

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

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

***Members Present:*** Chair Shawn Crapo, Clerk Chris Piela, Jenn Madden, John Tuttle and 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 7:14 p.m. and led the pledge of allegiance.

### **II. BUSINESS**

- **Approval of June 1, 2022 Meeting Minutes**

**Motion by Chris Piela to approve the minutes of June 1, 2022 as amended. Seconded by John Tuttle. All in favor.**

#### **Continuations:**

**Motion by Chris Piela to continue the applications by Mark Troy for 919 Ocean Boulevard, as requested. Seconded Sandra Chororos. All in favor.**

### **III. APPLICATIONS**

- 1. 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 parking space 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 a 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) for 114'/141' frontage where 150' is required; and from §190-2.4.C(3) for underground drainage pipes 9.9' from Richard Road boundary and 13.8' from Perkins Road boundary where 30' is required. **Property is in the General Residence, Coastal Overlay District. Case #21-2022.****

**Attorney Monica Kieser, representing the applicant,** presented to the Board. She stated that the case was presented in May by Attorney Phoenix and it was continued at that time. There

were a couple of concerns, primarily around potential stormwater issues. The applicant took the opportunity to continue and develop a full stormwater management plan. She noted that the stormwater management plan and all the calculations are a way to technically demonstrate, to the satisfaction of the building department and the Board, that the stormwater is managed on the lot. Part of the stormwater management plan involves a couple of drainage pipes that have outlet areas in the front setback. Given that, a request for front setback relief was added to accommodate the two drainage outlets. Attorney Kieser noted that the other reason for the continuance was for the driveway waiver, which has since been submitted to the Planning Board and will be heard on July 12<sup>th</sup>. The driveway permit is currently in administrative denial for failure to be more than 100' from an intersection. An application has been submitted to the Planning Board on how the driveway meets the criteria for the waiver. She understands that they have DPW Director Rucker's support and it's expected that the waiver will be approved. She commented that the applicant would be fine if the Board wanted to add this as a condition.

Chair Crapo pointed out that the whole layout of the plan relies on the driveway plan. The house, as it is designed, cannot be done if the driveway has to be in a different location and the plans change. He asked what the plan is for the shed that is to remain, but is half on someone else's property.

Attorney Kieser stated that her understanding about the shed is that it's not much different than it was the last time. The shed is going to stay and it's not being touched. The shed has been there since the late 1980's and that area has been occupied for a very long time. The son of the woman next door was amendable to providing an easement for that use to continue. However, the mother had a change of heart and didn't want the son speaking on her behalf on that issue. Ms. Leonard spent a fair amount of time speaking with the Planning Administrator. The applicant has not heard from her since. Attorney Kieser stated that the applicant's position is that this cannot factor into the Board's decision. The reason why is because the shed has been there and is not moving. Things that are being done now are not going to affect the shed. She pointed out that the applicant was not directed to get relief for the shed previously. The applicant is requesting rear setback relief for the home, side setback relief for the patio and front setback relief for the drainage pipes.

Chair Crapo stated that one of his concerns is if the Leonards force this owner to remove the shed, which is in the rear setback, he doesn't want an argument that the applicant can move it right to the property line because it's already in the setback.

Attorney Kieser stated that her understanding is that a building permit was issued for the shed.

Chair Crapo commented that if they move the shed, it doesn't mean they can occupy that space with a future shed.

Attorney Kieser stated that if they were going to move the shed to some noncompliant location, it would be a problem.

Chair Crapo pointed out that this lot was owned by the other abutter on the corner, who currently accesses and uses this lot as a driveway to get his cars to his other house. He has a concern that this property will cause another to be noncompliant.

**Eric Weinrieb, Altus Engineering**, stated that he doesn't know if that other lot has a driveway or not, but that is a standalone lot. There are two separate lots and that's a preexisting condition and probably predates parking being required on the property.

Chair Crapo pointed out that the abutting lot's access is right through the area where the permeable paver patio is proposed.

Attorney Kieser explained that the abutter doesn't access his home. He just happens to park in front of the shed. On the existing conditions plan, it shows a shed, gravel drive and gravel pad. The gravel drive goes around the first shed and terminates at some stepping stones. The abutter does not turn into a garage in that area. The gravel drive doesn't continue to connect to his home. She pointed out that the abutter was at the previous meeting to support the application.

Chair Crapo noted that currently it's being used as one major lot and now it's going to be changed. The abutter's lot is being made less nonconforming by doing this.

Attorney Kieser replied that she disagrees because it's not a subdivision. If it were a subdivision, there would be an obligation to cure nonconformities created as a result of the subdivision. She pointed out they were not directed to seek relief for anything on the abutting lot because that lot is not before the Board.

Mr. Weinrieb stated that regardless of whether or not this property is redeveloped, as of the sale of the property, he no longer has rights to that driveway.

Member Chororos asked where the one parking space in the front boundary would be located.

Attorney Kieser explained there are two fronts; one on Perkins and one on Richard. The request is for parking in the front setback. There's a parking space in the garage and a parking space on the Perkins Road side.

Member Piela asked about the swales on Sheet C-3.

Mr. Weinrieb explained there will be a couple of swales. In front of the house, the roadway grade is elevation 19 and the body of that swale is elevation 18. It will just be a small depressed area. The one in the back is similar, as it's elevation 20 at the existing shed and drops down to 19. It's a depressed area to collect the water and slow it down. The permeable surfaces for infiltration will reduce the runoff, as well as the volume on the site. He further explained the drains will tie into the existing drain that is maintained by the Town.

Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 7:40 p.m.

Member Piela noted that if the variances are approved, they still have to obtain a driveway permit. They cannot get a building permit without a driveway permit.

Chair Crapo suggested a condition on obtaining a driveway permit and a condition “as presented”.

Referring to the shed, Member Piela stated that his concerns isn’t that it’s existing, it’s that it can’t move because there is a water retention swale right in front of it. If the shed is pulled in towards the house to get it off the Leonard’s property, it would be in that swale.

Mr. Weinrieb pointed out that if the shed is moved, they would have to come back in for a variance and a new stormwater management plan. The only way it wouldn’t come back is if the applicant decides to tear it down and not replace it.

Member Piela commented he doesn’t know if this is enough for him to vote against the project. There’s certainly a limitation for where the shed can actually go. He continued that the concern about the Corbin property no longer having access to that driveway is well taken. He thinks that might be the Corbin property’s issue.

Chair Crapo noted it’s the building inspector’s issue.

Member Piela commented that the drainage plan makes sense.

Member Tuttle stated that he is thinking about the shed over the property line. He pointed out that his parents owned two lots next to each other and there was a condition that the shed be removed for approval of variances.

Chair Crapo stated that he’s not sure this case it at that point. He pointed out that they do not need a lot coverage variance. He opened to the public to ask Mr. Weinrieb if the shed has been factored into the stormwater runoff calculations.

Mr. Weinrieb confirmed, as well as the portion of the town road that’s on the private property. He also confirmed that the shed was included in the coverage calculations.

Chair Crapo stated that as it sits right now, it has its whole own set of issues. In the event they try to renovate or rehab the shed, that’s something the building inspector will have to deal with. He continued that he thinks it’s too much building and too much drainage manipulation to try and squeeze a building onto that lot. There’s too much going on with water on that corner to try to have the system successfully work.

Member Chororos asked if they are considering the variances collectively. She pointed out that there are a couple that she might vote differently if they're not as a collection.

Chair Crapo explained that oftentimes, the project is driven by all of them and it can't be done without all of them collectively.

Member Chororos expressed her concern that the depth of the lot is 115' where 200' is required.

