

## **TOWN OF RYE – BOARD OF ADJUSMENT**

**Wednesday, May 4, 2022  
7:00 p.m. – Rye Public Library**

***Members Present:* Chair Shawn Crapo, Vice-Chair Patrick Driscoll, Clerk Chris Piela, Jennifer Madden, John Tuttle and Alternate Sandra Chororos**

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

### **I. CALL TO ORDER**

**Chair Crapo called the meeting to order at 7:02 p.m.**

### **II. BUSINESS**

- **Approval of Minutes – April 6<sup>th</sup>**

**Motion by Patrick Driscoll to approve the minutes of April 6, 2022 as amended. Seconded by Chris Piela. All in favor.**

### **III. APPLICATIONS:**

- 1. 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 evaluation 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 #18-2022.****
- 2. 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 waiver relief from the building code §35-14.F for a septic system evaluation due to addition of deck where new construction standards are required for any expansion. **Property is in the General Residence, Coastal Overlay District and SFHA, Zones AE(8) and AO(3). Case #18b-2022.****

**Attorney Monica Kieser, representing the applicants, spoke to the Board. She explained that the proposal is to add a deck on the back of the house on an 87,000sf lot. The proposed deck**

will comply with rear and side setbacks. The only relief being requested for the deck is for expansion and for distance to the wetland buffer. When the building permit application was submitted to the Building Inspector, he said that because the house is being expanded, the septic system needs to be evaluated under Building Code §35-14.F New Construction Standards. The applicants' position is that those new construction standards do not apply to this project for two reasons. The building code states; "Whenever any of the following circumstances exist, septic application, including plans and specifications which meet new construction standards, shall be required unless a valid construction and operating approval exists and the total sewage load will not be increased." Attorney Kieser pointed out there is a valid construction and operating approval on file. The proposal is for an open deck. There will be no increase in sewage load. The applicants' position is that this section does not apply and it would be erroneous to apply it to this proposal. She continued that under 35-14.F(4), normally the expansion of the existing dwelling area would require compliance with new construction standards. However, the code excludes decks, open porches and other unenclosed areas. She noted that the request for a building code waiver is simply in the alternative. If for some reason the Board does not agree and denies the administrative appeal, they are requesting a building code waiver.

Chair Crapo asked if the existing, approved operating plan is in the file, or was that in question at that time.

**Alex Ross, Ross Engineering**, stated that he reviewed the Town's file. The State approved septic documents were in the file.

Chair Crapo stated that the spirit behind this section of the ordinance is that the general theory is that the building is being expanded and more of the land is being covered. The reason this was created is so the property owner doesn't put themselves in jeopardy by covering the only possible future replacement spot that a septic could go with a building. He's guessing that decks were an exception because a deck could easily be removed. However, an addition would be tougher to rip apart in the future.

Attorney Kieser noted that a septic wouldn't go in that area anyways, as it would be closer to the wetland. The septic should be left in the front of the house. She continued that with regard to the septic issue, the Board can either grant the administrative appeal or grant a building code waiver. The standard for granting a building code waiver is to consider whether it would do manifest injustice to apply it or whether an equally good alternative type of construction is proposed. In this case, applying the requirement to develop a new septic plan and design would do manifest injustice when all that is being added is an uncovered, unenclosed deck, which neither contains dwelling space nor increases the sewage load on the property. For that reason, imposing that requirement will not further the purposes of the building code, which is for protection, safety, health and welfare. That would entitle the Madden Family to a waiver for that provision. She noted that the rest of the project involves the regular variance relief.

Attorney Kieser stated that putting the septic issue aside, the applicants need the ability to expand a non-conforming structure. It is a structure that is within the tidal marsh, which requires

wetland relief. The requirement is that there be 100' to the tidal marsh. Right now, there is a house 49.2' to the tidal marsh and steps 43.6'. What is being proposed is to add on a deck, which would be 38.1' to the tidal marsh, with a pervious patio 28.2' to the tidal marsh. (Attorney Kieser reviewed the existing versus proposed conditions on the plan before the Board.)

Attorney Kieser noted that the proposal was before the Conservation Commission at their February meeting. They did a site walk and reviewed the proposal. The Conservation Commission supports the proposal and their letter has been submitted in the application packet. She pointed out that there will be drainage improvements around the property. There will also be a "no mow" area, so the marsh grass will be allowed to proliferate. The area up to the marsh line will not be landscaped anymore. Native plantings are being added in conjunction with the Conservation Commission's review, so there will be an overall buffer restoration. For those reasons, the applicants feel it offsets the addition of a slightly elevated deck in the buffer.

Vice-Chair Driscoll noted that the Conservation Commission's letter is dated March 7<sup>th</sup>. The last plan set was after that date. He asked if there were any substantial changes between the letter and the plan set.

Attorney Kieser stated that it looks like the plan set incorporates the wetland buffer plantings.

Mr. Ross explained there were minimal changes to the plan. The Conservation Commission conducted a site walk and there was some discussion on what they wanted on the plan. Those items have been added.

Chair Crapo pointed out that one of RCC's recommendations was a "formal planting plan as created and approved by the RCC." He asked if they have gone back since the letter with the plan. Would this be something that is still outstanding at this point?

Mr. Ross stated that they wanted to meet with the ZBA first. If the approvals are received tonight, a wetland permit will be applied for. It is such a small area that it would be a minimum impact expedited permit. He continued that they will work with RCC on a planting plan to get an approval for a building permit.

Attorney Kieser pointed out that RCC is going to have to stamp the plan and provide comment on the DES submission, which achieves the condition they've added. She suggested that if it were to be approved, the Board could add a condition for RCC approval of the plan in conjunction with the wetland permit application.

