

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

**Wednesday, September 7, 2022**

**7:00 p.m. – Rye Public Library**

***Members Present:*** Chair Shawn Crapo, Vice-Chair Patrick Driscoll, 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 7:00 p.m. and led the pledge of allegiance.

#### Continuations:

**Motion by Chris Piela to continue the application of Peter and Christine Baldwin for 163 Parsons Road to the October 5, 2022 meeting. Seconded by Patrick Driscoll. All in favor.**

**Motion by Chris Piela to continue the applications of Christopher and Susan Reaney for 691 Brackett Road to the October 5, 2022 meeting. Seconded by Patrick Driscoll. All in favor.**

**Motion by Chris Piela to continue the application of Shoals Realty LLC/Splaine for 28 Pine Street and 26 Pine Street to the October 5, 2022 meeting. Seconded by Patrick Driscoll. All in favor.**

### **II. BUSINESS**

- Approval of Minutes:
  - July 6, 2022

**Motion by Chris Piela to approve the minutes of July 6, 2022 as amended. Seconded by Jenn Madden. Vote: 5-0 (S. Crapo, P. Driscoll, C. Piela, J. Madden and J. Tuttle)**

- July 21, 2022

**Motion by Chris Piela to approve the minutes of July 21, 2022 as amended. Seconded by Jenn Madden. Vote: 5-0 (S. Crapo, C. Piela, J. Madden, J. Tuttle and S. Chororos)**

- August 3, 2022

**Motion by John Tuttle to approve the minutes of August 3, 2022 as amended. Seconded by Patrick Driscoll. Vote: 3-0-2 (P. Driscoll, J. Tuttle and J. Madden) Abstained: Chris Piela and Shawn Crapo**

- August 23, 2022

**Motion by Chris Piela to approve the minutes of August 23, 2022 as amended. Seconded by John Tuttle. Vote: 3-0-3 (S. Crapo, C. Piela and J. Tuttle) Abstained: Patrick Driscoll, Jenn Madden and Sandra Chororos**

### **III. APPLICATIONS**

- 1. 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 October meeting (see motion above)*

- 2. Matthew & Natasha Goyette for property owned and located at 750 Brackett Road, Tax Map 17, Lot 66 request variances from §190-6.3.A/B for expansion of a structure on a non-conforming lot; and from §190-3.1.H.(2)(g) for an addition on an existing footprint 55' from the wetlands. Property is in the Single Residence District. Case #36-2022.**

- *Continued to the December meeting (see motion at end of meeting)*

- 3. Christopher & Susan Reaney for property owned and located at 691 Brackett Road, Tax Map 17, Lot 34 request a special exception from §190-3.1.G(2)/3.1.H.2(f) for a driveway 38.4' from the wetland where 75' is required. Property is in the Single Residence District and Wetland Conservation Overlay District. Case #38a-2022.**

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

- 4. Christopher & Susan Reaney for property owned and located at 691 Brackett Road, Tax Map 17, Lot 34 request variances from §190-3.1.H(2)(a), (f) & (g) for a barn 31.6', a deck 30.7', a retaining wall 69.2', a garage 57.9', a pervious driveway 38.4' and an impervious walkway 68.4' from the wetland and removal of one tree**

where 75' is required; and from §190-6.3.A for expansion of a barn. **Property is in the Single Residence District and Wetland Conservation Overlay District. Case #38b-2022.**

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

- 5. Ben Stout of Bayberry & Company for Marvin Family Revocable Trust for property owned and located at 80 Locke Road, Tax Map 8, Lot 34 request variances from §190-3.1.H.2(a) & (g) for dredge and fill for a soak pool and patio within the wetland buffer. Property is in the Single Residence District and Coastal Overlay District. Case #40-2022.**

**Ben Stout, representing the applicant,** presented the proposal for 80 Locke Road for an enhanced outdoor living space to include a patio, soak pool, and plantings, as well as work on the current driveway. The site is within a sensitive area and this was kept in mind during the design process. The intent was to give the applicants usable space to enjoy the property, while also keeping it compact enough to be coherent to the sensitive site. In addition to the 654-sf of added space, the current impervious driveway is being removed. A new pervious asphalt driveway will be installed, which is about 2,450-sf.

Chair Crapo pointed out that the Conservation Commission knew there would be a plunge pool; however, they didn't really address any concerns with it in their letter. Although, one of their suggestions was that no machinery be used in the wetland or wetland boundary. He noted that the request is for dredge and fill within the wetland buffer. He asked if this is going to be done by hand or if machinery is needed.

**Justin White, Bayberry & Company Designer,** explained that when they went through the Conservation Commission process, the question about operating machinery within the buffer really focused on the plant material closer to the sensitive areas. When this came up at the Conservation Commission meeting, it was stated that all of that work would be done by hand. He continued that there's a small portion of the plunge pool and decking which creeps over the 75' wetland buffer line by 9'. RCC had a full review of that and they had no issues with the amount of excavation that is needed to complete that corner. He pointed out there's an existing residence on the site, so it was disturbed many years ago when the home was being built. He reiterated the project is just over the buffer line in the corner, which would require minimal excavation. He noted they have gone to great lengths on the the project to come up with a proactive scheme for the rest of the property, which includes significant impermeable area and plantings.

Chair Crapo asked if the deck adjacent to the plunge pool is already in place.

Mr. White replied it's a proposed deck and it will be on pilings.

Chair Crapo asked if excavation can be done by having the tracks of the machine and the bulk of the work done from the property side versus being on the resource side.

Mr. White confirmed. He commented there is no interest in disturbing outside the scope of work being done.

Speaking to Chair Crapo, Vice-Chair Driscoll asked if his understanding was no machinery in the buffer or wetland. He pointed out that the RCC letter says wetland boundary, not wetland buffer.

After reviewing the letter, Chair Crapo agreed that it says wetland boundary. He commented that he read it as buffer.

Vice-Chair Driscoll asked if the plans before the Board were the same plans before the RCC. He pointed out that RCC's letter recommends that the proposed driveway be reduced in size.

Referring to the RCC letter (recommendations numbers 3 & 4), **Simone Vitale, Bayberry & Company Designer**, explained that they opted to do the entire driveway in permeable material. On the plan before the Board, it's showing one area near the house. After RCC's recommendation, it was decided the entire driveway would be permeable material.

Chair Crapo opened to the Conservation Commission.

**Karen Oliver, representing Rye Conservation Commission**, asked how much of the tidal buffer zone is affected. What is the area of the permanent impact?

Mr. Stout replied it will be 654-sf over the tidal buffer line. Sheet C-3 shows the square footage of the impacted areas.