Chair Crapo explained this is in an area where a lot of these are lots of record and were previously subdivided. Historically, they have not been deemed non-buildable because of the dimensions, as there was a previous subdivision. Speaking to Attorney Kieser, he asked if she sees that any of the variances should be voted on separately.

Attorney Kieser noted that no one has expressed any concern over the patio. The criteria are satisfied by the proposal for the residential use in a residential zone. The setback to the rear is directly related to the depth of the lot, which is a preexisting non-conformity.

Chair Crapo noted that all the setbacks are from the lot line on the plan that is represented, which goes through the shed and not the line where the fence is on the other side of the shed.

Attorney Kieser pointed out that there's also a deed restriction on the front for 25' with a front setback of 30'.

Chair Crapo called for a vote on requested variances to 6.3.A/B; 5.0.C; 2.4.C(1); 2.4.C(2); 2.3.C(6); and 2.4.C(6):

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle - Yes  
Shawn Crapo - No

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

**3) Substantial justice is done?**

Sandra Chororos – Yes

Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle – No  
Shawn Crapo – No

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle – No  
Shawn Crapo – No

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

Sandra Chororos – Yes  
Chris Piela - Yes  
Jenn Madden – Yes  
John Tuttle – No

Shawn Crapo -- No

**Motion by Chris Piela to approve the variance application of 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, as advertised, with the conditions of a driveway permit being issued and the plans remaining as presented on July 6, 2022, which are dated June 13, 2022. Seconded by Sandra Chororos.**

**Vote: 3-2 Opposed: John Tuttle and Shawn Crapo**

- 2. Alissa Bournival of 59 Woodland Road, N. Hampton, NH for property owned and located at 271 Harbor Road, Tax Map 8, Lot 50 requests variances from §190-6.3.A/B for demolition of an existing non-conforming home to replace with new; from §190-3.1.H(2) for a house 24.9', garage 46.3', deck 23.3', stairs 20.2', driveway 23.9', retaining wall 68.1', walkway 56.4', a KOI pond 19.0' and a generator pad 53.5' from the wetlands where 75' is required; and from §190-2.3.C(3) for a walkway and retaining wall in the 40' front boundary. Property is in the Single Residence District. Case #28-2022.**

**Attorney Chris Mulligan, representing the applicant,** spoke to the Board. He explained that the plan is to demo the existing structure on a non-conforming lot and replace it with a new home. Essentially, two flavors of relief are needed. Setback relief related to the 75' wetlands buffer is needed to site some of the improvements being proposed. Relief from the 40' front yard setback will also be needed, in order to site a new walkway and retaining wall. He pointed out that not only is the property non-compliant with regard to road frontage, it slopes significantly from the roadway to the rear of the property into the wetlands. The property is encumbered by the 75' wetlands buffer, which essentially swallows up the entire parcel. The existing improvements already violate the 75' wetland buffer. In many ways, what is being proposed will be an improvement. As it stands now, the existing detached garage is 12.5' from the wetlands. If the project is approved as presented, the structure would be pulled back and it would be 24' at its closest point from the wetlands in the wetland buffer. He noted that compliance with the wetland buffer is effectively impossible, given the configuration of the lot and where the wetlands are located. A site walk was conducted with the Conservation Commission. The Commission has presented their written opinion. What is being proposed will improve the wetland's function and have better stormwater treatment on the site. There will be a new modern septic design installed. Pervious pavers are proposed for part of the driveway that is going to be installed. He noted that at the site walk with the Conservation Commission, they expressed a concern about the proposal to site a KOI pond within the buffer. The applicant has agreed to remove the pond and take it out of the buffer.

Chair Crapo asked if it is removed from the plan or just out of the buffer.

**Alex Ross, Ross Engineering,** explained it's removed out of the 50' buffer. (He pointed out the new location on the plan before the Board.)

Member Piela asked if it's being moved inside the 75' setback.

Mr. Ross explained that the KOI pond was inside the 50' setback. The Conservation Commission wanted it outside the 50' setback.

Chair Crapo clarified that the KOI pond is going to move from where it is shown on the plan and to where the wording is on the plan for the propane tank.

Mr. Ross confirmed.

Chair Crapo explained there is a 75' setback, as well as a 100' setback. It was unclear as to which one of those was the legal setback issue.

Mr. Ross stated this concern was heard from the Conservation Commission. He noted that he walked the site with Soil Scientist Marc Jacobs. The hightide delineation was able to be mapped out. He pointed out that the green line on the plan represents the 100' setback from a hightide. Nothing is being proposed in the 100' setback. The red line on the plan is 250' from the hightide. Anything that is done in that setback requires a state shoreland permit.

Chair Crapo asked how the hightide is determined.

Mr. Ross replied that Marc Jacobs spent a lot of time looking at the soils and plants to determine what would grow in a saltwater environment. It's based on elevation, soil, and plant life. The controlling wetland on this site is the inland wetland, which has a 75' setback versus the hightide 100' setback.

Attorney Mulligan stated that because the property is burdened by wetlands to the rear and wetland buffers that swallow up a fair portion of the property, which pushes the building envelope forward, it drives relief for the front yard setback. All that's being requested in the front yard setback for structures is a new walkway and a retaining wall. The ordinance defines those as structures that would be subject to relief. In looking at the existing conditions plan, there is already an existing walkway and wall in almost the same place as what's being proposed. He noted that the request for relief is to replace an existing non-conforming structure with one that is moderately less non-conforming, which will result in a significant improvement to the wetlands that the buffers are there to protect. The lot coverage is being reduced slightly.

Mr. Ross pointed out that the coverages within the 50' buffer are listed on the site plan because this will be going to DES for a shoreland permit. Currently, there is an old septic and leachfield in the front, fairly close to the wetlands. What's being proposed is a brand-new system, which will have pretreatment where the existing system is just a standard system. The system will be moved as far as possible into the front area. One of the things that was discussed at the site walk with the Conservation Commission is having a planting buffer around the wetland delineation. A design for that has been submitted to the Board and will go to DES as well.

Chair Crapo stated that the existing walkway looks like it's flat going up. With regard to the proposed, at what point does the building inspector say it's 56.4'?



Mr. Ross noted that is the distance of the wetlands to the walkway.

Chair Crapo pointed out that the walkway cuts right through the 75' setback.

Mr. Ross noted that the walkway is just beyond the 50' setback. (He pointed out the location on the plan before the Board.)

Attorney Mulligan reviewed the criteria for granting the variances.

- The requests are not contrary to the public interest nor contrary to the spirit of the ordinance. The Board has to decide whether or not the variances would result in a substantial change to the character of the neighborhood or negatively affect the health, safety and welfare of the public. Neither of those are going to occur here. It's a residential project in a residential zone. The character of the neighborhood is not going to change at all. Health, safety and welfare is not negatively affected. In fact, this is an improvement to health, safety and welfare.
- Values of surrounding properties will not be diminished. This will result in a newer, code compliant, more valuable construction and will be an improvement to the wetlands.
- Substantial justice will be done. Any loss to the applicant by denial of the relief far outweighs any gain to the public. There's no way to comply with the setbacks. The existing structure doesn't comply with the setbacks. The proposal marginally improves the non-conformity.
- It's a unique property and a preexisting, nonconforming lot. It's almost entirely swallowed up by the 75' buffer. Those are conditions that are unique to this property that distinguish it from others in the vicinity. There is no fair and substantial relationship between the purpose of the ordinance and the relief being requested, given what's existing already violates the setbacks.
- It's a reasonable use, as it's a residential use in a residential zone. It meets all the criteria for granting the variances that have been requested.

Referring to the KOI pond, Chair Crapo stated that the relief that was advertised was 19' from the wetlands where 75' is required.

