious it's going to be, but it's going to be seen. It's going to be an obvious thing. He understands that

someone won't know what they missed if the property were to go to sale, but he hears the abutters saying that they know what they are missing. The voice of the opposing abutters carries a lot of weight in his mind.

Member Tuttle commented that he agrees with Member Piela. A big issue for him is going to be the runoff and whether it would be going on to the abutters' property. It's going to stream right down their driveway and the whole way to Ocean Boulevard. He looked for a drain and the closest drain is at the beach access point. So, there will be more stormwater being added to Ocean Boulevard and the State property as well. He understands it's a small amount, but it's still an addition to the stormwater system.

Chair Crapo commented that Member Piela brought up a good point about expanding the nonconformity. He's not sure if the Building Inspector caught that and considered it.

Member Madden commented that Member Tuttle brought up a good point. If the structure is off the ground, isn't the water running under it?

Chair Crapo clarified that he is speaking about the roof runoff. For surface water, there cannot be an increase in flow off the property post-construction. He further clarified that the Building Inspector has not weighed-in on this new plan. The original proposal that the Building Inspector reviewed had a hip style roof where part of it was going towards the property line and part towards the existing Fregeau home. This new plan runs everything towards the property line.

Member Madden noted that she read the Penachos first letter. It said the issue wasn't the views, but clearly, the issue is the views. It also said the lot coverage was an issue, but then there was discussion about moving the shed. She was trying to get to the root issue, which she believes is the views. The applicant made a lot of revisions. It would have been good to have the survey just to show good faith.

Chair Crapo stated that part of him feels like there could be arborvitaes and that would make the whole thing moot. He doesn't know if there are any restrictions on that property. He's guessing that since the planting plans ended at a certain point that there's some sort of restriction on building. He's concerned with the points of the runoff and the general congestion in that area. Shortening up the shed and shoehorning it in, is going to leave a shed that's barely useful, but it will box in the views and jam up that property line. It is a situation where the other abutter is right up against their property line, so there is not a full 20' on that side either. Plenty of people in town get sheds. However, in this case, he doesn't see it as a situation where it ends up outweighing the harms.

Attorney Gamester called for a point of order. He stated that based on the comments being made, some of them not being discussed in depth as other issues, he would like to request a postponement for further revisions and further comments.

Chair Crapo stated that at this point, the Board will either vote or the applicant can withdraw.

Attorney Gamester requested to withdraw the application.

Chair Crapo agreed to the withdrawal.

*Note: Member Tuttle recused himself for the following application. The applicant agreed to a four-member board.*

2. **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.**

**Attorney Monica Kieser, representing the applicant,** presented to the Board. She explained that at last month's meeting, Mr. Day was before the Board on his own and presented the application. There were some questions that needed to be resolved, which he hopes to have taken care of. Mr. Day and Attorney Tim Phoenix connected since that time. Attorney Phoenix has submitted a clarifying letter, a revised plot plan and some photographs to demonstrate the intentions. She explained that currently there are stairs that just come off the front of the house, straight out the front door. (She presented the photo showing what exists now.) She continued that those stairs end 1.6' from the property line. Instead of having a 4 x 6 walkout area, they would like to have a proper deck in front of the house. It will be 5' forward and extend across most of the front of the house. Instead of having the stairs coming straight out towards the street, there will be stairs on either side of the deck. The proposal is for a 5' x 20' deck with a single set of stairs that flare on either side. Instead of the stairs being 1.6' from the lot line, they will be 4.2' on one side and 3.8' on the other side. In reading the minutes from the last meeting, she knows there were some concerns about how the impervious calculations were reached. She noted that the existing and proposed impervious coverage is listed on the plan in Note #5. She also has the back-up calculations for how those number were reached. Those numbers were provided to Attorney Phoenix after the date of the plan. It appears that impervious was calculated correctly. The existing, which includes the building, walkway, stairs, rear deck and patio, was 1393s.f. The landscape steps in the backyard 30s.f. The shed is pretty small and is only 12s.f. The total is 1435 s.f. on a lot size of 5,000 s.f. making it 28.7%. The proposed impervious is only adding the deck and stairs in front, and removing some of the stairs in front. The total square footage is 1547, which bring the impervious coverage to 30.9%. She commented that the 31% ask is accurate. The photo demonstrates that essentially this is a pretty reasonable proposal compared to some of the other expansions in the area.