Chair Crapo noted that the plunge pool will have to be cleaned and maintained. He asked what the pool will need for backflushing and maintenance. What are the restrictions that will be in place to keep it from being flushed out into the yard?

Mr. Stout commented that it's a small pool that's basically like a large hot tub.

Mr. White explained that it's a self-contained maintenance program. There's no backflushing or draining of the pool during the season. If there's any water evaporation, it will get filled. There's no outflow valve or anything required for this unit. The pool will stay filled year-round. Unlike other pools that are drawn down for the winter, this pool is used year-round.

Mr. Stout noted that if something comes up where the pool does need to be drained, it's a small enough cavity that it can be pumped out into a container and taken off site.

Speaking to RCC, Vice-Chair Driscoll asked if the letter is correct stating wetland boundary.

Mrs. Oliver stated that RCC has been recommending no machinery in the wetland.

Chair Crapo noted that a restriction the Board often puts on approvals is that best practices are followed, rather than micromanage the control of equipment.

Mrs. Oliver commented that to the point that incursion into the buffer can be minimized, would be great.

Vice-Chair Driscoll suggested taping off the wetland and wetland buffer areas on site, so the people will know where those areas are during the work.

Chair Crapo opened to the public for comments.

Property owner at 90 Locke Road noted that he received an abutter's notice about the project. He doesn't have an opinion about the project. However, he owns one-quarter of 90 Locke Road. There is a State Commissioner that has control over the property at 90 Locke Road and they would have to address any issues they may have. He just wanted to bring this to the Board's attention. The abutter's notice was forwarded to the State Commissioner, Attorney Dan Hoefle.

Planning Administrator Kim Reed stated that Attorney Hoefle's office reached out to her and they received a full packet on the proposal. Attorney Tim Phoenix confirmed receipt of the package.

Member Piela noted that letters in support have been received from Robert Gray, 2065 Ocean Blvd., and Kevin McGrath, 42 Locke Road.

Hearing no further comments, Chair Crapo closed the public hearing at 7:38 p.m.

Member Piela stated that he is normally not in favor of building within the wetland buffer. He looks towards the necessity of certain items within the wetland buffer. In this particular case, he is trying to take a balance approach. He thinks the modification of the driveway to include a larger section of pervious pavers and replacing the impervious driveway is giving enough to add the plunge pool in the backyard.

Chair Crapo reopened to the public. He commented that the portion that is over the buffer line is essentially 1.5' down to 6". He asked the reason the deck can't be shortened to pull it outside of the buffer.

Ms. Vitale noted it's 9' over the buffer, so it really can't be pulled back that much.

Mr. White stated that they looked really hard at the layout of the space and the egress off the deck. It just "cheats" over that line. He pointed out that they didn't have to make the whole driveway permeable. The State approved the 60/40 scenario. He feels they are going to great lengths to give and take.

Vice-Chair Driscoll pointed out that on the plan it says proposed deck, but that's existing.

Mr. White explained that some new decking may be needed. The existing structure and framing will stay. There will be no modification to that.

Referring to the RCC letter, Vice-Chair Driscoll noted that recommendation #3 will be struck because it was either #3 or #4. It says the entire driveway; however, it should also say "as determined by Public Works."

Member Tuttle suggested that recommendation #2 say no machinery in the wetland and machinery used minimally within the wetland boundary.

The public hearing was reclosed at 7:44 p.m.

Vice-Chair Driscoll stated that in looking at a plunge pool, the bar is set a bit higher. However, he thinks they have done a good job trying to minimize it, while still making good use of the land. He thinks the permeable driveway makes a difference in this case. He likes the application and is in favor, with the conditions.

Chair Crapo commented that during the construction of the house, a good portion of this was already disturbed. There's not a massive transition from virgin land to this project. There are offsets for something that is tied to the home use, which is a typical accessory that a lot of homes have. With the conditions and the safeguards that have been put in place, he doesn't have a problem supporting the project.

Member Tuttle noted that at the last meeting, they had a clause saying that permeability is certified upon completion and maintained. He asked if they are going to continue this.

Chair Crapo commented he's not sure how it would get certified. It is often represented that the applicant will put in a permeable surface and it will be maintained.

Member Tuttle replied the thought was that certification was an engineer inspecting it and stamping it as permeable.

Vice-Chair Driscoll explained there was a lot of discussion about whether the applicant should come in every year, three or five years to make sure it is permeable. It seemed to be a big hurdle for the homeowners and the town. He continued that the plan is signed by the engineer that has worked on the project. He imagines that Bayberry and Company would have someone on staff that is knowledgeable in this area who could say it was done per the specs. He thinks this would be a smaller hurdle than saying the applicant has to submit to the town every three years that it's still permeable. He thought that Patricia Weathersby and Gregg Mikolaities made a good point at the last meeting that once it's installed, it will at least have been done correctly.

Chair Crapo reopened the public session.

Mr. White noted that they can document the process, which will clearly show how it was installed to meet the permeable standards. This can be done by photograph and imagery.

Chair Crapo commented that this is going to be part of the Building Inspector's process anyway in issuing a certificate of occupancy (CO).

Vice-Chair Driscoll commented that he would be in favor of the language, as it is a good way to make sure there is some liability on the installers to have it done properly.

Mr. Stout asked for clarification on the certification process.

Member Tuttle explained that the installation would be documented and that information would be given to the Building Inspector for the files.

Chair Crapo commented that he is worried about the word "certified."

Member Piela suggested using the words "document the installation process."

The Board agreed.

Member Piela questioned recommendation #6 in the RCC letter.

Chair Crapo noted that it should be modified to say "the Building Inspector or their agent may revisit the project upon completion to assess its survival and compliance."