Attorney Kieser reviewed the criteria for granting the variances:

- The variance is not contrary to the public interest and the spirit of the ordinance is observed. The variances are required because the entire house is in the shoreland or wetland buffer. Anything that is done will require relief. Proposing a second-floor unenclosed deck and pervious patio serving a home that is already there, does not conflict with the ordinance such that it violates its basic zoning objectives, nor does it

- alter the essential character of the locality or threaten the public health, safety or welfare. This property is located amongst other developed lots, many of which have structures and impervious surfaces closer to the tidal marsh than what is here. The addition of the deck and pervious patio is not going to change the use of the dwelling. It complies with the yard setbacks and coverage requirements. It will have buffer plantings and drainage improvements. For those reasons, it doesn't alter the essential character of the locality nor threaten the public health, safety and welfare.
- Surrounding property values will not be diminished. The abutters on either side of the property are in support of the project.
  - Denial of the variance results in an unnecessary hardship. Special conditions exist on the property that distinguish it from other properties, given the location in the tidal buffer, the house and other things already on the lot. Expansion to the front would be in the front setback. Expansion to the sides would violate the side setbacks. A modest deck on the back of the house is entirely appropriate. Essentially, anything that is done in the area is going to require relief, given the location of the lot and the wetland zone.
  - Expansion restrictions exist to avoid overbulking or overburdening the lot. This will be an elevated deck with nothing underneath. Other improvements to the lot are to restore the wetland buffer and the functionality. There is no fair and substantial relationship that exists between the purpose of the ordinance and this specific application.
  - The proposed use is reasonable. It's a residential use in a residential zone. This is a small deck being proposed.
  - Substantial justice will be done by granting the variances. Given the slight expansion, the buffer improvements and the drainage improvements, there is no benefit to the public in denying an application that includes those things. The denial of the application to the applicants would be significant because they would not be able to have the added deck.

Referring to the plans, Member Piela asked if it is an open or covered deck.

Attorney Kieser replied there's a roof. The deck will be covered but open.

Chair Crapo stated that he thinks this will remove it from 35-14.F(4) because it's no longer "a deck, open porch or unenclosed area." It's a roof going off the back of the building with a porch underneath.

Attorney Kieser disagreed.

Chair Crapo asked if rain can fall right down through the asphalt from the deck to the ground.

Attorney Kieser replied it's not a coverage analysis issue. It's whether an expansion of the existing dwelling area, excluding not just decks, but also open porches and other unenclosed areas. This is an unenclosed area.

Chair Crapo pointed out that the existing septic system was installed in 1995. Operating plans are good for 20 years.

Attorney Kieser stated that this is not what DES says. It's a similar analysis in terms of what is being expanded. It's whether the sewage load or number of bedrooms is being expanded or not. She hasn't been able to find anything that has a time limit on the approval. She pointed out that 35-14.F(4) does not come into play at all if a valid operation and construction approval exists.

Chair Crapo stated that he thinks there's a time limit on that valid operation. This provision enforces an evaluation of the system to see if it's still in operation. At some point, the system has to be old enough that it's reasonable for the Building Inspector to request that it be evaluated for its operational functionality.

Attorney Kieser replied that in reviewing the regulation and its plain language, it does not impose a time limit on that valid construction operating approval. It doesn't say that it has to exist within the last 20 years.

Chair Crapo asked if it determines what "valid" means. He thinks valid could expire after a time.

Attorney Kieser pointed out that the regulation does not have a definition of "valid". If a term is not defined, a commonly accepted usage is used.

Mr. Ross stated that he's a licensed septic designer. As far as the State goes, there is no time limit. The State is very strict. They treat a site differently if it has an approved system or if it doesn't. It doesn't matter if it's a 2005 system or a 1985 system.

Vice-Chair Driscoll asked if there is any way the State puts on that it passes current code. If there is a "pocket" septic plan that was drawn in 1995, but it's not close to passing what is required today, is there any weight the State puts on this?

Mr. Ross explained that if a new system had to be designed, they would take that into account. That is why they are very strict with having an approved plan and an approved system. He noted that this site has an approved system and it has been well maintained. The State wouldn't have an issue.

Chair Crapo clarified that the system Mr. Ross is referring to is the actual installed system from 1995, not a "pocket" plan from 1995.

Attorney Kieser stated that she thinks the Building Inspector is directing them to have the system evaluated and to potentially make a shelf plan. She's saying that this requirement does not apply if there is a valid, operating and construction approval on file. It also doesn't apply if an expansion is proposed that has no additional dwelling space that is unenclosed.

Chair Crapo asked if this property is subject to the Pump Out Ordinance requirements for the Parsons Creek Watershed. Properties in that area are required to have their systems pumped out every two years. At that time, the company that pumps out the system gives a report on whether it is a working system or not. He asked if this is something that the applicant can provide, as this would satisfy whether the system is working or not.

Attorney Kieser pointed out that the property is not in the Parsons Creek Watershed. Also, if the Building Inspector was relying on the Pump Out Ordinance, he didn't say so. He referred the applicants to 35-14.F for new construction standards.

Chair Crapo asked when the system was last pumped.

**Mary Ellen Madden, applicant**, stated that they purchased the house three years ago. The septic system was evaluated at that time to be sure it was working properly. There was one repair made. Since that time, the system is pumped out every year. She pointed out that it's only she and her husband who live at the house.

Chair Crapo commented that potentially, this satisfies the Building Inspector's request anyway. The Building Inspector said it has to be looked at by a certified evaluator. Most pump-out people are certified evaluators. At the time they pump it out, oftentimes, they will make notes on whether the system is working properly. If they notice it is not working properly, they may have to report it.

Attorney Kieser stated that their obligation is to respond to the code provision that is cited. That is what they have done.

Vice-Chair Driscoll asked how many posts are proposed for the new design. He continued that he is interested in the details of the finished grade underneath the deck. He wants to be sure that anything going in that area washing towards the wetland after construction is not harming the wetland. Also, during construction, he would like to see a silt sock for erosion control.

Mr. Ross explained it's a pretty small deck. Most likely, five posts would be sufficient. Typically, on a site like this where it is open underneath, pervious stone would be put in for infiltration. If this gets approved, a plan would be made for the plantings and stormwater, which would be reviewed by RCC, the Building Inspector and DES.