Attorney Kieser stated that the questions that were raised surrounded the issue regarding parking. Exhibit 2B shows an SUV parked in front of the existing stairs in front of the house. She reiterated that the existing stairs are 1.6' from the property line. Certainly, a vehicle could not be parked without being in the front yard setback. However, the applicant's position is that this is not changing, as a result of the proposal. There will be a bit more room in front of the front steps and the farmers porch. Right now, even parking in front of those steps, the vehicle is well off the paved portion of the road. To her understanding, this was one of the concerns of the Board at the

last meeting. In terms of the parking issue, Patricia Weathersby had said at the previous meeting that she viewed that as a prior nonconforming condition. That is the applicant's position and it's not changing and is not getting any worse, as a result of the proposal, which is demonstrated by the photos.

Attorney Kieser stated that in terms of criteria, she can rest, in the interest of time, on Attorney Phoenix's letter dated March 25<sup>th</sup>, which addresses the criteria and how the proposal meets it. She pointed out that this area is a fairly congested area with small lots that have existed for many years. Many of the houses in this area have been redeveloped and expanded from the little beach bungalows into something greater. This house is a modestly sized house. It is not getting any bigger, except for the small farmers porch in the front. Although its larger in area and volume, the steps in the front are coming back out and its essentially similar to some of the development that has gone in the neighborhood; therefore, it is not contrary to the public interest and observes the spirit of the ordinance. For those same reasons, it doesn't diminish the value of surrounding properties. Pulling the stairs back from the traveled way and removal of the non-descript front entry way, and replacing it with something more tastefully designed, does not diminish the value of surrounding property areas. Hardship is related to the size of the lot and the fact that the house is located very close to the front lot line. Those are combined to create special conditions. Given the distance between the lot line and the travelled portion of the road, and the way other properties have been developed in the area, this change is very minimal overall. The lot coverage is only going from 29% to 31%. It's deminimis with respect to stormwater treatment. For all those reasons, the proposal doesn't violate the public purposes of the ordinance. It's a reasonable proposal for the reasons outlined. There really isn't a way to add a front porch of any size without asking for relief. This will be improving a condition with respect to the front stairs, by turning those stairs and having them exit either side without interfering with the existing parking arrangement. For those reasons, substantial justice is met as well.

Member Piela pointed out that the proposal calls for a side yard setback of 9.7'. It looks like the porch is in more than the house.

Attorney Kieser commented that the setback is greater than that. Attorney Phoenix's letter says that the distance is 15+/- from the left and right property lines, where 9.6' and 9.7' exists and 20' is required.

Chair Crapo asked if they would be comfortable with the plus/minus 15'.

Attorney Kieser confirmed. She noted this is the relief being requested in the revised letter dated March 25<sup>th</sup>.

After reviewing and scaling the plan, it was noted that the stairs on the side of the porch are 11' to the lot line.

Vice-Chair Driscoll stated that he would want to condition it on the width of the depth.

Attorney Kieser noted it's a 5' x 27' deck.

Member Piela clarified its for a front entry deck plus/minus 12' from the side boundary where 20' is required.

The Board agreed.

Member Driscoll stated that for him, this comes down to hardship of applicant versus the Town. His concern is that if the road ever gets widen or if the Town ever wants to put a sidewalk in, all of a sudden that SUV parking becomes a lot tighter. He asked if there was any consideration to do this exact layout but only have one set of stairs that comes down, as opposed to having stairs coming down on both sides. If it's only on one side it would give an extra 5' or more to pull two cars in.

**Nicole Day, applicant**, explained that the driveway essentially goes to the property line on both sides. There's room to park on the sides. She further explained that they are able to park four to five cars in their driveway. Just taking out the small portion of the front stairs would still give ample space to park two vehicles.

Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 9:15 p.m.

It was noted that there were no letters in opposition received for the proposal.

Member Piela stated that he feels this is a reasonable request. He echoes Vice-Chair Driscoll's concern about parking, but the parking situation is an existing non-conformance. He doesn't think this is making anything dramatically worse with regard to the parking situation. Vice-Chair Driscoll raises a good point. If they ever wanted to widen Breakers Avenue, or put a sidewalk in, it could complicate matters a bit. He can't necessarily in good conscience deny a reasonable request on the potential future of what the Town may or may not do.

Vice-Chair Driscoll noted the landing is 6' and the stairs on either side comes to 18' plus a 4' landing makes it 26' for that whole space. It's a 50' wide lot that is completely wide open. If they ever wanted to expand the road, it would still give 24' to park.