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

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

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

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

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

**3) Substantial justice is done?**

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

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

Jenn Madden – Yes  
Chris Piela – 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?**

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

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

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

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

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

Jenn Madden – Yes



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

**Motion by John Tuttle to approve the application for Marvin Family Revocable Trust for property located at 80 Locke Road, Tax Map 8, Lot 34, for variances to §190-3.1.H.2(a) and (g), as written and presented, with the following conditions:**

- **The planting areas along the lawn edge planted to a minimum of 10’;**
- **No machinery used in the wetland and machinery used minimally within the wetland buffer;**
- **Entire driveway to be constructed of pervious materials as determined by the DPW;**
- **Installation of the permeable asphalt documented and submitted upon completion with it remaining permeable throughout the life of the driveway;**
- **Plantings to have a survival rate of 85% or better after one year; and**
- **Building Inspector or their agent may revisit the project upon completion to assess its survival and compliance.**

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

**Note:** *Jenn Madden recused herself from the following application. Sandra Chororos was seated for the application.*

- 6. Greg Sandell for property owned and located at 6 Tower Ave, Tax Map 8.1, Lot 64 requests variances from §190-5.0 for parking 6’ from the boundary line where 10’ is required and for four parking spaces within the front boundary; and from §190-5.6.C(3) for two additional parking spaces for an ADU; and from §190-6.3.A for an addition of a structure on a non-conforming lot. Property is in the Single Residence District and Coastal Overlay District. Case #41-2022.**

**Greg Sandell, applicant,** spoke to the Board in regards to his request for variances for the property located at 6 Tower Avenue. The application is for an addition of an accessory dwelling unit (ADU) within the existing home. The plan is to add a dormer to the rear section of the house to make the back section more livable. The existing footprint is not being changed. The driveway is also existing. He noted that he received a denial from the building department just before this meeting. There was an additional variance noted in the letter, §190-2.3.C(2), referring to the side setback for the dormer. The setback requirement is 20’ and 17.5’ is needed. He asked if this variance can be added to this application.

Chair Crapo stated that in the past with applications like this, a dormer within the existing roofline, he doesn’t recall needing dimensional setback relief. It is not an expansion beyond the side of the building. He stated that the Board has the ability to modify the relief being requested. The abutters have all been notified of this project. He doesn’t feel that the technicality of that one setback relief would need for this to be continued and re-noticed. He asked the Board if

they feel the variance needs to be reviewed as part of the package or if it is not needed because the drip edge structure is not changing.

Vice-Chair Driscoll stated he is okay with hearing the variance. It seems like the package illustrates that request. He is always under the interpretation that because they are increasing the bulk within the setback, a variance is needed. If someone where to add a second story to a home, he would want a variance to be requested for it. He would say that it needs a variance. He is okay with hearing that additional variance section.

Member Piela agreed with Vice-Chair Driscoll. He continued that he does not see a negative to adding the variance.

Member Chororos asked if the view by the abutter would change.

Member Piela replied that in this case, he doesn't think so. The plans are not going to change by adding the additional variance request. He thinks they should be able to hear the case as presented and even add the additional variance. He pointed out that §190-6.3.A is kind of a catchall for expansion of a non-conforming structure. Adding §190-2.4.C(2) is more of an administrative detail.

Chair Crapo commented that he doesn't mind adding it out of an abundance of caution. He asked the Board if they are comfortable moving forward.

**Motion by Patrick Driscoll to add the request for a variance to §190-2.4.C(2) to the application by Greg Sandell for 6 Tower Avenue. Seconded by Chris Piela.**

**Vote: 5-0** (S. Chororos; C. Piela; J. Tuttle; P. Driscoll; and S. Crapo)

Referring to the package, Chair Crapo asked how many vehicles are able to park versus the four that are required.

Mr. Sandell replied six. He noted that he owns a 4Runner and his friend has a jeep. Those vehicles fit side by side without a problem. The vehicle doors can open without any obstructions.

Member Chororos asked if the driveway narrows as it goes towards the back.

Mr. Sandell replied that the driveway narrows on one side.

Chair Crapo stated that a standard parking space in the town is 9'x18'. In this case, he does not see how the 18' width can be demonstrated.

Dave, general contractor for the project, noted that Ross Engineering added an 18'x36' block to the map.

Member Piela noted that the block shows it going into the building.

Chair Crapo pointed out that the top part goes into the building. He continued that the Planning Board sent this back to the Board for parking, which is akin to a denial. It does not come out as a formal denial letter, but coming from the Planning Board actually ranks higher than the building department denial. He reiterated that in looking at the drawing, the corner of the 18' width is on the siding of the house.

Member Tuttle commented that the easterly corner is on the retaining wall.

Dave (general contractor) noted that it's not a retaining wall. It's just a granite cobble lining at the edge of the driveway.

Member Chororos asked if this could be taken out.

The contractor confirmed.

Member Piela pointed out it's a decorative edging to the driveway.

Speaking to Planning Administrator Reed, Chair Crapo asked if the Planning Board is saying that the applicant needs a variance that will allow him to have less than four.

Administrator Reed explained that the Planning Board said that a minimum of two parking spaces are needed for the existing house and two are needed for the ADU. They also said bulking up. Those are the two items that the Planning Board noted. She continued that she was surprised by the six. The only thing required by the ordinance is four per the parking regulations; two from the main dwelling and two for the accessory dwelling.

Chair Crapo commented that the represented four are within the side setback and front boundary.

Administrator Reed confirmed. They must meet all requirements per ADU requirements. That is why the Planning Board said they have to go the ZBA.

Referring to the plan, Member Tuttle pointed out that the current building coverage says 32.4% and the proposed is 30.9%. He asked if anyone can speak to that.

The General Contractor noted that this was a typo and it should be the same number. This was corrected on the revised drawing.

Chair Crapo pointed out that the Planning Board has already approved the ADU with the condition of relief for the parking.

Member Piela asked if the intention is to have four vehicles parked on site on a regular basis.

Mr. Sandell replied that he owns one vehicle. The ADU is a studio setup with the maximum of two cars but there could be one. He pointed out that his mother only has one car and he only has one.

Chair Crapo explained that this is not really before the Board because the requirement is four.

Chair Crapo opened to the public for comments.

**John Murphy, 25 Big Rock Road**, noted that he owns the white fence that abuts the project. He also noted that this is a 5,000-sf lot. This is putting a two-family dwelling onto that 5,000-sf lot.

Chair Crapo replied this is an ADU. The town has completely different zoning for a two-family dwelling. An ADU has certain restrictions on occupancy and use.

Mr. Murphy stated that the parking becomes an issue because it's supposed to be 10' off the property line.

Chair Crapo explained that people apply to the ZBA and ask that the criteria be varied. They have to meet certain criteria for a variance. It's the Board's job to evaluate the whole picture given those criteria.

Mr. Murphy stated that the lot coverage for the house is 60%. This is the wrong lot and Tower Avenue is a one lane road. The ADU is trying to be squeezed in and they don't have the parking. He commented that this is setting precedent.

**Tom Farrelly, 18 Gray Court**, noted that he lives just around the corner.

Chair Crapo explained that this area is a tight neighborhood. Standing wise, he is going to limit it to the tight neighborhood. He asked Mr. Farrelly to keep it to zoning. He also explained that the ADU is not before the ZBA. The Planning Board has their own criteria and they hear the ADUs. The only thing before the ZBA is the issue of the four parking spots in the proposed location and the dormer, as it's within the setback area.