Vice-Chair Driscoll asked if crushed stone would be the best material for underneath the deck.

Mr. Ross confirmed.

Vice-Chair Driscoll asked if the deck will be screened.

Mary Ellen Madden replied that there are no plans for screens.

Vice-Chair Driscoll asked if the applicants are okay with all RCC requirements, as they are written.

Attorney Kieser stated that she would suggest; “A formal planting plan is created and approved by RCC in conjunction with the NH DES submittal.” (RCC Requirement #4)

Attorney Kieser confirmed that the applicants are fine with all other RCC requirements.

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

**Mike Garvan, representing Rye Conservation Commission**, stated that RCC is more than neutral. They thought it was a good plan. With the 300sf deck and patio, it would be a maximum of 500sf, but it will all be pervious. In exchange, there will be 36,000sf of “no mow” area. The existing lawn is actually in the wetland, not just the buffer. There will be additional plantings, plus extensive planting in the southern area. RCC is okay with the project.

Chair Crapo asked if RCC views the roof area to be pervious.

Mr. Garvan replied that they did not pick up on the fact that there’s a roof over the deck.

Attorney Kieser noted that the calculations are incorporated into the plan. There is no relief required for it.

Chair Crapo noted that it’s not the same as a regular deck where the water can percolate down through the deck. The water is going to shed off to the sides of the roof.

Vice-Chair Driscoll asked if the applicant would be okay with a condition of “no screens or enclosure”.

Mary Ellen Madden confirmed.

Chair Crapo asked if they would be open to the submittal of the pump-out reports.

Mr. Ross stated the system has been pumped. He’s sure the applicants can get those slips and submit those. He knows that some companies will do the pump-out and there’s a separate more in-depth evaluation. He reiterated that it has been pumped out. If there is a condition to submit the most recent slip from the latest pump-out that would be fine.

Hearing no further comments, Chair Crapo closed the public hearing at 7:48 p.m. He asked the Board if they want to address the septic issue under the administrative appeal. He noted that the question that has to be answered for the administrative appeal is whether there has been an error in any order, requirement, decision or determination by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16. If it’s found that the letter was in error to that section applying, then it would essentially not be required under the variance part. It would be saying that 35-14.F doesn’t apply, so they wouldn’t need a waiver. If

the appeal is denied, the Board can still evaluate the relief from the building code. The question for relief is whether enforcement of that specific provision would manifest injustice and be contrary to the spirit and purpose of the building code and the public interest.

Member Piela suggested addressing the appeal first and then the relief. His opinion would be to deny the appeal. He believes the roof over the structure “dances” close to an expansion. He continued that if it was an open porch with no roof, he would say to grant the appeal. The roof “dances” closer to an enclosed structure than open. With that being said, he is not against granting them relief. He would be in favor of granting relief, which gets them to a porch, with the RCC recommendations. They would still get to the end result.

After some discussion, the Board came to the consensus to address the variance and requested wavier relief first.

Referring to the variances being requested; Vice-Chair Driscoll suggested the following conditions: 1) Conditions of RCC with the added “in conjunction with DES submittal” to number 4; 2) No screens or enclosure; and 3) Erosion control during construction.

Member Madden noted that one of the abutters is no longer an abutter. She also noted that she is not related to the applicants, as there may be a question because they have the same last name.

Vice-Chair Driscoll stated that he is not sure that this house had a ZBA sign on it.

Member Tuttle noted that the sign was up for the last meeting and remained up for about a week after.

Vice-Chair Driscoll stated this would solve the issue of someone buying an abutting home, as they could see the sign posted. Also, the home is right on the cusp. The homes on the right are closer to the marsh. The ones on the left are set further back. The reason he is okay with this getting closer is that it helps out with the health of the marsh behind the property. Also, it’s right there. He doesn’t want this to set precedent for the other homes next to it that they can continue to encroach on to the marsh.

Chair Crapo called for a vote on the waiver relief request from building code §35-14.F:

- **Would enforcement of §35-14.F do manifest injustice and be contrary to the spirit and purpose of the building and the public interest?**

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



Chair Crapo called for a vote on requested variances to §190-6.3.A and §190-3.1.H.(2)(a) & (g) with the conditions as listed by Vice-Chair Driscoll:

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

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

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

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

**3) Substantial justice is done?**

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

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

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

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

Chris Piela – Yes  
Jennifer Madden – Yes  
Patrick Driscoll – Yes  
John Tuttle – 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?**

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

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

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

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

Chris Piela – Yes  
Jennifer Madden – Yes  
Patrick Driscoll – Yes  
John Tuttle – Yes  
Shawn Crapo – Yes

**Motion by Patrick Driscoll to approve the requested variances for property at 1641 Ocean Blvd, 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, with the following conditions: 1) Adherence to the Rye Conservation Commission’s recommendations listed on their letter dated March 7, 2022, #4 would have the addition of “in conjunction with DES submittal”; 2) No screens or enclosures to be added to the porch, and 3) Sediment control to be used during construction between the construction area and the wetlands.**

**Seconded by Jennifer Madden. All in favor.**

**Motion by Chris Piela to grant waiver relief from Building Code §35-14.F.**

**Seconded by Patrick Driscoll. All in favor.**

Attorney Kieser withdrew the administrative appeal without prejudice.

- 3. Jack & Sheryl Barnes of 12 Elm Lane, Leetsdale, PA for property owned and located at 46 Pollock Drive, Tax Map 23.1, Lot 20 request a variance from §190-3.1.E & H for a proposed patio with the 100’ tidal wetlands and for steps within the 75’**

non-tidal wetlands. **Property is in the Single Residence Coastal Overlay District. Case #19-2022.**

**Note:** *Patrick Driscoll noted that he is neighbors with Jason Kindstedt; however, he does not feel he needs to recuse himself from the application.*

**Jason Kindstedt, Green Penguin Landscaping, representing the applicants,** noted that there's a freshwater marsh to the rear of the property. The patio and access stairs were designed for the 75' setback to the freshwater marsh. It was designed at 76' to give some "wiggle" room. After the Building Inspector reviewed the plans, he felt that the area is lumped in with the Fairhill Marsh, which on the far side has some saltwater tidal. Thus, the whole acreage falls under the jurisdiction of the 100' setback. Mr. Kindstedt continued that the project has been before the Rye Conservation Commission. The proposal is for approximately 450s.f. for a new stone patio. It will be installed in a permeable manner. There is currently a slope to the property where 7 to 8 fieldstone steps will be installed.