Chair Crapo called for a vote on variances to §190-6.3.A; §190-2.4.C(2); §190-2.4.C(5); and §190-3.4.E:

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

Patrick Driscoll – Yes  
Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes

Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

**3) Substantial justice is done?**

Patrick Driscoll – Yes  
Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
Chris Piela – Yes  
Jenn Madden – 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?**

Patrick Driscoll – Yes  
Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes



Chris Piela – Yes  
Jenn Madden – Yes  
Shawn Crapo - Yes

Member Piela clarified that the proposal is for a front entry deck 12' +/- from the side boundary where 20' is required.

Attorney Kieser confirmed.

**Motion by Chris Piela to approve the application of Timothy Day of 8 Fraser Drive, Andover, MA for property owned and located at 25 Breakers Road, Tax Map 8.4, Lot 60 for variances from §190-6.3.A for expansion of a nonconforming structure; from §190-2.4.C(2) for front entry deck 12' +/- from the side boundary where 20' is required; from §190-2.4.C(3) for a front entry deck 3.8' and 4.2' 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. Seconded by Patrick Driscoll. All in favor.**

**Note: Member Tuttle was reseated for the remainder of the meeting.**

- 3. Robert & Melissa Pickett for property owned and located at 133 Washington Road, Tax Map 17, Lot 28 request a variance from §190-2.3.C(5) for impervious coverage of 15.57% where 15% is allowed for a shed. Property is in the Single Residence District. Case #16-2022.**

**Robert Pickett, applicant,** spoke to the Board. He noted that they are asking for a variance for lot coverage for a shed. He pointed out that they have owned the house for three years and have made substantial improvements to the property. They have put in a septic system in the back. An unsafe structure was taken down, as it was a bit of an eyesore. They have tried to make the property less impactful than it had been. The shed will be a 12 x 16 prebuilt shed.

Referring to the denial letter from the Building Inspector, Chair Crapo noted that it says it will increase the impervious coverage to 16.4% where 15% is allowed. The application is for 15.57%. He asked the reason for the difference in numbers.

Mr. Pickett explained that it was a miscalculation on the Town's part.

Member Tuttle agreed. He did the calculations and got 15.57% as well.

Mr. Pickett stated that they have reduced the lot coverage for the entire project by almost 20%. In terms of everything that has been done to the lot, they have decreased the impervious coverage. He feels they have been working in the spirit of the ordinance in trying to improve the lot coverage.

Chair Crapo asked if the 12 x 16 is from the drip edge of building. If the Building Inspector is putting a "ring" around the building, it could add the 1%.

Mr. Pickett replied that could possibly be. The dimensions are from the side walls.

Chair Crapo explained that the Building Inspector is going to base the calculations on the drip edge of the shed. He asked if it's known what those final numbers would be.

Vice-Chair Driscoll noted that they have a site plan. The Board can do 16.4%.

Chair Crapo agreed, as this is what the Building Inspector put in his letter.

Speaking to the applicants, Vice-Chair Driscoll asked if they want to modify their application to the 16.4% from the 15.57%.

Mr. Pickett confirmed.

Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 9:33 p.m.

Vice-Chair Driscoll commented it makes sense to him. The difference between 15.57% and 16.4% doesn't make a difference to him. One thing to be cognizant of is to be sure to still abide by the setbacks, as it looks like it's pretty close.

Member Madden commented that she thinks they have done a really thoughtful job with their project.

Member Piela pointed out that he appreciates the use of the pervious pavers and the improvements on the property. They have thoughtfully used pervious pavers and have taken a thoughtful approach to it.

Chair Crapo called for a vote for a variance to §190-2.3.C(5):

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

**3) Substantial justice is done?**

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - 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?**

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

**Motion by Patrick Driscoll to approve the application of Robert & Melissa Pickett for property owned and located at 133 Washington Road, for a variance from §190-2.3.C(5) for impervious coverage of 16.4% where 15% is allowed for a shed.**

**Seconded by Chris Piela. All in favor.**

- 4. Nina Webb & Cory Pavitt for property owned and located at 10 Hunterville Ave, Tax Map 8, Lot 92 request variances from §190-2.4.C(2) for a house where 18.6' exists currently, 11.8' is proposed and 20' is allowed in the left side boundary; from §190-2.4.C(3) for a house where 23.2' exists, 22.0' is proposed and 24.7' is allowed in the front boundary; from §190-5.0.C for parking 20' from the front boundary where no parking is allowed; from §190-6.3.A for expansion of a non-conforming home. Property is in the General Residence District. Case #17-2022.**