Mr. Farrelly stated that he agrees that passing a project like this will be opening 'Pandora's Box'. The issue is the six cars parked on site for two people living in the home. The amount of cars parking on lawns in this neighborhood is out of control. It absolutely affects property values. It's a one lane road. There is nothing but congestion and this is a dangerous precedent being set.

Chair Crapo stated that he reads the application that it's relief for four spaces. He can see how the notice looks like it's a request for six spaces. He believes the Board is only looking at relief for four spaces total.

Administrator Reed commented this is her understanding. She explained that in looking at the requirements for an accessory dwelling unit, per the parking calculations, there has to be two for

the main residence and two for the ADU. There is an existing driveway already and that's not changing. The only thing the Planning Board looks at is two for the existing home and two for the ADU. Six parking spaces never came up at the Planning Board.

Mr. Sandell explained that he said six because he has had six vehicles in the driveway before. He is not asking for six. All that are required are four.

**Dominique Winebaum, 52 Cable Road**, asked for the proposed total square footage for the two floors.

Vice-Chair Driscoll noted the first floor is 1436-sf and the second floor is 588-sf.

Mrs. Winebaum asked about the existing square footage.

Chair Crapo commented that the square footage underneath the proposed dormer is already in the calculations. They are just raising the roof and making more utility out of the same square footage. It's not necessarily adding new square footage.

Mrs. Winebaum noted that the tax card lists 1245-sf. What she is seeing on the plan is more than 1245-sf. She asked if there is going to be more foundation. It looks like what is being presented as living area is bigger than what it is now. She explained that the tax card is not accurate because the assessor wasn't able to go into the house. The crawl space is 1245-sf. What is existing is much more. In looking at the demo notes, it says that all the inside walls are coming down. She asked what that means. She thinks the Board needs to read what is on the plan carefully. What is being shown is bigger than what is there. There are also no dimensions of setbacks. The applicant didn't file for variances. The parking variances were done afterward.

Chair Crapo stated that the only part of the structure that is before the Board is the dormer.

Vice-Chair Driscoll noted that he will ask the applicant what the scope of work is for other spaces.

Mrs. Winebaum commented that this should have come to the ZBA before the Planning Board.

**Sam Winebaum, 52 Cable Road**, stated that this is a totally non-conforming lot with a non-conforming structure. The lot coverage may be higher if the gravel is considered permeable. The coverage is huge on this lot, for various reasons over time. The parking is totally non-conforming. It's close to Mr. Murphy's fence already. The ADU says two plus two. However, the applicant talked about six cars in his paperwork. The applicant is looking for the space for six. He continued that one of his concerns is this is a one lane street. Where are they going to put the snow? How is the fire department going to get in there with potentially big snowbanks? All of these things are going to be a consequence of formally authorizing two plus two and a number of other cars being parked there. The request for the parking variance should not be granted. As far as the dormer, although it may or may not increase the footprint, going up with

so little setback to either side is only going to potentially cause noise and problems for neighbors. Expanding higher to a second unit is going to be a nuisance factor in the neighborhood on a 5,000-sf lot with no setbacks. He asks that the variance be denied for the parking.

Police Chief Kevin Walsh stated that he would like the Board to take a hard look at the unintended consequences with the parking. While the Board's job is to take a look at whether the variance is reasonable, he is asking the Board to look at the unintended consequences of town services and how those will be affected in the future. Some of the neighbors have brought up some very valid points. He asks that the Board take this into consideration.

**Devin Farrelly, 18 Gray Court**, commented that the application says parking 6' from the boundary where 10' is required. However, on the diagram, it looks like the parking is right up against the boundary line.

Mr. Murphy commented this is his question also. He asked where the parking will be located.

After reviewing and measuring the plan, Member Piela stated that it must be 6" to the boundary.

Referring to the notice, Mr. Murphy stated that if they are discussing the proposal, it should be right.

Chair Crapo explained that if it said 6', and only the applicant showed up with no abutters showing up to speak from the public, and then it was realized it was 6", he would ask for a continuance because maybe if the abutters read it as 6" they would've been at the meeting, versus the 6'. He noted that they haven't lost abutters from a miscalculation in this case. The Board can modify the relief to be what has been presented tonight, which appears to be 6", not 6'. He doesn't feel there was a faulty notice to the point that someone in an abutter status is prejudiced by not having come to the meeting because they felt differently about the relief requested. He feels it's a clarification. He personally thinks the Board can move forward knowing that it's 6".

He asked the board members if they are fine with moving forward. The Board agreed.

Chair Crapo reiterated that the relief is for six inches (6") where ten feet (10') is required. Following up on Mr. Winebaum's comments, Chair Crapo stated that people are only able to get variances to legal parking spaces. The applicant has represented that at times they can park six vehicles. That is not necessarily before the Board. It's whether or not four legal spaces can be approved given all the parameters.

**Kathy Watson, 12 Tower Avenue**, stated that she lives right next door to the property. She has seen six vehicles parked at the property. The cars have not been on the road and have not impacted her property. She pointed out there are four houses on the street. It's narrow, but they all work together. She continued that the dormer is going to increase Mr. Sandell's value, which

is going to increase her property value. She and her husband do not have a problem Mr. Sandell moving forward on his project.

**Wayne Newton, 15 Big Rock Road**, noted that he lives right across the street from Mr. Sandell. He has no hesitation in his proposal with the four parking spaces and the addition of the dormer.

Speaking to the applicant, Member Chororos asked if modifications are being made to the driveway.

Mr. Sandell confirmed. (He submitted a drawing showing the fence and property line for the record.)

Member Chororos noted that the applicant commented to the Planning Board that it could probably be redesigned so three cars can be on one side of the driveway and one on the side closest to the house.

Mr. Sandell explained there can be three along Mr. Murphy's property line and one can fit near the front porch.

Member Chororos clarified the parking is all in the same area.

Mr. Sandell confirmed.

Chair Crapo asked the need to dormer, given that part of the proposal is to remove and reconfigure interior walls, versus utilizing the space differently.

Mr. Sandell explained the space upstairs is tight, given the roofline. Two bedrooms will be going upstairs with the living space downstairs.

The General Contractor explained that the current second story doesn't comply with building code. There's not even an average of 7' ceiling height throughout that space. It's a very awkward space. The structure is going to be drastically improved for safety, building code and energy efficiency.

Vice-Chair Driscoll asked the applicant to speak more on the scope of the project in general. He noted that one of the abutter's comments piqued his interest in regards to drainage and changes to make sure the application is right.

The General Contractor explained that there is no proposed change to the foundation system. The area that is currently used as a mudroom/laundry room is just a slab on grade. Essentially, that interior area will be reconfigured into the living space. That area is not really insulated properly, so it will be brought up to code. He reiterated there will be no change to the foundation system. He pointed out the entire site is essentially underlain by bedrock within inches of the

surface. Doing any type of foundation work on the property would be almost impossible at this point.