Mr. Kindstedt stated that it's not contrary to the public interest, as a patio is generally an acceptable use of a backyard space. The applicants are currently using the space as a firepit as it is, just on the lawn. They'd like to make a more permanent area. Due to the topography of existing ledge, the slope and setbacks of combustibles to the house, the firepit has to be pushed out. This would put it in the location of the current septic and the plan on file for the replacement system if needed in the future. This is the reason the patio is proposed in the location of the little plateau corner of the lot. He continued that the spirit of the ordinance is to prevent unregulated construction within the buffer. With the placement of the patio being on the upper edge, with only a portion being in the buffer and it being permeable, it would not cause any undue harm. Property values in the area would not be impacted, as it's close to the house. If it were to be pushed out further, it would be closer to the neighbor's property. A patio is an acceptable use for the property and isn't out of the ordinary. There are special lot conditions due to the slope, outcroppings and the situation with the combustible setback. Literal enforcement of the ordinance would create an unnecessary hardship. The applicants would not be able to use their yard in the way they would like. It would not make sense to have the patio away from the house and tucked off into the corner of the lot, as that would negate the use of the patio.

Member Piela asked if the patio is built on the slope.

Mr. Kindstedt explained that it's right on the cusp on the outer edge. Due to the existing leach field, about 2' to 3' would be terraced onto the slope. There will be boulders on the outer edge to keep a level surface. He also explained there is room with the combustibles to bring the patio a bit closer to the house so it would all be on flat land; however, it would then be on the edge of the leach field. If the patio were to be on the other side, it would be too close to the property line. The applicants are agreeable to the conditions from the Conservation Commission. There will be a 5' strip of native ground cover that will fill in along the water line, so there will be no lawn in that area. From the base of the steps to the water, on both sides, it will only be mowed at a maximum of three times a year, so it will remain in native conditions.

Member Driscoll asked if there was a discussion with the Conservation Commission on how the stairs will be built.

Mr. Kindstedt confirmed. Best management practices of silt socks and silt fence will be used. Low PSI ground pressure equipment will be used. Everything will be coming in off the driveway side on plywood and coming down the slope. The work will be done from the slope up. Construction disturbance will be limited to the space actually being constructed.

Referring to the Fairhill Marsh, Member Madden stated that it doesn't really look connected.

Mr. Kindstedt stated that there seems to be a bit of a gray area of whether it's separate or together. That was one of the discussions with RCC on the site walk. They felt whether it was or not, it was minimal impact on the 100' setback and they were okay with it.

Chair Crapo noted that the way the notice reads its "for steps within the 75' non-tidal wetlands". On the plans, it looks like the step does not approach the buffer.

Mr. Kindstedt explained it was originally designed at 76' so there is 1' to the buffer setback. He pointed out that the letter also says "pavers" and the patio will actually be bluestone. It will still be permeable. None of the construction is going to be in the 75' buffer.

Vice-Chair Driscoll stated that he hasn't heard of a bluestone patio being permeable.

Mr. Kindstedt explained that what defines a permeable is the base and the joints. The base is on an open-graded versus gravel. It's all going to be built on a ¾" base stone. The joint sand is EASY Joint which meets the permeable percolation rate. Technically, the paver itself is not permeable because it's solid concrete. It's the system that it's built upon that makes it permeable.

Chair Crapo opened to the public for comments.

**Mike Garvan, RCC Member**, stated that it's a unique lot. The patio is going on a ledgy knoll that runs steeply towards the wetland. He thinks they've done the best that they can in situating the patio. It's beyond the 75' but still within the 100' buffer. They could really not have done anything to get it out of the 100' buffer. It's well designed. The fact that they are going to put in a 5' depth of plantings, where there isn't anything right now, will go a long way in providing mitigation in this area. Plus, they are going to reduce the mowing, which will also mitigate any runoff coming down the ledge.

Hearing no further comments, Chair Crapo closed the public hearing at 8:27 p.m.

Member Madden commented that she has no concerns. It's a beautiful lot. They are doing a really nice job of incorporating it with what's there.

Referring to the RCC letter, Member Piela asked if they are going to strike #3 that addresses the 85% survival rate.

Chair Crapo stated that it's reasonable to leave it in. In the past, the Board has questioned who has the authority to revisit the site and follow up. The Board can only grant the Building Inspector permission, who would delegate it to the Conservation Commission to follow up.

Vice-Chair Driscoll noted that he appreciates RCC's well written and easy to implement letters on the recent applications. Clearly RCC went out to the site and did a lot of work. The letters are written in a way that makes it easy for the Board to implement and include them in the conditions.

Chair Crapo reviewed the proposed conditions: 1) Adherence to RCC's recommendations #1-3 on their letter dated April 10, 2022; 2) Follow best practices for erosion control and work within the 75' non-tidal wetlands.