Mr. Ross replied the new distance is 51'.

Chair Crapo asked how the Board would get to yes votes on hardship for the KOI pond.

Attorney Mulligan noted that the existing structure has a KOI pond already. What is being proposed is replacing the existing structure with one that is similar in kind. Because the existing structure is so noncompliant and what is being proposed is so much more compliant, it's reasonable to retain the same amenities on the property.

Mr. Ross commented that the 75' setback is really there to protect the wetlands. In looking at this plan, the reduction of surfaces, moving the mass further from the wetlands and adding all the

landscaping and putting in a “Cadillac” septic system much further from the wetlands, is really a “no brainer” as far as wetland protection and the DES Shoreland Permit.

Referring to the KOI pond, Chair Crapo asked what is being proposed in the buffer.

Mr. Ross explained it would be a landscape element. It’s usually lined with small, landscaped walls. He noted that currently, the whole back yard is a mowed grassed area. The difference from what is existing to this plan is “night and day”. He doesn’t think the KOI pond is adverse in any way.

Chair Crapo asked if the KOI pond will overflow in a rainstorm. He also asked if there are chemicals or other treatment that need to be considered. He noted that the Board is being asked to evaluate something that is in the buffer that is not really a functional amenity to the home. The Board doesn’t have any information, other than the KOI pond being moved a few feet.

**Alissa Bournival, applicant,** explained it’s just going to be a liner with natural rocks and a stream. KOI fish hibernate in the winter.

Chair Crapo stated that the Board has to determine if it’s a hardship to not have it. It helps to know what it entails.

Member Madden asked the current ridge height.

Mr. Ross stated that the elevation on the proposed house meets the maximum building height. (He submitted an architectural drawing showing the proposed home.) It was noted that the proposed home does not need a height variance.

Chair Crapo opened to the public for comments.

**Susan Shepcaro, Rye Conservation Commission,** commented that RCC also had a hard time with the KOI pond. Many members objected to having the KOI pond at all because it was within the 75’ buffer. Building and dredging within the wetland buffer is prohibited. The pond is a decorative thing and there’s no functional purpose. To disturb the buffer for a decorative purpose is not a practice that the Conservation Commission can support. There’s also a concern that there are a lot of sea birds in the marsh. It’s the opinion of several members of the Commission that the KOI would just be food for the birds. She continued that RCC is also wondering if there is any way to get more pervious pavers in the driveway at some location that would make sense. She noted that the plantings will start at the stonewall on the west side boundary and run along the wetland buffer to the east side boundary in the location of the fence. Beyond the fence, it will have to be left natural because it’s actual wetlands. RCC is concerned about the fence placement because it looks to be on the property line. It’s in the RCC’s recommendation that the fence be looked at and corrected, if need be.

Chair Crapo pointed out that the fence has to be 1' in, unless there is signoff from both neighbors to be right on the lot line. He asked if the Conservation Commission is saying they want a condition of having a fence.

Ms. Shepcaro replied they are not requiring a fence. If the fence is going to remain, RCC would like it to be moved to the proper location.

Mr. Ross noted that the fence is shown on the plan. It's entirely on Ms. Bournival's property. It's tight against the property next to the street and then tapers in to where it's more onto her land.

Chair Crapo asked if the applicant has any issue with RCC's recommendations.

Attorney Mulligan replied that the planting plan is a standard recommendation of RRC and that's fine. As far as the pervious pavers and the asphalt driveway, he thinks they have provided what they can because of the topography.

Chair Crapo commented that if it's found during construction that more pavers could be added, he doesn't think the proposal would have to come back to the Board for any kind of relief. If possible, maybe there can be additional pavers in the back strip.

Mr. Ross commented that they can consider this idea.

Member Chororos commented that she would like to see more pavers, as it's a long strip of asphalt.

Hearing no further comments from the public, Chair Crapo closed the public hearing at 8:38 p.m.

Member Chororos stated there is not enough information relative to the KOI pond. She thinks that is something that should be removed.

Member Piela stated that from a number's perspective, he is looking at the proposal as is and to be. Looking at the coverage inside the 50' buffer, it's really a 500sf improvement. There will be less lot coverage inside the 50' buffer. The garage is being removed, but the size of the house is being increased and also the deck. There is going to be more house, more deck, and a bit more driveway.

Member Madden pointed out that the septic will be improved.

Member Piela noted that if the KOI pond is not approved, there will be 600sf of improvement from as is to proposed, as well as the improved septic.

Chair Crapo stated there are eight recommendations from the RCC. Number 5 has to do with the fence. The representation from Mr. Ross is that the fence is on the applicant's side of the boundary line.

Member Piela commented that it will probably do more harm than good to remove it and replace versus leaving it alone.

Referring to the RCC letter, Chair Crapo noted that the applicant has not objected to the other seven recommendations. It might make sense for all of them. Number seven asks the applicant to consider more pervious pavers for the driveway. It's not a requirement that they change any of the proposed asphalt to pervious. However, if they can, that wouldn't violate their plans and cause them to come back to the Board. If other essential elements change, they may have to come back. Just the material of the driveway changing wouldn't bring them back to the Board.

Member Madden commented that she sees the fence not being relevant to the application.

Chair Crapo pointed out that they are not proposing to move it. A condition can be put on the approval to make sure the fence is a 1' from the boundary in the future, if the fence is ever replaced.

Member Madden stated that the approval would be as presented and the fence would stay. If the applicant wants to do something in the future with the fence, they can take it up then. It doesn't seem applicable to this application at all.

Chair Crapo asked if she is saying to strike number 5.

Member Madden confirmed.

Member Piela commented that he would say it should be left alone and not touched because putting in a new fence is going to disturb soil.

Chair Crapo asked the Board if it is the consensus to condition it on seven out of the eight with number five being removed.

The Board agreed. The Board also agreed to vote on the KOI pond separately.

Chair Crapo asked if there are any thoughts or concerns.

Member Tuttle stated that he is good with everything, except the KOI pond. He doesn't feel the KOI pond meets the hardship.

Member Madden commented the only hardship is that it's a very encumbered property and the owner wants to be able to enjoy their KOI pond. They've reduced the coverage by 500sf. She's

good with voting on it separately. She reiterated it's a very challenging property. They've managed to reduce the coverage and make it much more conforming.

Chair Crapo called for a vote on variances to 6.3.A/B; 3.1.H(2) and 2.3.C(3):

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

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

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

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

**3) Substantial justice is done?**

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

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

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

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

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

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

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

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

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

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

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

**Motion by Chris Piela to approve the application of Alissa Bournival of 59 Woodland Road, N. Hampton, NH for property owned and located at 271 Harbor Road, Tax Map 8, Lot 50 for variances requested, with the exception of the KOI pond, with the inclusion of the Rye Conservation Commission's recommendations in their letter dated June 20, 2022, with the exception of item number 5 on that list. Seconded by John Tuttle.**

**Vote: 5-0 All in favor.**

Referring to the KOI pond in the proposed location, Chair Crapo stated that he doesn't see the public protection benefit to the wetlands. He can't see that it meets the criteria.

Member Madden commented that it becomes a different vote when it is pulled out separately and is not part of the bigger application. The criterion takes on a different meaning.