Vice-Chair Driscoll commented that with the dormer going up, there's a good amount of added window space looking over the Murphy property, which is within the setback. He asked if there was any thought put into privacy concerns and why the windows are so large on that side.

Mr. Sandell replied it's east facing. He pointed out it looks over Mr. Murphy's property, not where the house is located, but the lawn. Right now, there is a skylight and one window in that area. He just wants to add light to both bedrooms.

Vice-Chair Driscoll asked if there was any thought about reusing some of the existing footprint to add some parking that would be conforming to Rye codes. He explained that this is a substantial project being proposed. The request of 6" to the side yard for parking is a big ask. He asked if they have thought of ways to do a substantial construction process that would satisfy the needs that would also more closely satisfy the zoning requirements of Rye.

Mr. Sandell replied he has not. In terms of the parking, he knows there is adequate space on the plans for what the ADU is requiring with the four spaces.

Referring to the tax map, Chair Crapo stated that the area proposed to be storage, mudroom/laundry and mechanical, is listed as porch, enclosed, unfinished, utility/storage unfinished. He clarified that those areas are going to be reconfigured and finished. He asked if there are any restrictions placed on those areas to say it can't become living space. He pointed out that in the past, there were plenty of rooms added to buildings with conditions that said not to be finished and not to be occupied.

The General Contractor replied there aren't any restrictions.

Planning Administrator Reed noted there were permits in 1999 to add a two bedroom, bathroom and second story approximately 658-sf additional with no restrictions. There was also a permit for a fence on the east and south side. There were also permits for the repair of siding and windows. There was an approval from the ZBA in 1998 for a house on a vacant lot with no restrictions. She does not see any zoning board or building permit restrictions. She pointed out the height is not to exceed 28'.

Hearing no further comments or questions, Chair Crapo closed the public hearing at 9:06 p.m. and opened to the Board for deliberation.

Vice-Chair Driscoll stated it's a really big ask. He appreciates the support of the two abutters on the street, but they aren't most directly affected. To do a project, there has to be two parking spots. To have an ADU, the threshold is greater. This doesn't satisfy the first requirement. To him it doesn't satisfy the second requirement of needing four spots. He appreciates the way the house has been added on to. It's petty common in this area. It's a very difficult project to pull



off a dormer section. The parking space within 6" of the abutter, the tight road, trying to think of where they are going to put snow, and trying to make sure there are stormwater management practices in place is too big of an ask for him to vote in favor of this proposal.

Member Chororos concurred. She thinks that Chief Walsh made a very good point as it relates to setting precedent for the future. It's the Board's job to take that into consideration. They have to work against eight different criteria. She finds it difficult when looking at the criteria. This just isn't feasible. She's also concerned about any potential emergency and trying to get equipment down that road, particularly during the winter.

Referring to "values of surrounding properties are not diminished," Member Piela stated that the Board has heard two sides of that argument. However, the abutter most effected has argued that it would diminish his property values. He takes that into heavy consideration. If it wasn't an ADU and didn't require the parking spaces, and it was just adding a dormer and reconfiguring the interior of the house, he wouldn't be as opposed.

Vice-Chair Driscoll agreed.

Member Piela stated that what Chief Walsh was articulating is that in ten or fifteen years from now this could be a rental property with additional people and multiple vehicles.

Member Tuttle agreed. He definitely took into consideration what Chief Walsh had to say with regard to emergency services.

Chair Crapo stated that he doesn't disagree with any point made. There is a relationship between this relief and the proposed ADU use, which drives the parking spaces. The ADU has certain requirements that dictate some of the space use. With this expansion, as proposed with all the driving factors, he can't find that it does substantial justice, is reasonable or is even in the spirit of the ordinance. Although the ordinance is to allow ADUs in homes where they fit; here, it's too much of an ask to make these changes in proximity to the boundaries and the road.

Referring to "spirit of the ordinance," Vice-Chair Driscoll noted that they are asking for 6" where the requirement is far greater. He sees that as being the issue.

Vice-Chair Driscoll noted that if the Board starts with the parking requirements for the ADU, he is going to deny those. It wasn't really being presented to the Board as being a single-family home without the ADU and whether the dormer would be separate at that point. He asked if the applicant would even want the Board to vote on that at this time. The applicant may want to withdraw the dormer, so it can come back as part of a non-ADU proposal.

Mr. Sandell confirmed that he wants to withdraw those requests.

Speaking to the applicant, Chair Crapo clarified he is withdrawing both structural variance requests for the expansion of a non-conforming (6.3.A) and for the side setback (2.3.C(2)).

Mr. Sandell confirmed.

Chair Crapo explained that when this Board meets and something is denied, any future request cannot be a slightly tweaked version, as there's a driving case called Fisher v. Dover. For example, if the parking is denied and an owner comes back with a request for parking relief, the first thing the ZBA would have to do is an evaluation of whether the new request is substantially different from what was denied. That is the difference between going to a vote versus the applicant withdrawing. He asked Mr. Sandell if he wants to leave parking on the table.

Mr. Sandell confirmed.

Chair Crapo called for a vote on requested the requested variance to §190-5.0 for parking 6-inches from the boundary line where 10-feet is required:

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

Sandra Chororos - No  
Chris Piela – No – Because of emergency vehicles.  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo - No

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

Sandra Chororos - No  
Chris Piela – No  
Patrick Driscoll – No  
John Tuttle – No – Due to the minimal amount that was presented.  
Shawn Crapo – No – The ADU is driving something that simply doesn't fit for that lot.

**3) Substantial justice is done?**

Sandra Chororos - No  
Chris Piela – No  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo – No – There is legal parking there for the structure at hand. The use requested is asking for parking that goes beyond what would be just.

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

Sandra Chororos - No  
Chris Piela – No – Well articulated by the abutters.

Patrick Driscoll – No  
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 – No – All the lots are very small in that area.  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo – No – Very similar structures and everyone has tight parking in that neighborhood.

**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  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo – No – It's the same as all other properties. Zoning is uniformly applied.

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

Sandra Chororos - No  
Chris Piela – No – ADU requirements cannot be met by this particular lot.  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo - No

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

Sandra Chororos - No  
Chris Piela – No  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo - No

Chair Crapo called for a vote on the requested variance to §190-5.6.C(3) for two additional parking space for an ADU:

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

Sandra Chororos - No  
Chris Piela – No – Because of emergency vehicles.  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo - No

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

Sandra Chororos - No  
Chris Piela – No  
Patrick Driscoll – No  
John Tuttle – No – Due to the minimal amount that was presented.  
Shawn Crapo – No – The ADU is driving something that simply doesn't fit for that lot.