Chair Crapo called for a vote on requested variances to §190-3.1.E & H:

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

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

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

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

**3) Substantial justice is done?**

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

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

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

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

**Chris Piela – Yes**  
**Jennifer Madden – Yes**  
**Patrick Driscoll – Yes**  
**John Tuttle – 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?**

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

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

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

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

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

**Motion by Chris Piela to approve the application of Jack and Sheryl Barnes for property owned and located at 46 Pollock Drive for a variance from §190-3.1.E and H for a proposed patio within the 100' tidal wetlands and for work within the 75' non-tidal wetlands with the conditions articulated in the Rye Conservation Commission letter dated April 10, 2022**

**including a fourth condition that best practices for erosion control measures to be implemented during construction.**

**Seconded by Jennifer Madden. All in favor.**

- 4. One Locke Road, LLC for property owned and located at 1 Locke Road, Tax Map 8.4, Lot 82** requests an administrative appeal from the Building Inspector's April 4, 2022 denial letter which stated a driveway permit was required. **Property is in the Single Residence and Coastal Overlay District. Case #20a-2022.**
- 5. One Locke Road, LLC for property owned and located at 1 Locke Road, Tax Map 8.4, Lot 82** requests variances from §190-6.3.A for expansion of a non-conforming structure; from §190-3.4.E for front dormer height of 32.60', rear shed dormer height <35.42' and rear addition ridge height of 34.42' where 28' is allowed; from §190-2.3.C(3) for front porch drip edge 30.23' from the front boundary where 40' is required; from §190-2.3.C(2) for a pervious patio 17.1' from the side boundary where 20' is required; from §190-2.3.C(1) for a pervious patio 16.73' from the rear boundary where 30' is required. **Property is in the Single Residence and Coastal Overlay District. Case #20b-2022.**

**Note:** *Attorney Phoenix noted that he has been approached by Jennifer Madden to do some work for her personally. He has no question about her ability to be unbiased, fair and impartial in deliberating on this case. He wanted to disclose that he will be having a working relationship with her in the near term. Member Madden did not feel a need to recuse herself from the application.*

**Attorney Tim Phoenix, representing the applicant,** spoke to the Board. He noted that he is not sure they are properly before this Board on the Building Inspector's driveway permit requirement. After this was filed, it occurred to him that it's part of the Planning Board Regulations. The Planning Board reviews driveway permits. If a driveway permit was denied, it wouldn't be going before the Board of Adjustment. He continued the reason it was brought was because the Building Inspector said a driveway permit was needed because the surface is being changed. However, the driveway dimensions and location are not changing. Attorney Phoenix stated the he is willing to withdraw that and deal with the Building Inspector or DPW.

Chair Crapo stated that part of it would be the wording of the driveway section in the Planning Board's regulation and whether it says appeals of that section have to go to the Planning Board. Otherwise, his take is that it was the Building Inspector's decision. The way the town ordinances read is if a decision of any town official is being appealed, it would go the Zoning Board of Appeals.

Planning/Zoning Administrator Reed explained they are appealing the Building Inspector's letter, which would come to this Board. However, the RSA states that the Planning Board has the jurisdiction for driveways. Attorney Phoenix is willing to withdraw the administrative appeal

because he's going to go to the DPW Director anyway. If the DPW Director denies it, then it would go to the Planning Board.

Attorney Phoenix stated that his working knowledge is that administrative appeals to the Zoning Board are those that are related to the zoning ordinance. He noted that the Board can rule on it or not. However, the driveway has been there for decades and is not moving. He pointed out the driveway regulations are in the Land Development Regulations, not the Zoning Ordinance.

Chair Crapo stated the administrative appeal can either be withdrawn or continued for a month.

Attorney Phoenix replied that if it is up to the Board, he would like a decision on it. (He pointed out the location of the driveway on the existing conditions plan and on the proposed conditions plan.) He pointed out that the flare of the driveway is the same. It's just going to be changed to a pervious material. He continued the permit requirement for the driveway has to do with the location and its width where it meets the street. This is a prior non-conforming condition that's being converted from an impermeable to a permeable in the same location. It's his position that relief is not needed for this driveway.

Attorney Phoenix continued that 1 Locke Road is on a private road. There is an existing four-bedroom home and a detached garage that doesn't meet the right-side setback. The front setback requirement is 40'. It's between 39' to 40' to the existing home. The home is 35.42' high, measured from the center as required. The existing back patio doesn't meet the side and rear setback. The proposal is to add a farmer's porch to the front of the home. That is primarily 35' from the front line. It's slightly closer in the corner because the road curves. That corner is 31.5' and the rest is about 35'. The proposal also includes an expanded patio inside the existing wall. What is being built doesn't meet the requirements for the rear and side setback, but it's further away than what's already there. He pointed out there's a 35.5' roof peak. The tops of the proposed doghouse dormers are above 28'. The tops are above 25' but are lower than the top of the roof. Dormers are being put in where they properly connect to the floor and ceiling, so that's where they have to go. He noted that nothing is taller than the existing roof, which already exceeds 35'.

Attorney Phoenix reviewed the relief being requested.

Vice-Chair Driscoll asked if anything new above the 28' in height blocks any of the abutters' views.

Attorney Phoenix noted that in the front, for anything new above 28', behind it is another roof. He continued that everything is attached to the main house. He doesn't see how anyone's view is going to be taken away.

**Jason Poole, contractor**, explained that the house to the left has a long driveway and it goes all the way out to the marsh. The house to the right is closer to Straw's Point and sits closer to the road. This does not block their view, left or right. The small house that is currently behind the



house is owned by the same family. The house is a ranch so their view is already blocked by trees and bushes that already divide up to the property. Nothing will be affected, in terms of the addition being put on the house, from a view standpoint for any of the surrounding neighbors or the direct abutter behind, which is owned by the same family.

Vice-Chair Driscoll stated that in looking at the building, he sees the dormers on the front as needing to be at the height they are proposed so they function with the living space inside. He sees the gable dormer from the rear tying into the roof line with the windows needing to be that height. He doesn't have any plan view of the second floor. That's why he was asking about the 18" or 19". What's the hardship that requires a variance for that particular portion?

Mr. Poole stated that this is actually the third floor and that is ceiling height. On the third floor, there's a small flat ceiling and then it angles down on the sides to meet the roof edge. The dormer height creates the flat ceiling in the dormers and in the rear dormer to give them a more open feeling to walk to the edge of the third floor.

Vice-Chair Driscoll asked if the dormer pitch can be reduced to get below or at the 28'.

Mr. Poole replied not on the backside as the windows would be lost. In regards to the addition over the porch, it was kept at that height in order to keep the floor height the same, in order to be able to walk through that area with a flat ceiling.