Chair Crapo called for a vote on the variance requested to 3.1.H(2) for a KOI pond 51' from the wetlands where 75' is required:

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

Sandra Chororos – No

Chris Piela - No  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – No  
Chris Piela - No  
Jenn Madden – No  
John Tuttle – No  
Shawn Crapo – No

**3) Substantial justice is done?**

Sandra Chororos – No  
Chris Piela – No  
Jenn Madden – No  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – No  
Chris Piela – Yes  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – No  
Chris Piela – Yes  
Jenn Madden – Yes  
John Tuttle - No  
Shawn Crapo – No

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

Sandra Chororos – No  
Chris Piela - No  
Jenn Madden – No  
John Tuttle – No  
Shawn Crapo – No

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

Sandra Chororos – No  
Chris Piela - No  
Jenn Madden – Yes  
John Tuttle – No  
Shawn Crapo – No

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

Sandra Chororos – No  
Chris Piela - No  
Jenn Madden – No  
John Tuttle – No  
Shawn Crapo – No

**Motion by Chris Piela to deny the application of Alissa Bournival of 59 Woodland Road, N. Hampton, NH for property owned and located at 271 Harbor Road, Tax Map 8, Lot 50 for a KOI pond 51' where 75' is required. Seconded by John Tuttle.**

**Vote: 5-0 All in favor to deny.**

**3. Bluestone Properties of Rye for property owned and located at 33 Sagamore Road, Tax Map 24.1, Lot 6 requests a one-year extension for the zoning approvals granted August 5, 2020, case #30a-2020 and #30b-2020. Property is in the Business District. Case #32-2022.**

**Eric Weinrieb, Altus Engineering**, noted that because of Covid, it wasn't the time to build the building. The permits were received at the beginning of Covid and they are now asking for an extension.

**Mike Labrie, applicant**, explained there have been a lot of issues with the supply chain, construction material availability and costs. He also explained that during the pandemic it was really tough on the restaurant business and it was a time to survive, rather than extend themselves.

Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 8:57 p.m. He asked the Board if they find there is good cause to extend the variances for one year:

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



**Motion by Chris Piela to extend the zoning approvals granted August 5, 2020 for a one-year extension, as requested, to August 5, 2023. Seconded by Shawn Crapo.**

**Vote: 5-0 All in favor.**

- 4. Craig & Denise Benson, Trustees, K&L Realty Trust for property and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18 request variances from §2.3.C(2) for a propane tank 8' from the side boundary where 20' is required; from §190-3.1.H.2(a), (b) and (g) for soffits for a house 38.7'/22.4'/16.4' and a house foundation 42.5'/25.2'/16.4', a porous drive 44.5', a walkway 67', a septic tank 67', septic system 79' and landscaping from wetland where 100' is required. Property is in the Single Residence District. Case #33a-2022.**
- 5. Craig & Denise Benson, Trustees, K & L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18 request a special exception from §190-3.1.G/§190-3.1.H.2(f) for a driveway 44.5' from the wetland where 100' is required. Property is in the Single Residence District. Case #33b-2022.**

**Attorney John Cronin, representing the applicants,** presented to the Board. He noted that he was initially engaged to deal with the appeal for the first case that came before the Board. He was not directly involved in that case, but had a chance to look at the record and review the history. It was clear from the minutes that the Board recognized the balance between property rights and zoning, and struggled with the proposal. The decision was a 3/2 against granting the variances to allow the house to be built. After that case was denied, there was some suggestions that the applicants could do better and make some changes. The side loading garage was a concern. The number of trees being cut was also a concern. At that time, the case was before the Housing Appeals Board. He met with Mr. Baskerville and said that it's worth giving this another shot. He suggested to Mr. Baskerville that there could be some improvements to come back and get the variances needed to build a single-family home on this lot.

Attorney Cronin stated that there are a few things that he has asked in the application. The first one is the Bartlett analysis. The doctrine that came out of the Supreme Court case says the Zoning Board of Adjustment, the determiner of the ordinance, has a right to make the determination if a variance is even needed or required. He continued that this particular lot is the last lot of the 1987 Parsonage Subdivision. All the lots that were approved in that subdivision have been built upon. The road improvements are complete. The infrastructure is complete. That particular lot is vested to be developed for a single-family home. He cited the case *Henry and Murphy v Town of Allentown*. He noted this is a 1980's case in which a gentleman had a subdivision approved with 10,000sf lots. The gentleman built out about 70% of the subdivision, but didn't complete it. In the interim the town changed the zoning ordinance to make it more restrictive with a minimum lot size of 50,000sf. The gentleman challenged that under common law standard and said that he had made a significant investment in the project. He and his successors should have the right to build under the then existing regulations that were in place at the time of the subdivision. The trial court did not agree with Henry and Murphy, but the Supreme Court did. The decision was reversed, as the Supreme Court found it met the common

law vesting standard. This is one of the preliminary questions. Do the applicants even need a variance or can they go forward and build this single-family home, as proposed, without the benefit of any zoning relief?

Attorney Cronin stated that the second procedural prong they have to overcome is the Fisher v Dover standard. This is another document that comes out of a Supreme Court decision. They don't want people seeking a variance for a particular relief, waiting for a while and coming back for the exact same relief. There are a couple of circumstances in which the application can come back. One is if there is a material change to the plan, which this one is. The second is if the applicant is invited or made changes to the plan that are responsive directly to some of concerns that led to the denial. Attorney Cronin stated that the major concerns seem to be to the side loading garage. Vehicles coming in and turning into the garage would be close to the wetlands, where vehicles have gas, oil and water, which was a real concern. Part of the other problem was that to create that side loading garage, a lot of trees were being cleared out to make that happen. Initially, there were approximately 93 trees being removed. Then there was a trip to the Conservation Commission recently where the new plan was reducing it down to 70 trees. Now, it will be approximately 50 trees.

Attorney Cronin stated that if the Board is satisfied that the Fisher standard has been met, they can go forward and present the new plan with a reduced footprint, a front-loading garage and other changes that were made to be responsive to the original decision of the ZBA. Secondly, he would like the Board to make a determination on Bartlett or take it under advisement for another day.

Chair Crapo stated that the case that was cited has to do with lot size, not wetlands, as far as the Bartlett analysis.

Attorney Cronin explained that the case dealt with the change in lot size from 10,000sf to 50,000sf. It referred to subsequent and active ordinances. It is not specific just to lot sizing, but any subsequent action that would defeat any work that was done to create the subdivision, which would be consistent with statutory vesting.

Chair Crapo asked if he is saying that any unbuilt lot should just be the zoning the day it the subdivision was created.

Attorney Cronin explained that the common law vesting is really an equitable analysis based on history and application. In that case, they looked at how the property was taxed. They found it wasn't taxed as vacant land. It was taxed as a building lot. In this case, since 1987, this particular lot has been taxed as a buildable single-family lot and taxes have been collected on the lot for over 30 years. He believes this would be a very important factor for the court to consider.

Member Piela stated that his concern is less Bartlett. He thinks that is something the courts will have to decide. He has Fisher v. Dover concerns because he was an alternate when the first application came through in 2020. He is looking at the variances that were requested in 2020

versus the variances that are being requested today. For example, in 2020 there was a request for an eave that was 14.1' from the wetlands where 100' is required. With the current request, it's 16.4' from the wetlands, so it's a 2' difference. In 2020, there was a house with a wall at 17' from the wetlands where 100' is required. Today, there's a wall that is 16' from the wetlands, so it's a bit less of an improvement. Back in 2020, there was a septic system that was 66' from wetlands where 100' is required. The septic tank is now 67' and a system 79', so there is a bit of an improvement. The driveway is the biggest improvement. In 2020, the driveway was 15' from wetlands where 100' is required. Today, there's a porous driveway at 45' from wetlands where 100' is required. The tree cutting is an improvement. They are still cutting down 53 trees that are greater than 4.5" in diameter. There is still a driveway in the wetlands buffer. There is also a new item on the list for a propane tank 8' from the side boundary where 20' is required. He reiterated that he was not seated for the last case, but was an alternate during that meeting. The preponderance of the discussion was building anything inside of the wetland buffer. Patty Weathersby, ZBA Chair at that time, made the comment about the risk of leaving a lot unimproved. While sympathetic to the applicant, he's not exactly sure his vote tonight would be different than what was voted back in 2020, given the fact that the variances being requested are fairly close to the variances that were requested two years ago.