**Attorney Monica Kieser, representing the applicants,** presented to the Board. She noted that Alex Ross has done the survey work. The lot has about 73' to 74' of frontage along a curve, so the lot is wider in the back. This is directly related to the relief being requested. She continued that there is a single-family home with garage on the lot. The plan is to replace the single one car garage with another single one car garage with living space above. There are also other renovations going on to expand the house, as it is a fairly small home. Much of the expansion is within the building envelope. There's already a driveway and garage. If they replace that garage and expand with breezeways and stairs on the inside, it drives the expansion towards the side boundary. The denial letter talks about the parking in the front setback. She pointed out that currently one car can park in a compliant location and another car would be either in the front or side setback. With the proposal, there is a complaint space in the garage. Outside the garage, one car can pretty much fit outside of the front setback. To the extent this is increasing a nonconformity, they've asked for relief; although, it's questioned whether it is needed.

Attorney Kieser noted that the criteria for granting the variance is set forth in the memorandum submitted to the Board. Also, in the memorandum is the summary of the purposes of the ordinance and how the proposal complies. This will be a new code compliant home. There will be a minimal decrease on the front setback. The primary ask is the side yard. Letters of support have been received from Ian Buchan, 8 Hunterville Avenue, and two other neighbors. She continued the dwelling and lot coverage are compliant with both being under 30%. A stormwater management plan will likely be required and the applicants will work with the Building Inspector on that. The variances are required strictly because of the shape of the lot. It's essentially 50' wider at the back than the front. The way the house exists on the lot now is somewhat rotated because of the curve in the street. Granting the variances will not alter the essential character of the locality or threaten public health, safety or welfare. Looking at the overall area, there are many lots that have been developed with houses that do not meet today's regulations. Some have been redeveloped in a similar manner. Granting the variances will not

diminish surrounding property values, as agreed by the abutters who are in support of the proposal. It will improve the value of the existing home and the homes around it.

In looking at special conditions, Attorney Kieser reiterated that the lot configuration is the primary driver, as well as the placement of the house. The minimal ask for the front setback is not going to impact sight lines or any of the purposes of the front setback. The proposed use is reasonable, as it's a residential lot in a residential zone. Because the proposal involves a tasteful expansion of the existing home and provides adequate air, space, light, parking and sight lines, there are no gains to the public from denial. However, denial would cause great harm to the applicants because they would be unable to develop this lot.

Vice-Chair Driscoll asked if there was any thought to gutters and how the water is going to be prevented from going onto the neighbor's property.

**Alex Ross, Ross Engineering**, explained that typically on a site like this, a stormwater management plan will be prepared. There will be gutters and downspouts that go to a dedicated infiltration trench, or there will be drip edges on the gable end and the back to collect the runoff.

Vice-Chair Driscoll commented that it doesn't seem like a big hurdle. It looks like the bulk of the house is in the setback. The design was to try and get it to the setback. From his perspective, it's a good design. Also, he likes that there are not a ton of windows on the side that's encroaching on the setback and they are not directly facing the closest abutter's house. He thinks it's a good design.

Chair Crapo opened to the public for comments.

**Nina Webb, applicant**, commented that this is her childhood home, but it needs a lot of TLC. They are just hoping to give it a facelift.

Attorney Kieser stated that the Building Inspector had some questions about the roof on the other side of the lot; however, that's not being changed.

Chair Crapo noted that letters of support have been received from Ian Buchan, 8 Huntervale Ave, Candace Lord, 12 Huntervale Ave, and Michael and Catherine Bergeron, 11 Huntervale Ave.

Hearing no further comments, Chair Crapo closed the public hearing at 9:58 p.m.

Member Piela commented that it will be in keeping with some of the other homes that have been renovated. This proposal will be in keeping with the neighborhood. It will be a nice addition to the neighborhood without being overbearing.

The Board did not have any concerns with the proposal.