Vice-Chair Driscoll noted that the ceiling is above the door going out to the upper porch. If it's a 6.10' door, the ceiling is another 6' above the casing of the door. He asked if it could be made to a lower pitch.

Mr. Poole replied it technically could be made to a lower pitch. The architect was trying to match the same pitch on the roof for esthetics. He noted that they could technically lower the pitch to get to the 28' mark.

Attorney Phoenix stated it's important to note that it all has to tie together esthetically. It would make sense that the roof pitches would match. It seems like it would be harsh to say to get everything below 28' when there is already a 35' roof.

Member Madden asked the age of the house.

Attorney Phoenix replied about 100 years old. The house is what it is and is located where it is. He thinks its not hard to agree that this is a tasteful design. A lot of the homes in this area have been redone over the years. He reviewed the criteria for granting the variances:

- The variance is not contrary to the public interest and the spirit of the ordinance is observed. The purpose of the ordinance is to lessen congestion in the streets, provide safety from fire, promote health, adequate light and air, and prevent overcrowding of land. The proposal moves the garage so it meets the right-side setback. It's reasonable to add a farmer's porch for esthetics and use. The

farmer's porch has to be put where the house is located, which creates the need for the front variance. The dormers speak for themselves, as they are tied into the existing roof pitch.

This is a tasteful, esthetically pleasing renovation that maintains the character of the century old home, while giving it modern living with nods to the past. It's not going to change the character of the locality.

It's not going to threaten the public, health, safety or welfare. Whatever condition the house is in now is probably not fully to today's codes. To do these renovations, it will have to be brought up to code.

- Granting the variances will not diminish surrounding property values. These improvements will increase the value of this property and will help the value of other properties in the neighborhood.
- Denial of the variances would result in an unnecessary hardship. This is an unusually shaped lot with a curved front lot line, which creates special conditions. The existing home and garage violate existing setbacks. Any porch or alteration will require relief, if it is within the existing retaining wall.
- Setback and height restrictions are to be sure there is adequate light, air, space and to avoid overbulking or crowding of land. Given the increase to the right setback, and the fact that everything is within the perimeter of the house, except the farmer's porch, which is still 30' away from the lot line, and the rear is all tied into the house based on its size and can't be seen by anyone, there's no reason to apply the strict requirements of the ordinance. Virtually, any addition to this house within the existing roof line is going to require these variances because of the height of the existing building.
- The proposed use is reasonable, as it's a residential use in a residential zone.
- Substantial justice will be done. There's no harm to any abutter. There is no reason to deny the variances for the benefit of the public. Yet, if any are denied, the applicants will not be able to do these reasonable and tasteful renovations to their home.

Vice-Chair Driscoll commented there is only one two-bedroom home in the back. The owners of this property also own a separate lot that is the abutting lot to the rear. That lot is the most effected by this. He asked if there are multiple lots in the back.

Mr. Poole explained that currently there are two residences on this lot. In the center is its own lot that was subdivided off years ago that has a cape style home, which is owned by this family. There are three residences right in a line that make up this property. The homes are all accessed by the driveway that comes around the far side of the house.

Chair Crapo asked if the farmer's porch will be 5' deep. He noted that it's right up against the paved driveway circle, so there's only so much room.

Attorney Phoenix confirmed the depth is 5'. He pointed out this is similar to an application from last month's meeting for a farmer's porch that was 5' wide.

Chair Crapo commented that with this proposal there could be a car right in that area. He asked how people will access the porch. It looks like the porch goes out right into the circle. He asked if there is enough room for a step.

Vice-Chair Driscoll noted that there are two risers.

Chair Crapo commented that it looks like it's hovering 2' above existing grade. There has to be a transition.

Attorney Phoenix noted there is still 10' to 12' of driveway.

Chair Crapo asked where the existing grade is measured from. By the Town's definition, it's to be measured from the center front wall, which is basically where the steps would be.

Attorney Phoenix stated that the question is whether the measurement of the height is based upon the center of the existing building or proposed building.

Chair Crapo replied that it's the center of the front wall at the time of application.

**Paige Libbey, Jones and Beach Engineering**, noted that the architectural plan is off from what was calculated. The height is calculated from the grade in front of the house to the roof peak.

Alternate Chororos asked about total impervious coverage. She pointed out there's a lot of impervious coverage with the driveway and there's an additional driveway being added. There's the round driveway and a lot of building coverage. She asked the intentions with the driveways, in terms of materials.

Attorney Phoenix replied the proposal is for impervious pavers. The purpose of that is for esthetics but also because impervious surface to the house is being added. This is so the existing impervious would not be exceeded.

Chair Crapo opened to the public for comments. Hearing none, he closed at 9:20 p.m. He asked the Board their thoughts on the administrative appeal.

Vice-Chair Driscoll stated that he likes the idea of continuing it because this is not going to be a point once it goes to DPW. If it is continued, it's not going to stop them from starting the project if they need to.

Chair Crapo opened to Attorney Phoenix.

Attorney Phoenix read from the driveway regulations, Appendix E of the Land Development Regulations. He explained that the reason he asked for the Board to consider it and approve it, is because if a determination is made after tonight and the Board did need to hear it, it would have

to come back and they wouldn't be able to get started. If the Board did approve it, but didn't have jurisdiction in the first place, it means nothing anyway.

Chair Crapo commented that he thinks it should be continued.

Attorney Phoenix agreed to continue the appeal. He feels that the Building Inspector is wrong, as this has been a driveway that has existed for years. Also, it's of the same size and dimensions, and is a private road. He made a formal request to continue the administrative appeal for the driveway for one month.

**Motion by Chris Piela to continue the administrative appeal for the property located at 1 Locke Road for the Building Inspector's April 4, 2022 denial letter for a driveway permit to the June 1, 2022 meeting. Seconded by John Tuttle. All in favor.**

Chair Crapo reclosed the public hearing at 9:25 p.m.

Member Piela stated that the roof height for the addition is 18" over 28'; however, it is matching the pitch. It's still less than the 35.5' main house peak. He feels like it would be a bit of a hardship to make them lower that particular roof peak 18" and it may look odd. He can consider this a concession based upon architectural style and reasonableness.