Chair Crapo stated that procedurally, they need to look at the Bartlett analysis. His interpretation is that Attorney Cronin's representation is a gross broad-brush stroke. In general, his comment is if it's a lot of record, there's a right to build on it. Chair Crapo continued that the Board is looking at a specific requested structure. There are two different aspects of whether a proposal before the Board is acceptable and meets the criteria versus whether there could be any proposal before the Board that could meet the criteria. Someone coming in with a 7,000sf home, when in reality the lot only supports a 1,200sf home, is not saying that it's not a buildable lot of record. It's saying it's not buildable with that set of plans. He doesn't think there's enough vested in this lot that makes it that anything can be built here without variances and the current zoning would not apply, as it would revert back to the zoning requirements at the time of the creation of this subdivision. He feels it does need the variances as identified by the building inspector. He doesn't feel it has a vesting that gets it past needing the variances.

Member Madden commented that she doesn't think the ordinance has changed all that much since 1987.

Member Piela pointed out it's the wetland designations that have changed.

Member Madden agreed. She continued that a lot of these may not apply, which brings her back to the Bartlett analysis. She heard two things; whether variances are need and they are now here asking for variances. As a board member, she has to decide on the variances that are in front of her.

Member Chororos asked if they should seek assistance from the Town Attorney.

Chair Crapo noted that the Board can vote in favor of tabling the case to talk to town counsel, if the board members collectively feel they can't move forward on this decision tonight. In regards to Fisher v. Dover, it's not asking if the board member would vote differently. It's whether the Board feels the plan is materially different enough that it can be evaluated separately. There is a second phase of that. He commented that he stood in the location of the driveway at the site walk and talked about whether they had looked at a different location, which would not go through the wetland and trees. As far as that analysis, he feels that falls under something that the Board invited the applicant to possibly change and come back. He thinks from a Fisher perspective, denying this application to be evaluated would not be a proper decision.

Member Piela asked if the Board should consider Bartlett first and then Fisher from a procedural perspective.

Chair Crapo confirmed. He suggested that they go through the Bartlett analysis. If the Board feels that this case does not rise to the level of needing variance relief, it would revert back to the 1987 regulations and not any of the new changes in zoning today.

Attorney Cronin stated that it appears that the application is making it difficult. That is not his intent. His job is to try to make the Board see it the applicant's way with the relief requested. He realizes this doesn't always happen. His second job is to make sure there is a complete record, so if the Housing Appeals Board or Superior Court are looking at this, they won't send it back for more information or question why the Bartlett issue wasn't raised before the ZBA. On its face, it's contradictory. However, his job is to exhaust all opportunities on behalf of the client. It's one thing that he raises often in applications where there is also variance and special exception relief. He thinks Member Piela analyzed it right in saying that the Board should deal with Bartlett first. If the Board thinks the existing ordinance applies, it then moves to Fisher v. Dover.

Referring to Bartlett, Member Madden asked if the Board is deciding whether they agree the lot is vested.

Chair Crapo explained the statutory law provides that once a subdivision plan is approved and recorded, the lot is vested and not subject to subsequent regulations. If the Board feels the restrictions and regulations from 1987 apply, when the lot was created, then it's saying the current regulations do not apply. The applicant would come in and apply as if the old variances were in effect, and the building inspector would have to apply different criteria for his denial letter. If the Board feels that it should be under the current restrictions on the land and zoning regulations, then this application would move forward.

Speaking to the Board, Chair Crapo asked if they would like to continue to defer to counsel or move forward with a decision tonight.

Attorney Cronin stated that he has no issue if the Board wants to defer Bartlett. If the variances are granted, it becomes moot. If the Board would like to take Bartlett up at the end, if the

variances are denied, he would be fine with that. At least the Board can hear the merits of the application, if it gets by Fisher. He pointed out that there is another significant change that relates to the septic system. When the time is right, he is going to ask Mr. Baskerville to chime in so all the changes are captured.

Chair Crapo commented that he is not moving forward wondering whether they apply the criteria or not. The Board either decides to apply the criteria and it moves forward, or the whole thing is held up.

Member Piela stated that his perspective is they have been waiting for two years as it is. He doesn't see any harm in getting advice from counsel.

Member Chororos agreed.

Member Tuttle also agreed.

Chair Crapo commented the Board needs to move to continue.

Attorney Cronin requested to withdraw his Bartlett request conditioned upon a favorable vote on Fisher. If the Board will at least take up the Fisher, he will withdraw the Bartlett, if they can get to the merits.

Chair Crapo noted that he is not going to withdraw Bartlett conditioned upon granting approval.

Attorney Cronin explained that he is not suggesting that by getting by Fisher does anything other than giving an opportunity to present the case on its merits.

Chair Crapo confirmed the withdrawal of the Bartlett case, at this time. He commented that Fisher v Dover is the upfront materially different analysis. It also has a secondary approach about whether discussions or deliberations invited a change that would then be considered. He asked the applicant about other significant changes.

**Robert Baskerville, Bedford Design Consultants**, noted that the most significant change is to the driveway. The size of the garage was reduced. The first plan had an enviro septic system, which is tubes. Now, it will be the AOS with pretreatment and it will be a smaller system in the front. The first plan had both pads for both the a/c condensers and generator. The generator was taken out of this plan. The a/c condenser was moved under the porch. In the first plan, there was an a/c pad out back closer to the wetlands. He continued that the propane tank was shown on the first plan, but it was never brought up that relief was needed. It's a buried tank in the side setback. When the new plan was submitted, it was added to the list of relief needed.

Chair Crapo commented that he doesn't think dimensional relief is needed. However, it's going to be buried so there will be digging and back filling in the wetlands buffer. He thinks that is where relief is needed, as it's a disturbance in the wetlands.

Mr. Baskerville noted that the size of the house has been reduced, as the garage is smaller and there's a room above. Originally, the lot was bought 29 years ago by the people across the street for their children. Due to the two-year gap, the children have moved on. The owners are now going to sell. In terms of the floor plan itself, there may or may not be a room above the garage as previously intended. That will be up to a different owner when the lot is sold.

Chair Crapo commented this is so sensitive that he would think any approval would be tied to these plans. Any change could bring the second owner right back before the Board. Speaking to the Board, he asked if they feel the plan is materially different from what was presented and voted on in the past.

Member Madden replied she does.

Member Piela stated that he doesn't know if it's materially changed, but it was said that they were invited.

Chair Crapo stated he feels that from the tone and the process from that night, the Board invited a revision.

Member Piela commented if it was invited, he will go with it. He's not sure if he sees enough material change.

Member Chororos stated the house has been reduced in size and the house has been moved further away from the wetlands. The driveway has also been reconfigured. She thinks it's a material change.

Member Tuttle agreed.

Chair Crapo noted there is a consensus that it meets Fisher v Dover.

There was some discussion about continuing the application for the Baldwins, due to the time of the meeting.

**Motion by John Tuttle to continue the application of Peter and Christine Baldwin for property owned and located at 163 Parsons Road. Seconded by Chris Piela. All in favor.**

Mr. Baskerville noted that the subdivision plan was signed in 1987. The work was probably done in 1985/86. (He pointed out that wetland line at that time, which was shown on the original set of plans.) Per that line, the house is 128' away. He pointed out that back then, wetlands scientists were not even licensed yet. The three-prong approach to determine wetlands, hydrology, soils and vegetation, didn't even exist. There were certified soil scientists that identified Hydric A and Hydric B soils to determine wetlands. It was just based on soils in New Hampshire. Based on the wetland delineation at that time, this lot met all 1986/87 zoning requirements when it was approved.