Chair Crapo called for a vote for variances to §190-2.4.C(2); §190-2.4.C(3); §190-5.0.C; and §190-6.3.A:

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

**3) Substantial justice is done?**

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - 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?**

Patrick Driscoll – Yes

John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

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

Patrick Driscoll – Yes  
John Tuttle - Yes  
Jenn Madden – Yes  
Chris Piela - Yes  
Shawn Crapo - Yes

**Motion by Patrick Driscoll to approve the application of Nina Webb & Cory Pavitt for property owned and located at 10 Hunterville Ave for variances from §190-2.4.C(2) for a house where 18.6' exists currently, 11.8' is proposed and 20' is allowed in the left side boundary; from §190-2.4.C(3) for a house where 23.2' exists, 22.0' is proposed and 24.7' is allowed in the front boundary; from §190-5.0.C for parking 20' from the front boundary where no parking is allowed; from §190-6.3.A for expansion of a non-conforming home. Seconded by Chris Piela. All in favor.**

- 5. Jack & Mary Ellen Madden for property owned and located at 1641 Ocean Blvd, Tax Map 13, Lot 21 request an administrative appeal from the Building Inspector's February 9, 2022 letter stating relief from §35-14.F for a septic system is required for the addition of a deck when decks are excluded from the definition of expansion and no increase to dwelling space or sewage load is proposed. Property is in the General Residence, Coastal Overlay District and SFHA, Zones AE(8) and AO(3). Case #18a-2022.**

- **Continued to the May meeting (see motion above)**

- 6. Jack & Mary Ellen Madden for property owned and located at 1641 Ocean Blvd, Tax Map 13, Lot 21 request variances from §190-6.3.A for addition of a deck; from §190-3.1.H(2)(a) & (g) for a house deck 38.1' and for a pervious patio 28.2' from the tidal marsh where 100' is allowed; and a waiver relief from the building code §35-14.F for a septic system evaluation due to addition of a deck where new construction**

standards required for any expansion. **Property is in the General Residence, Coastal Overlay District and SFHA, Zone AE(8) and AO(3). Case #18b-2022.**

- **Continued to the May meeting (see motion above)**

### **Adjournment**

**Motion by Chris Piela to adjourn at 10:01 p.m. Seconded by Jennifer Madden. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

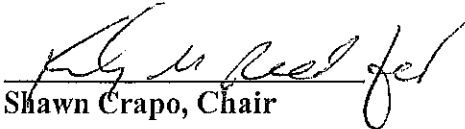
Applicant/Owner: Peter Fregeau

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: 04-06-2022

Decision: The applicant withdrew his application.

  
Shawn Crapo, 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:

Melissa & Robert Pickett

Property:

133 Washington Road, Tax Map 17, Lot 28  
Property is in the Single Residence District

Application case:

Cases #16 -2022

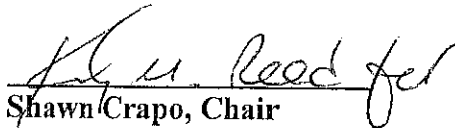
Date of decision:

04-06-2022

Decision:

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

- §190-2.3.C(5) for impervious coverage of 16.4%

  
Shawn Crapo, 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:

Nina Webb & Cory Pavitt

Property:

10 Huntervale Ave, Tax 8.1, Lot 92  
Property is in the General Residence District

Application case:

Cases #17 -2022

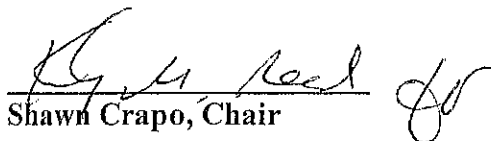
Date of decision:

04-06-2022

Decision:

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

- §190-2.4.C(2) for a house 11.8' from the left side boundary;
- §190-2.4.C(3) for a house 22.0' from the the front boundary;
- §190-5.0.C for parking within the 20' from the front boundary; and
- §190-6.3A for expansion of non-conforming home.

  
Shawn Crapo, 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:

Jack & Mary Ellen Madden

Property:

1641 Ocean Blvd, Tax Map 13, Lot 21  
Property is in the General Residence District, Coastal Overlay and  
SFHA zones AE(8) and AO(3)

Application case:

Cases #18 -2022

Date of decision:

04-06-2022

Decision:

The Board voted 5-0 to grant continue the application to the May 4, 2022  
meeting.

  
Shawn Crapo, 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:** 04-06-2022

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

- §190-6.3.A for expansion of a nonconforming structure;
- §190-2.4.C(2) for front entry deck 12' +/- from the side boundary;
- §190-2.4.C(3) for a front entry deck 7.7'/3.8' from the front boundary;
- §190-2.4.C(5)/ §190-3.4.E for lot coverage approximately 31%

  
Shawn Crapo, Chair

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