**3) Substantial justice is done?**

Sandra Chororos - No  
Chris Piela – No  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo – No – There is legal parking there for the structure at hand.  
The use requested is asking for parking that goes beyond what would be just.

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

Sandra Chororos - No  
Chris Piela – No – Well articulated by the abutters.  
Patrick Driscoll – No  
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 – No – All the lots are very small in that area.  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo – No – Very similar structures and everyone has tight parking in that area.

**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  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo – No – It's the same as all other properties. Zoning is uniformly applied.

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

Sandra Chororos - No  
Chris Piela – No – ADU requirements cannot be met by this particular lot.  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo - No

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

Sandra Chororos - No  
Chris Piela – No  
Patrick Driscoll – No  
John Tuttle – No  
Shawn Crapo - No

**Motion by Patrick Driscoll to deny the application of Greg Sandell for property owned and located at 6 Tower Avenue for variance from §190-5.0 for parking 6" from the boundary line where 10' is required and from §190-5.6.C(3) for two additional parking spaces for an ADU. Seconded by John Tuttle.**

**Vote: 5-0** (S. Chororos; C. Piela; P. Driscoll; J. Tuttle; and S. Crapo)

Request for variances to §190-6.3.A and §190-2.4.C(2) withdrawn by applicant.

**Note:** *Sandra Chororos was unseated and Jenn Madden was reseated.*

**7. Michelle Bingham & Wayne Maciejewski for property owned and located at 1 Central Road, Tax Map 11, Lot 73 request a variance from §190-2.4.C(3) for a hot tub 30' from the front boundary where 40' is required. Property is in the Single Residence & Aquifer and Wellhead Overlay District. Case #42-2022.**

**Michelle Bingham, applicant,** spoke to the Board in regards to the request for a variance to 2.4.C(3) for a setback of 30' for a round self-contained hot tub. She noted that the property is a corner lot so they have two frontage setbacks. The hot tub would be within the front yard setback, as well as the side yard which is deemed as a front yard according to the corner lot rule.

She noted that the Board has been provided a map of the property showing the location of the hot tub.

**Wayne Maciejewski, applicant**, explained that the Building Inspector denied the wrong code. The Building Inspector listed a 2.4, which is the general district and has a 30' frontage setback. However, in the single residence district's it's 40'. He clarified that the denial letter is actually inaccurate. He further explained that the front setback on the property is less than 20' on one side and to the hot tub on the other side is 30'.

Chair Crapo noted that in the single residence district the variance would be to §190-2.3.C(3). The 2.4 would change to 2.3 in the notice. The applicant is representing the hot tub is 30' from the front setback, where 40' is required. They are asking for 10' of relief for the side that faces Washington Road.

Mr. Maciejewski pointed out the setback is to the property line, not the road. There is an additional 7' beyond the property line to the road.

Member Piela asked if there is any way to move the hot tub.

Ms. Bingham explained that it would require an electrical move.

Referring to the photo of the patio, Chair Crapo asked if the patio is compliant.

Mr. Maciejewski confirmed. The patio has received a building permit.

Member Madden commented that she believes the hot tub pad was already there. She asked if this was a replacement.

Ms. Bingham explained the previous owners did all the electrical hookups, so that was existing. The hot tub was on the patio behind the house. When the previous homeowners moved, they took the hot tub with them. It's a replacement in the fact that one is being put in, but it's new.

Member Piela asked if the previous hot tub was in that same spot.

Ms. Bingham replied no. The previous hot tub was right up against the house.

Member Madden clarified that the conduit is already there, so that is the reason for the location.

Ms. Bingham confirmed.

Chair Crapo asked if the hot tub can be moved 10' with an extension of the conduit.

Ms. Bingham explained that the decision to not keep the hot tub in the previous location is because the snow and rain runoff from the house would fall directly on top of it. That's one of

the reasons it was moved off the patio. The other reason is that it takes up a good portion of the patio. This would allow for more useable space on the patio. If it were to be moved, a company would have to come up to drain the hot tub and an electrician would have to dig the channel for the underground electrical conduit.

Chair Crapo opened to the public for comments.

**Shannon Murphy, 17 Central Road**, commented that he has no issue at all with the variance.

Member Tuttle asked the applicant to speak to the unnecessary hardship criteria.

Ms. Bingham stated that the house is a hip roof colonial. The drip line extends away from the side of the house. The runoff would drip down on top of the hot tub. Also, the electrical line would have to be run much further into the backyard, if it was to be off the patio. It would then be encroaching onto the septic system.

Mr. Maciejewski noted that anything on that side is basically not within the parameters of the setback.

Referring to the photo, Chair Crapo noted that 40' in one direction would put the tub away from the drip edge. He's not seeing how there would be a drip edge issue.

Ms. Bingham pointed out there's a stonewall on either side of the location being referred to on the plan. The only option would be to put it on the patio where the drip line is or take down the stonewall. She also pointed out there's an additional stonewall that outlines the perimeter of the patio because there's a drop in grade.

The Board reviewed the plan showing the drop in grade of the site.

Vice-Chair Driscoll clarified that there's a hot tub on a pad that is hooked up to the electrical that was there previously. He asked if the pad was there as well.

Ms. Bingham replied no.

Vice-Chair Driscoll further clarified it was just the electrical that was run to that location before the patio project was started. He asked if they stopped the process once they realized it wasn't in good standing.

Ms. Bingham confirmed. She noted that they were under the assumption that they only needed the 40' from the front, not realizing that the side yard is also considered a front yard.

Hearing no further comments or questions, Chair Crapo closed the public hearing at 9:45 p.m.

Chair Crapo stated that the topography answers the question that Member Tuttle initiated. He was also struggling with why it just couldn't comply.

Member Piela stated it's a reasonable error to have made. If he had a property that had an electrical box in the yard, he would've assumed the box was put in a place that was compliant. He can see how a homeowner would make this type of good faith error.

Vice-Chair Driscoll stated he doesn't see how it could be different, even if the lot was level, given where they are to the road and where they are to the abutters. If the hot tub is 30', it doesn't affect any abutters or the public. It seems to be pretty straightforward and the path of least resistance.

Member Madden pointed out that it can't be seen in any direction from the road.