Mr. Baskerville continued that Mr. Benson bought the lot across the street and this lot in 1993. He built his house on the lot across the street and held onto this lot for his children. In May of 2020, Jim Gove flagged the wetlands. Referring to the existing conditions plan, Mr. Baskerville noted that for the purposes of this application, it's almost an ideal lot to build on. The road itself is at elevation 498. It goes up just a bit to a stonewall and very gently slopes down to 494. The edge of the wetland is only 4' below the road. There is a 3" to 5" dip and it naturally rises back up. Mr. Gove reported that he evaluated the advantages of this wetland. The test pits came out very good. (He pointed out the location of the new wetland setback on the plan.) Mr. Baskerville noted there is no buildable land at all that is not in the setback of some type. He also noted that the stonewall is not on the right-of-way. In order to squeeze the house up as tight as possible, the stonewall will be rebuilt 1' behind the property line.

Chair Crapo asked if the stonewall is a boundary.

Mr. Baskerville replied no. (He submitted Mr. Gove's report and analysis to the Board.) He explained that Mr. Gove identified the wetlands as Wetland A, which is up close, and the back Wetland B. He noted that this is not a scientific term. It's just how he labeled the wetlands. He continued that Wetland B is over 100' away from the house and has the major functions of a wetland. Wetland A is directly behind the proposed house and has virtually no major wetland functions. The Army Corps of Engineers says that there are three criteria for determining wetlands; soils, vegetation and hydrology. The Town picked up the State definition in 2012. Historically, the Town probably still has setbacks in town to Wetland A and Wetland B soils, which is what they were back in 1986/87.

Mr. Baskerville reviewed the delineated wetlands on the plan before the Board. He noted the test pits came out fine. There is no floodplain on the lot. The septic system will be a clean solutions system, so the field will be much smaller. A complete stormwater analysis has been done. An infiltration trench has been designed to go around the house 30" wide, and 18" deep with 6" of gravel. The trench will take the entire stormwater from the roof during a 50-year storm. The driveway is pervious pavers. The sidewalk is also pervious pavers. A silt sock will be used during construction along the entire length of the wetland and up the property line. Mr. Baskerville pointed out that the soffit at the front of the house is just a few inches behind the front setback. The septic also has to be 35' away from the catch basin in front of the house. Everything in the front is as tight as it can get.

Chair Crapo asked if the proposed system takes up less space than the previously proposed system.

Mr. Baskerville explained the size of the tank is the same size or a bit bigger. The actual leachfield itself is much smaller. He continued that since the house slopes gently back, the first floor is raised a bit. There's a walkout basement in back. The intent is to have water flowing away from the house, while keeping it as flat as possible. He noted there are no vernal pools anywhere near close to the house. (He submitted a landscaping plan to the Board for review,

which was prepared by Landscape Architect Robbi Woodburn.) He pointed out that the plantings along the back are intended to enhance the functions of the wetlands.

Mr. Baskerville noted that the building area is 2,288sf, which is 1.6% of the lot coverage. The impervious coverage is 2,765sf, which is 1.9%.

Attorney Cronin summarized the criteria for granting the variances.

- The variances will not be contrary to the public interest and the spirit of the ordinance is observed. One way to demonstrate compliance is to show that if the variances are granted, they will not alter, in a substantial degree, the essential character of the neighborhood. This is a single-family subdivision. The home will be a single-family home. The terrain, layout and land are all very similar, as they arise out of the same subdivision plan that was granted in 1987. As far as the other goals of the zoning ordinance with respect to lessen congestion in the street, and adequate light and air, this particular proposal will satisfy all those criteria.
- Granting the variances will not diminish surrounding property values. This lot is part of an approved subdivision. Anyone building would know that this is a building lot intended to be built upon. There are covenants in place that this home will have to comply with in terms of the design to protect the value of other homes in the subdivision.
- Special conditions exist with this particular property that distinguish it from others. The topography, wetlands, characteristics, the uplands and the division by wetlands, would make it special. Also, the fact that it's been approved as a single-family lot and has been taxed as such for over thirty years, would give it a special condition factor.
- As far as fair and substantial relationship exists between the general purpose of the ordinance and the application to this property, this particular house plan is about the best that can be done. That standard has to be balanced with the right of a property owner to use and enjoy their property to some extent. Without the variances, this lot, despite being taxed and approved as a single-family lot, would have no economically viable use.
- The proposed use as a single-family house is reasonable. This standard is the Simplex standard. There is also an alternative path for determination of the variance, which is the Governor's Island standard. If the applicant can demonstrate that there's no economically viable use for the lot, it can satisfy the hardship prong. In this particular case, the Governor's Island is applicable because of the variance is lost, it runs into a Burrows situation. Burrows v Keene involves a wetland ordinance where someone owned a piece of property they wanted to develop. The town had changed the wetland ordinance to make it more restrictive so they couldn't develop. The Burrows folk said "if this is for the public good then the town should buy the lot for market value". The town disagreed and it went to Supreme Court. Supreme Court said "yes". That's what's called a reverse condemnation and a regulatory taking. He noted that they had this discussion with the Rye Conservation Commission. If this piece of property is so important to not be developed for the benefit of the community



at large, they asked the RCC to consider buying it to preserve it. There didn't seem to be any interest at the time from the Conservation Commission.

- Substantial justice will be done by granting the variances. Looking at the balancing test, certainly the wetland buffers are important. Everything has been done in this particular proposal to protect the wetlands: the elevation of the house; the composition of the driveway and walks; removal of generators and other things that were of concern; the shift in the location of the house to get it as far away from the wetlands as possible; the landscaping plan has been designed to be a benefit to the wetland and the removal of some of the trees too create more light and air for better health and growth for the environment. Denial of the variances will not benefit the public, but might harm the public by prolonging this and not knowing what will be there at a later date.

Attorney Cronin reviewed the criteria for granting the special exception for the driveway.

- The proposed use is neither injurious nor detrimental to the neighborhood. This particular driveway has been shortened significantly in distance and route to be directed to the garage. It will drain, as it will be porous subject to the condition that it be properly maintained.
- The proposed use is in harmony with the general purpose and intent of the ordinance and the specific rules therein. Single-family homes are permitted in this particular district in this location. The driveway has been designed for the appropriate stormwater runoff penetration and infiltration. It shouldn't have any bearing on the general harmony of the community and neighborhood.
- Due to existing conditions, no alternative route is feasible. Alternative routes were considered, but they were not desired. This is the most direct route that provides the minimum distance to get vehicles into the garage. Without the proposed driveway, there is no way to access the home and the buildable upland at the front of the lot.
- The location of the driveway will have the least possible detrimental impact on the wetland.

Chair Crapo opened to the public.

**Susan Shepcaro, RCC Member**, commented that there's no Wetland A and Wetland B. A wetland is a wetland. She thinks that's a confusing thing. If it's a wetland, it's a wetland and has to be treated as a wetland. She noted that in 2001 or 2002, the Town voted to increase the buffer in the Berry's Brook Watershed from 75' to 100'. Berry's Brook is a very high priority protection area, as it's an impaired wetland. She continued that it was said that the property would be improved by this type of a septic. She pointed out that there is no septic on the property. The property doesn't need to be improved by putting a septic on the property. Adding a septic system to the Berry's Brook Watershed is contrary to the 100' buffer. It's contrary to what the Town has voted on by warrant article. This is a concern for the Conservation Commission. She stated that the Conservation Commission asked if Mr. Benson would consider donating the property to conservation. If an offer was made to the Commission, they would

probably consider it. Also, this house is not a real house. It's just a placeholder house. What protection is there that if the variances are granted, it will only be this proposal?