Vice-Chair Driscoll stated the he wants to be sure that anything that gets a variance, as far as height, is absolutely necessary. He understands that having the other gables tie in is absolutely necessary. It's needed for head height in the rooms. It's needed to match the existing. In looking at Window K, he doesn't think that is necessary. The hope is that it's actually 2.6' below that and it becomes a non-issue. He doesn't want it to go up; however, it can't because it's per the plans submitted. He's very on the fence about it. This will probably require an as-built. The Building Inspector has been making sure that everyone is "spot on" to the ridge. He cautions the applicant to watch the ridge cap and everything else.

Member Tuttle commented that he likes the proposal.

Member Madden stated that she is good with the roofline. She thinks it's necessary to retain the historic character. She thinks the esthetic would be a bit off if the pitch were to change.

Chair Crapo noted that he has a slightly different perspective on the height. He thinks there should be a condition that it can't be any taller than it is and they are only approving what is being asked for in terms of total elevation wise. The Coastal Overlay is 28'. Part of the premise on that was so views for people are protected and it didn't look like a domineering wall along the coast. He pointed out that this is an old home and it's already at its height. In this Straw's Point Community, the pitch lines are in keeping with this neighborhood and several of the homes down there are over 28' due to their construction style. Because of its location, view wise to neighbors, he doesn't see that the 1' to 1.5' is going to affect it. He can support the height in this case, as it is a unique situation to other homes in the overlay zone. As far as moving the garage,

it makes a lot of sense. This is at the higher point of the yard. Any pervious conversion makes sense, as this house is at the higher elevation.

Vice-Chair Driscoll suggested the condition of the secondary ridge being the lesser of nineteen and five-eighth inches above the 28' height or scaled off the submitted plans. Or scaled off the current plans off grade.

Chair Crapo called for a vote on requested variances to §190-6.3.A; §190-3.4.E; §190-2.3.C(3); §190-2.3.C(2); and §190-2.3.C(1):

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

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

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

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

**3) Substantial justice is done?**

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

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

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

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

**Chris Piela – Yes**  
**Jennifer Madden – Yes**  
**Patrick Driscoll – Yes**  
**John Tuttle – 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?**

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

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

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

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

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

**Motion by Patrick Driscoll to approve the variances for One Locke Road, LLC for property owned and located at 1 Lock Road from §190-6.3.A for expansion of a non-conforming structure; from §190-3.4.E for front dormer height of 32.60', rear shed dormer height <35.42' and rear addition ridge height of 34.42' where 28' is allowed; from §190-2.3.C(3) for front porch drip edge 30.23' from the front boundary where 40' is required; from §190-2.3.C(2) for a pervious patio 17.1' from the side boundary where 20' is required; from §190-2.3.C(1) for a pervious patio 16.73' from the rear boundary where 30' is required, with the condition that the secondary ridge being the lesser of nineteen and five-eighths inches above 28' or as scaled off submitted plans. Seconded by Chris Piela. All in favor.**

- 6. Robert Dietrich/CVHR, LLC of 107 Longmeadow Road, Greenville, NC for property owned and located at 6 Richard Road, Tax Map 5.2, Lot 154-01** requests variances from §190-6.3.A/B for construction on non-conforming lots; from §190-5.0.C for one space parking within front boundary; from §190-2.4.C(1) for a house 20.17' and patio 19.94' from the rear boundary where 24.81' is required; from §190-2.4.C(2) for pervious patio 11.73' from the right side boundary where 20' is required; from §190-2.3.C(6) for depth of lot 115 +/- where 200' is required; from §190-2.4.C(6) from 114'/141' frontage where 150' is required. **Property is in the General Residence, Coastal Overlay District. Case #21-2022.**

**Attorney Tim Phoenix, representing the applicant,** presented to the Board. He explained that the property is at the corner of Perkins Road and Richard Road. The effect is that it has two front yards; therefore, two larger front yard setbacks of 30'. There's 141' of frontage on Richard Road and 114' on Perkins Road. Approximately, 526sf of the roadway, the travelled portion of the road, encroaches onto the lot. He pointed out that there are a couple of sheds on the lot. One of the sheds doesn't meet the setbacks. There's a gravel pad that doesn't meet the setback. There's another shed that is going to stay with the other shed being taken out. The area between the fence line and the actual property line has been occupied by Mr. Dietrich and his predecessors for many years.

Attorney Phoenix continued that the Building Inspector stated in his denial letter that he wanted documentation that this is a lot of record. Attorney Phoenix noted that he has submitted the subdivision plan of 1953 which created the lot. He also references the 1953 zoning ordinance. This subdivision was approved on March 9, 1953 and the ordinance was passed on March 10, 1953, so it predates the ordinance by one day.

Chair Crapo asked if any of the requested relief has to do with the shed that crosses the property line.

Attorney Phoenix replied no. He pointed out that it's a preexisting shed. He is not sure how long it has been there or how it got to that location.

Chair Crapo stated that he wants to be sure that they are not doing anything tonight that condones the shed being over the property line. Whether or not that property line changes in the future, is not before the Board.

Attorney Phoenix replied it is not before the Board, but he thinks it is worthy of consideration. There has been some discussion with the neighbors about whether they would consider granting a permanent easement for the use of the property. He has an email dated April 27<sup>th</sup> from Tom Leonard (abutting property owner's son) stating that he would support a recorded easement. Attorney Phoenix continued that more recently, within the last week, Mr. Leonard contacted him by email and said that his mother doesn't want him to speak for her anymore and she would like to speak for herself. Mr. Leonard is no longer representing her interest. Attorney Phoenix reiterated that it's worthy of consideration. He does not have approval for an easement. In

considering the area, the setback is met within less than a half a foot on one side and the rest meets it. Visually, it appears that the setback is met and if there was an easement it would be even stronger. However, he cannot say that the neighbors would be willing to grant an easement.