Chair Crapo called for a vote on requested variances to §190-2.3.C(3):

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

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

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

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

**3) Substantial justice is done?**

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

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

Jenn Madden – Yes  
Chris Piela – 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?**

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

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

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

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

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

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

**Motion by Patrick Driscoll to approve the application of Michelle Bingham and Wayne Maciejewski for property owned and located at 1 Central Road for a variance to §190-2.3.C(3) for a hot tub 30' from the front boundary where 40' is required, as advertised and presented. Seconded by Chris Piela.**

**Vote: 5-0 (J. Madden; C. Piela; P. Driscoll; J. Tuttle; and S. Crapo)**

- 8. Michael Magri for property owned and located at 354 Wallis Road, Tax Map 18, Lot 80** requests variances from §190-6.3.A for expansion of a nonconforming structure; from §190-2.3.C(5) for building area of 19% where 15% is allowed; from §190-2.3.C(1) for construction at 21.5' from the rear boundary where 30' is required; and from §190-2.3.C(3) for construction 34' from the front boundary where 40' is required. **Property is in the Single Residence District. Case #43-2022.**

**Michael Margi, applicant,** stated that in front of the house, there's an existing concrete poured footing that's currently a slate patio for the entryway to the house. The proposal is to create a mudroom on the existing footprint. There will be a breezeway into the kitchen. In the back of the house is a poured concrete foundation that is currently framed in as a greenhouse at ground level. He is proposing to expand that area for expansion of the kitchen for more family living space. He reiterated that the footprint of the house is not being expanded at all. There is an existing poured concrete foundation. He is just looking to add a second story over the greenhouse, which is the first story of the front of the house. He continued that the roofline will not go any higher than the existing roofline. The mudroom on the front of house will not be any closer than where the house currently sits because the cape is closer to the road than where this entryway is located. The last part of the proposal is for a deck on the back of the house. The long-term plan is to make part of the deck a screened-in porch. He noted that he spoke to the abutters who do not have a problem with the proposal.

Chair Crapo stated there may be a potential issue with the notice. The notice states §2.3.C(1) for construction at 21.5' from the rear boundary. He asked if that is for the porch addition or the mudroom.

Mr. Magri stated the rear boundary would be the rear deck. The actual kitchen addition is within the setback.

Chair Crapo explained that this lot has two fronts, two sides and no rear. He pointed out that there's a 40' setback on Long John Road and a 40' setback on Wallis Road. That will capture the mudroom.

After review of the plan, Member Piela stated that he thinks the existing patio is okay in the rear; however, the deck is going to catch it. He asked if the Board can change it and say there's an error on the notice because it's a side lot.

There was some review of the corner lot definition in the ordinance.

Planning Administrator Reed explained that the Planning Board and voters voted on a change in 2019 that depending upon the orientation of the building, there would be two rears or a side and a rear (§190-2.2.F).

Chair Crapo stated that he is not sure what the review would be on the orientation. However, on the septic side, that could be a side and in this zone it's 20'. On the drawing, the 20' is going

halfway through the septic tank. If the Board was to send the applicant down the road with the variances that have been requested, the Building Inspector would probably send it back to the ZBA for a variance for the septic tank.

Vice-Chair Driscoll stated that he doesn't disagree that it might need to be fixed. However, the way he looks at this application is that the septic tank has no bearing on the way he looks at the proposal being presented.

Member Piela and Member Madden agreed.

Vice-Chair Driscoll noted that he is okay with moving forward. However, the Board doesn't have anything scaled to know how far the deck is within the setback.

Chair Crapo commented that he doesn't think they can go forward without a scaled drawing. The Board needs to know clearly what the relief is. A corner of the kitchen may get caught slightly. Much of the porch/deck is going to get caught up, as well as the whole mudroom addition. He is of the mind to continue for a scaled drawing. If the Building Inspector wants an after-the-fact on the septic, that may be something that should also come before the Board.

Member Piela showed Mr. Magri on the drawing what the Board would need for information.

**Motion by Chris Piela to continue the application by Michael Magri for 354 Wallis Road to the October 5, 2022 meeting. Seconded by Jenn Madden. Vote: 5-0**

9. **Shoals Realty LLC/Splaine of 81 Cable Road, Rye NH for properties owned and located at 28 Pine Street, Tax Map 5.2, Lot 51 and 26 Pine Street, Tax Map 5.1, Lot 50 request variances from §190-2.4.C(6) for a lot line adjustment between the two properties where 26 Pine Street where 25,600 sf exists will be reduce to 22,823.34 sf where 44,000 sf is required; from §10-2.4.C(2) for property 28 Pine Street for a house 10.52' and other fixtures +/- 5' and +/- 8" from the side boundary where 10.28' exists and 20' is required; from §190-2.4.E for building coverage for 28 Pine Street of 17.75% where 9.26% exists and 15% is required; and from §190-6.3.B for destruction of nonconforming structure and making slightly conforming. **Properties are in the General Residence District and Coastal Overlay District. Case #44-2022.****

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

**Note:** *Jenn Madden recused herself from the following application. Sandra Chororos was seated.*

10. **Victor Odryna Living Trust and Regina A. Odryna Living Trust of 5 Juniper Lane, Hampton NH for property owned and located at 640 Long John Road request variances from §190-3.1.H(2)(a), (b), (e)(2), (f) & (g) for a retaining wall 5.9', a home 86.8', a deck/spiral staircase 62.3', a porch 28.3' and garage 53.3' from the wetland where 75' is required and 100' required for the marsh; from §35-14.B(2) for a**

septic 50.0', 88.8', 100' + from the wetland where 75' is required; and from §190-6.3.B for demolition of existing nonconforming structure and replace with new. **Property is in the Single Residence District and Wetland Overlay District. Case #45-2022.**

**Attorney Monica Kieser, representing the applicant,** spoke to the Board. She explained this is a huge lot with 25-acres. There's only a small area that they are dealing with, which has already been developed. Over 20-acres of the lot is in a conservation easement monitored by the Conservation Commission. There's an area of reserve for development where the existing house is located. There's a decent size existing house, septic system and barn. A portion of the existing house and barn is within the wetland buffer. The wetland buffers are coming from the south and from the side. There's also a little wetland that is not big enough to be jurisdictional. The proposal was presented to the Conservation Commission and a site walk was held on the property. Another complicating factor is that there are different types of wetlands. There's a pond and marsh. There's also garden variety wetlands just over 1-acre. The marsh and pond require 100'. The garden variety, just over 1-acre, are not tidal and have a 75' buffer. She continued that what is being proposed is a tear down and rebuild with it being slightly expanded from the existing home. The septic system that exists is fine; however, new construction requires a whole new septic system. The new septic system is going to be an oversized system for a four-bedroom home; however, the home proposed is a three-bedroom house. The new septic system will be an Enviro Septic System. It will be more than 100' from the pond and wetlands. It will be less than 50' from the non-jurisdictional wetlands and will comply with the State setback regulations. She pointed out that coverage and yard setback relief is a non-issue, as it's a 25-acre lot. The primary relief is just for the redevelopment in the wetland buffer and the replacement of the home.