Chair Crapo commented that if it is not tied to these plans, it at least has to be tied to the relief.

Ms. Shepcaro noted that RCC considers this to be a non-buildable lot because it's in the Berry's Brook Watershed 100' buffer. In the Conservation Commission's opinion, that's enough to shut it down.

**Amos Rogers, 37 Olde Parish Road**, commented that he is trying to understand the change in the house itself, as to what is being proposed now, size wise, versus what was proposed last time.

Mr. Baskerville explained that the house itself, not including the garage, is very similar to the first proposal. The garage is 15% to 20% smaller. It's tucked in so there is less volume. He further explained that originally the driveway came in and sloped down slowly to a level below. Now that it's coming in at a shorter distance, the intent was to not have it too steep, so it was raised up higher. Originally, there could be a room above the garage at the first-floor level. That can't be done now. It changes the layout of the building. The square footage of livable area has decreased by about 20% because there probably won't be a room over the garage.

Mr. Rogers stated that the only place to build this house is the far front corner of the lot, which pushes it up against the lot line of his property. Anything that involves disruption in that area, whether it's excavation and/or fill, could have the potential of being a detriment to his property because the property line is wetland. One of his concerns is the wetland being pushed onto his property where he would start to lose the use of his property. If that happens, what recourse does he have and to whom? He continued that another concern is that the closest corner of his property to where this building will be sited, is his open space with a back patio. There would be air-conditioning units in that area. His concern is noise and how much it impacts the use of his property. He reiterated that the house is being pushed to the far corner of the property because it's the only place feasible to build, even though it is all still in the buffer.

Mr. Rogers stated that because of the requirements to disrupt the property as little as possible, the home would be built in an area where there is absolutely no setback and no surrounding yard. He questions who would want to own a property where there is no yard. It's essentially in the woods and in the wetlands with no light to support any kind of landscaping. In terms of the house and how it is consistent with the surrounding homes, taking a look at all the homes in the area, they are centrally sited on their lots. There are significant setbacks and significant area around the houses. All the garages in that area enter from the side. There are no front facing garages. In his view, this is very inconsistent with the other homes in the neighborhood. The other concern is that in order to meet the requirement to maintain the square footage of the homeowner's association, which is 5,000sf., the house has to be skinny and go up. Again, this would be inconsistent with the overall neighborhood. If there is a septic tank going in, does that also increase the elevation and cause more sloping away to the road, as well as the side of the property? He noted there was a lot of discussion about drainage to the side of the house and the

roof area. He asked how they can be sure that what is built is consistent to what is being proposed in this plan. He also heard something about the propane tank being buried in the side setback, which would be up against his property line. This would mean more disruption to that area and it's already wet. In his opinion, the proposal is not necessarily in the character of the neighborhood. He thinks it would be inconsistent enough that it would have a negative impact on the overall appeal and therefore, the valuations of the other homes in the area.

Chair Crapo commented that there was a reference to a house with no setbacks. He pointed out that they are not proposing to be in the dimensional zoning setbacks from the edge of the property. The relief that's being requested is from the setbacks from the wetlands.

Mr. Rogers stated that his point was more to consistency with the surrounding area and value of surrounding properties. The house is being pushed to the absolute limit of the front corner of the property, which is still well within the wetland buffer. That's very inconsistent with all the houses in the neighborhood.

In regards to pushing the house over to the side, Attorney Cronin stated that setback relief is not being asked for the building, so that required setback is being maintained. New Hampshire is a net zero State. Artificial improvements cannot be made to the lot that would increase the natural runoff onto someone else's property. As a matter of law, nothing can be done that would artificially increase the flow of water onto abutting property. With respect to the character of the neighborhood, he commented that they are willing to limit themselves to this footprint and this location. The covenants are designed to preserve value. That value standard is not the perception of people who live there currently. Certainly, the people living in the abutting home would prefer for this lot to never be developed. Any improvement, no matter how nice, might be a detriment to them. It's an impact to the market. If someone else were to buy the property, would it make a difference? He commented that the abutting home appears to be closer than the 100' to the wetlands. With respect to the propane tank, it would be better from everybody's perspective to be underground for esthetics and appearance. In terms of the location of the lot, this is the location where they were directed to put the home to bring it as far as possible to the front corner of the lot while still respecting the side setback. If the Board wanted the home in the middle of the lot, he doesn't think the Conservation Commission would be happy. He noted that they are open to any conditions that might create additional protections.

Mr. Baskerville noted that right now, the lot is very wooded with mature trees. During a rainstorm, the rain falls on the property and eventually infiltrates into the ground. The whole edge of the house has been designed to absorb it all into the ground just as it does today. It's essentially the same and there shouldn't be any difference. The details for the trench around the house are on the plans. The building inspector should be able to enforce that when the house is built.

Chair Crapo explained that the building inspector will go out to the site during different processes to conduct inspections during construction.

Mr. Rogers stated that if this is built, he doesn't know what his recourse is or who it's to. He is concerned this could be a migrated change over time. He continued that when this whole case was first made, part of the appeal was that the Bensons have owned this land for a long time. They wanted to build a home for their family and needed the variances to build on this land. The circumstances are now totally different. This is strictly a business opportunity.

Chair Crapo noted that the Board really can't consider whether someone is going to build something to rent out or live in. That is typically not something the Board can evaluate. The zoning implications are what they are here to consider. The ownership really isn't before the Board.

Regarding the question about recourse, Attorney Cronin explained there is definitely civil recourse to stop any water trespass, have it restored and recover any damages that may have occurred, whether the improvements migrated onto the abutting property now or three years from now.

Ms. Shepcaro commented that 53 trees are being cut. Those trees absorb many gallons of water a day. The property is going to get wetter, not drier. Taking down all those trees is a change in the land.

Mr. Baskerville stated that in no way was he trying to imply that the septic system was an improvement on the lot. However, when the first plan was done two years ago, there was more traditional system that was bigger. As compared to the first system, this is smaller and better.

Attorney Cronin pointed out there was a comment about the buffer being wet. The buffer is not wetland. That's the separation from the wetland boundary. There was some comment about removing trees in the wetland, which they are not. The trees are in the buffer.

Mr. Baskerville clarified that nothing in the wetland is touched or cut at all.

Chair Crapo closed the public hearing at 10:58 p.m. He asked the Board if they feel they have enough time at this meeting to deliberate the case.

Member Piela stated this is worth a fair amount of discussion. He's not sure they can give it its due in the two minutes remaining. He noted that this structure is 5,000sf. The covenants are 3,200sf. The last time this was denied, there were questions raised about inviting an alternate plan that was closer to the minimum covenant size. This is almost 2,000sf larger. He thinks there will be a fair amount of debate and discussion.

Chair Crapo agreed.

Member Piela asked if the Board should conduct a site walk with the benefit of having the applicant's representatives on site.

Chair Crapo pointed out that this is a very sensitive and difficult project. He opened the public to Attorney Cronin.

Attorney Cronin commented that Mr. Piela's comment about the size in the covenants is a good one. He suggested the Board leave it open so he can tighten up the pocket plan with square footage and elevations. He thinks this will be beneficial to everyone.

Chair Crapo agreed to leave the public session open.

Planning/Zoning Administrator Reed noted that the Board is going to have different members sitting at the August meeting.

There was discussion amongst the Board about scheduling another meeting in July to address this application. The Board agreed to schedule a meeting for July 20<sup>th</sup> at 5:00 p.m., which will be held at the Town Hall.