Attorney Phoenix noted that Mr. Leonard wasn't too happy about Mr. Corbin being able to put the shed up. A building permit was given years ago.

**Ernest Corbin, 10 Richard Road**, stated that the shed is on blocks. It's not a permanent structure. It was built in 1987.

Member Madden clarified that Mr. Corbin sold the lot to Mr. Dietrich, who purchased the lot with the shed encroaching on the property.

Mr. Corbin replied that he didn't know that. He has been in this area for 36 years. It was a shock to find out that the property line went through the shed.

**Erik Saari, Altus Engineering**, explained there is a granite bound right at the corner; however, it's not the property corner. There's also a fence going along the edge, so it looks like it's part of the property.

Chair Crapo stated they have to go by the property line as it exists right now.

Member Madden asked Attorney Phoenix to speak to the note in the denial letter for the 25' front yard deed restriction.

Mr. Saari explained there's a 25' front setback in the deed restriction and a restriction that the house has to cost more than \$7,000. The deed restricts the building from being any closer to the right-of-way.

Attorney Phoenix noted there will be a new pervious driveway. All other impervious surface, with the exception of the existing shed, will be removed. A 1652sf footprint home is proposed with two-stories and four bedrooms, which will be served by municipal water and sewer. One shed will remain and the rest will come out. He continued there were questions about whether certain relief was needed. The dwelling coverage is 15% for dwelling coverage and 30% overall in the coastal zone. The proposed dwelling coverage is 14.95% and 20% overall, so it complies. The rear yard is 24.81' is required. The new rear yard setback is going to be 20.17' to the house and 19.94' to the patio. He noted that the look is closer to 30'. The right yard setback is 20' and the existing shed is about 15'. The patio will be 11.73' to the right yard setback. He does not think they need the variance for the depth of the lot because the lot has been there since 1953. He pointed out that the house in 1953 would not have met the rear setback, which was 24', but it would have met side at 15', front at 20', area of the lot at 10,000 and frontage of 100' at the time. He continued that there's off street parking. A variance is being requested because a space cannot fit out of the front yard setback. He noted that the lot was approved in 1953, so it's a preexisting, nonconforming lot. The way Rye has always treated these is if there's a preexisting,



nonconforming lot with a house on it already, it doesn't need a variance for the lot. If there is not a house on it, a variance for the lot is needed.

Chair Crapo asked how they are going to deal with the water that's going to be displaced from the fill that will be needed to bring it up to building height.

Attorney Phoenix commented that the Building Inspector will probably require a stormwater management plan.

Mr. Saari explained that the patio and driveway are pervious. Right now, there is a culvert in the front yard that goes out to the marsh. Once they get the two pervious surfaces plus the drip strips around the edge, it will handle most of it.

Chair Crapo asked if the lot is going to have to be brought up.

Mr. Saari replied that they haven't gotten that far yet.

Chair Crapo stated they should have that information before proposing a house that could possibly shed water onto the neighbor's lots. He noted that this lot is in a really wet area. It's a big unknown as to whether or not the house is even able to be built. It seems premature to come in for a building plan not knowing what the drainage on this lot is going to be.

Attorney Phoenix replied that he understands the comment. The rule is that the volume of water can't leave the site in a greater way than it does pre-construction. Although there will be a house, there's a fair amount of impervious surface already with the existing shed and the compacted gravel areas. He is asking the Board to review the variance requests in front of them.

Mr. Saari stated that he's confident he can make the drainage work.

Chair Crapo asked if the lot is outside the buffer to the wetlands across the street.

Mr. Saari confirmed the entire lot is outside the buffer.

Chair Crapo commented that potentially, there may need to be a variance to put fill in and for raingardens, as a retention pond can be a structure and therefore, may need setback relief. There's a potential the dimensions could change. He continued that he is in favor of continuing the application to get a stormwater management plan because it could change the whole layout. In this area, these lots are very sensitive and very technical with wetlands. He pointed out that this lot is not a big, high and dry lot. This lot is already discharging water into another lot in the neighborhood. Filling in this lot with a foundation is going to change the dynamics. He can't go forward with an approval.

Vice-Chair Driscoll stated that it would be cleaner if it's continued and has one approval.

Attorney Phoenix requested a continuance to the next meeting. He pointed out that the Building Inspector's letter says that he wants a stormwater management plan. Attorney Phoenix stated that the reason the continuance might make sense is because it's not a large building envelope. There's a likelihood that something is going to happen in the setbacks because that's all that's left. If there's a determination that a structure is going to be in the setback, it would make sense to put everything together. He commented it would be helpful to hear the Board's questions and whether they are comfortable with the proposal as it is.

Chair Crapo noted that they should check on the end of the driveway as it relates to the new driveway ordinance.

Planning/Zoning Administrator Reed suggested going to the DPW for the driveway cut. She thinks he's going to deny it because it's within 100' of a cross section. It would then have to go to the Planning Board.

Vice-Chair Driscoll noted that where the driveway is located is going to tie into the location of the raingardens.

Chair Crapo commented that if there are no water issues that dictate a different house, he thinks it's a decent proposal for that lot. He just thinks there may be some water challenges.

Member Piela stated he does not have a problem with the house or the general plans. He doesn't even have an issue with the placement of the house on the lot.

Speaking to Mr. Corbin, Chair Crapo asked if there are any concerns.

Mr. Corbin stated that he doesn't think there will be any issues.

Vice-Chair Driscoll commented it fits the lot well.

Referring to the shed in the back over the property line, Member Tuttle stated that he knows it's already there, but he's seen the Board have sheds removed when putting up a new structure.

Attorney Phoenix replied that they would be opposed to that because it's a 30- or 40-year preexisting condition.

**Motion by Shawn Crapo to continue the application for 6 Richard Road to the June 1, 2022 meeting. Seconded by Chris Piela. All in favor.**

### **Adjournment**

**Motion by Chris Piela to adjourn at 10:20 p.m. Seconded by Jennifer Madden. All in favor.**

Respectfully Submitted, Dyana F. Ledger