Mr. Baskerville noted that the garage doesn't count as square footage. Taking the garage out, the square footage is at 3,328 which is just above the 3,200sf.

**Motion by Chris Piela to continue the application to July 20, 2022 at the Town Hall 5 p.m. Seconded by Sandra Chororos. Vote: 5-0 All in favor.**

- 6. Peter & Christine Baldwin of 10 Crestview Drive, Exeter, NH for property owned and located at 163 Parsons Road, Tax Map 20, Lot 1 request Building Code waivers from §35-14.C(1) to replace an existing cesspool with a septic system with a distance 3.47' to bedrock/impermeable substratum where 6' is required; and from §35-14.C(2)/§35-14.D(1)(b) for septic system distance 2' to estimated seasonal highwater where 4' is required and 2' or less is a prohibited condition. Property is in the General Residence District, Coastal Overlay. Case #34-2022.**

- **Continued to the August Meeting.**

- 7. Mark & Shauna Troy, Trustees of the Mark & Shauna Troy Family Trust for property owned and located at 919 Ocean Blvd, Tax Map 20.2, Lot 92 request variances from §190-6.3.B for reconstruction of a non-conforming structure; from §190-2.3.C(3) for a structure 17' from the front boundary where 30' is required; from §190-3.1.H(2)(a), (b) and (g) for surface alteration, a septic system 61.5' +/-; a leachfield 78' +/- and a house 20.6' +/- from the wetland where 100' is required; and a building code waiver from §35-14 to allow the bottom of the septic system to be 5' above the top of bedrock where 6' is required. Property is in the Business and General Residence Districts, Coastal Overlay and SFHA, Zone AO(3). Case #35a-2022.**

- **Continued to the August meeting.**

8. **Mark & Shauna Troy, Trustees of the Mary & Shauna Troy Family Trust for property owned and located at 919 Ocean Blvd, Tax Map 20.2, Lot 92 request a special exception from §190-3.1.G/§290-3.1.H(2)(f) for a driveway 60 +/- from the wetland boundary where 100' is required. Property is in the Business and General Residence Districts, Coastal Overlay and SFHA, Zone AO(3). Case #35b-2022.**

- **Continued to the August meeting.**

#### **Adjournment**

**Motion by Shawn Crapo to adjourn at 11:09 p.m. Seconded by Chris Piela. All in favor.**

*\*All files and corresponding documents may be viewed at the Building Department, Rye Town Hall.*

Respectfully Submitted,  
Dyana F. Ledger

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** Peter & Christine Baldwin of 10 Crestview Drive, Exeter, NH

**Property:** 163 Parsons Road, Tax Map 20, Lot 1  
Property is in the General Residence and Coastal Overlay Districts

**Application case:** Cases #34-2022

**Date of decision:** 07-06-2022

**Decision:** The Board voted 5 to 0 to continue the application to the August 3, 2022 meeting date.

  
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:** K&L Realty Trust, Craig & Denise Benson Trustees

**Property:** Merrymeeting Lane, Tax Map 15, Lot 18  
Property is in the Single Residence District.

**Application case:** Cases #33-2022

**Date of decision:** 07-06-2022

**Decision:** The Board voted 5 to 0 to continue the application to a special meeting on Thursday, July 21, 2022 at 5pm to be held at the Rye Town Hall for further deliberation of the application on its merits.

  
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: Alissa Bournival of 59 Woodland Rd, N. Hampton, NH

Property: 271 Harbor Rd, Tax Map 8, Lot 50  
Property is in the Single Residence District.

Application case: Cases #28-2022

Date of decision: 07-06-2022

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

- §190-6.3.A/B for demolition of an existing non-conforming home to replace with new;
- §190-3.1.H(2) for a house 24.9', garage 46.3', deck 23.3', stairs 20.2', driveway 23.9' retaining wall 68.1' walkway 56.4' and a generator pad 53.5' from the wetlands; and
- §190-2.3.C(3) for a walkway and retaining wall in the 40' front boundary.

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

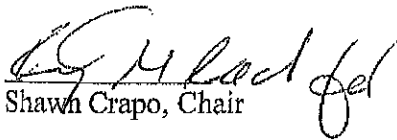
- §190-3.1.H(2) for a KOI Pond 51; from the wetland.

The above variances were granted with the following conditions from the RCC letter dated June 20, 2022:

1. The entire wetland boundary to be planted with native plants, bushes, grasses and trees to a depth of not less than 5ft and averaging 10ft.
2. This planted area will not be mowed or weed whacked. Mulch used within an area being restored shall be natural straw or equivalent non-toxic, non-seedbearing organic material, in accordance with Env-Wt 307.12(d).
3. The RCC will approve the planting plan prior to installation.

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.

4. The planted area will start near the boundary stonewall on the west side of the property, follow the wetland flagging around the backyard and up the east side boundary along the white fence to the end wetland delineation.
5. The area behind the wetland boundary plantings will be left natural.
6. The RCC requests that the owner consider replacing the asphalt driveway with pervious pavers. Alternatively, that the owner consider replacing a portion of the asphalt driveway with pervious pavers.
7. The RCC believes that an 85% or greater survival rate of the planted vegetation adequate.

  
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:** Robert Dietrich/CVHR, LLC of 107 Longmeadow Rd, Greenville, NC

**Property:** 6 Richard Road, Tax Map 5.2, Lot 154-01  
Property is in the Single Residence District and Coastal Overlay

**Application case:** Cases #21-2022

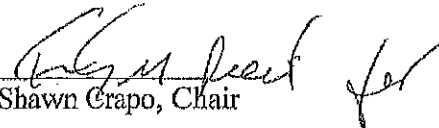
**Date of decision:** 07-06-2022

**Decision:** The Board voted 3 to 2 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-6.3.A/B for construction on non-conforming lot;
- §190-5.0.C for one space parking within front boundary;
- §190-2.4.C(1) for a house 20.17' from the rear boundary;
- §190-2.4.C(1) for a patio 19.94' from the rear boundary;
- §190-2.4.C(2) for a pervious patio 11.73' from the right side boundary;
- §190-2.3.C(6) for depth of lot 115' +/-
- §190-2.4.C(6) for 114'/141' frontage
- §190-2.4.C(3) for underground drainage pipes 9.9' from Richard Road boundary and 13.8' from Perkins Road boundary.

The above variances were granted with the following conditions:

1. Driveway location is approved by the Planning Board; and
2. The plans as presented with cover sheet dated June 13, 2022.

  
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:

Bluestone Properties of Rye

Property:

33 Sagamore Road, Tax Map 24.1, Lot 6  
Property is in the Business District.

Application case:

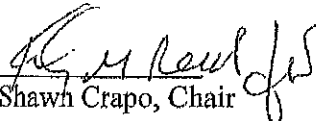
Cases #32-2022

Date of decision:

07-06-2022

Decision:

The Board voted 5 to 0 to grant a one-year extension for the Zoning Approvals from the granted date August 5, 2020, case #30a-2020 and #30b-2020.

  
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

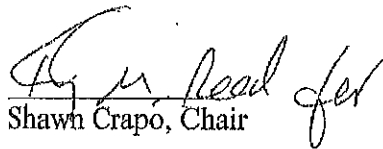
**Applicant/Owner:** Mark & Shauna Troy Family Trust, Mark & Shauna Troy Trustees

**Property:** 919 Ocean Blvd, Tax Map 20.2, Lot 92  
Property is in the General Residence and Coastal Overlay Districts and SFHA, Zone AO(3)

**Application case:** Cases #35-2022

**Date of decision:** 07-06-2022

**Decision:** The Board voted 5 to 0 to continue the application to the August 3, 2022 meeting date.

  
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.