**Victor Odryna, applicant,** stated that they started working with the Conservation Commission on this project last fall. He and his wife wanted to be sure they didn't harm the wetlands and improve it in any way that they could. One of the suggestions the Conservation Commission made was to put in a retaining wall on the south where the marsh is located. Today, there is a lot of erosion that drops down right into the marsh. The suggestion by the Conservation Commission was to put in a wall to raise it up a bit, fill that with gravel and put in french drains. He continued that because the house is being torn down and rebuilt, the decision was made to move the house 2' away from the marsh to try to better that condition. Overall, they are trying to do better than what is there now and improve the wetland conditions.

Attorney Kieser noted that the barn is going to remain the way it is now.

Chair Crapo asked if there are any issues with the recommendations of RCC in regards to cleanup around the barn.

Mr. Odryna replied no.

Attorney Kieser noted that the Conservation Commission talks about an AOS system. The new septic will be an Enviro Septic System.

**Bruce Gammon, Millennium Engineering**, stated that the Enviro Septic System is designed for a three-bedroom septic system. The system will be designed for 310' of linear pipe, which is greater than what it needs to be for a three-bedroom septic. It was felt that it would be better to have extra pipe, so the treatment can spread out. He continued that the 1250-gallon tank is the new tank that is allowed by the State for up to five bedrooms. He explained that the Enviro Septic System is a hybrid system. The pipe is enclosed with mesh to provide surface area. The more surface area to volume ratio, the more treatment that can happen through the bacteria that digests the waste before it even touches the soil. (Mr. Gammon reviewed the plan for the septic system and the installation of the retaining wall.)

Vice-Chair Driscoll noted that the plans show an existing foundation plan. He asked if that will be removed.

Mr. Gammon replied that the intent is to keep that drain.

There was some discussion about using silt sock and fencing during demolition and when removing the materials from the site.

After Board review of the plans, Attorney Kieser rested on the memo addressing the five criteria.

Chair Crapo opened to the public for comments.

**Karen Oliver, RCC**, stated that the Odrynas were really communicative and listened to the Conservation Commission's ideas. The letter from RCC sets forth where the Commission stands on the project.

Hearing no further comments, the public hearing was closed at 10:53 p.m.

Member Piela stated that it was initially hard to look at; however, they did a good presentation to clarify things. He appreciates the RCC letter and how they worked together to improve the lot itself. He always hesitates when looking at construction in the buffer; however, this seems to be an improvement.

Chair Crapo stated it was a design effort from the beginning. It evolved in a manner with some positive given and take. It was designed with consideration of how to achieve the goals while still being respectful. The history is that this area was subdivided and developed. He's not sure that best practices were always followed on those lots, which may be why some of the flows have been modified and changed.

Member Chororos concurred. There has been some incredible communication with RCC. She applauds RCC because that's a lot. She really applauds the homeowners' desire to protect this beautiful land. They are clearly mindful stewards of the land and this is a big chunk in Rye. She sees that what has been done is all in a positive vein in trying to respect why there are variances.

Vice-Chair Driscoll agreed. He thanked RCC for their work on this proposal and for working in the best interests of the town. He continued that the lot is unique. It has very little affect on neighbors and abutters. This is based off what is the effect of the environment. It seems like all those things have been satisfied. He thinks this is an amazing property and it seems like a good project.

Member Tuttle agreed.

Chair Crapo called for a vote on requested variances to §190-3.1.H.(2)(a), (b), (e)(2), (f) & (g); §35-14.B(2); and §190-6.3.B:

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

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

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

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

**3) Substantial justice is done?**

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

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

Sandra Chororos – Yes  
Chris Piela – 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?**

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

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

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

**Motion by Patrick Driscoll to approve the application of Victor Odryna Living Trust and Regina A. Odryna Living Trust for property owned and located at 640 Long John Road, as advertised and presented, with the recommendations from the Rye Conservation Commission letter dated September 7, 2022 numbers 1 through 6, and to include two silt fences near the wetlands. Seconded by**

#### **IV. OTHER BUSINESS**

**Motion by Chris Piela to continue the application of Matthew and Natasha Goyette for 750 Brackett Road to the December 2022 meeting. Seconded by Sandra Chororos. All in favor.**

**Motion by Chris Piela to adjourn at 11:10 p.m. Seconded by John Tuttle. All in favor.**

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Greg Sandell

**Property:**

6 Tower Ave Tax Map 8.1, Lot 64  
Property is in the Single Residence and Coastal Overlay Districts

**Application case:**

Cases #41-2022

**Date of decision:**

09-7-2022

**Decision:**

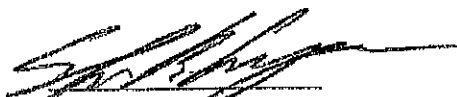
The Board voted 5-0 on all points to deny the variances from the following section of the Rye Zoning Ordinance

- §190-5.0. for parking 6" from the boundary line
- §190-5.6.C (3) for parking spaces for an ADU.

The variances were denied for the following reasons:

1. The parking is not contrary to public interest because of emergency vehicles.
2. The spirit was not observed
3. There is legal parking there for the structure at hand the use requested is asking for parking beyond which would be just.
5. The values of the neighborhood diminished as articulated by the abutters.
6. No special conditions they are all small lots in that area.
7. No fair and substantial provision to the property same as other properties.
8. The ADU's requirements cannot be met therefore use not reasonable.

The Application withdrew his request for a variance from §190-6.3A for an addition of a structure on a non-conforming lot and from §190-2.4.C(2) for construction 21.5' where 20' is required.



Shawn Grapo, 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:** Victor Odryna Living Trust and Regina A. Odryna Living Trust of  
5 Juniper Lane, Hampton

**Property:** 640 Long John Road, Tax Map 16, Lot 144-1  
Property is Single Residence and Coastal Overlay District.

**Application case:** Cases #45-2022

**Date of decision:** 09-7-2022

**Decision:** The Board voted 5-0 to grant variances from the following section of the Rye Zoning Ordinance as written and presented.

- §190-3.1.H(2)(a),(b),(e)(2), (f) & (g) for a retaining wall 5.9' from the wetland and marsh.
- §190-3.1.H(2)(a),(b),(e)(2), (f) & (g) for a home 86.8' from the wetland and marsh.
- §190-3.1.H(2)(a),(b),(e)(2), (f) & (g) for a deck/spiral staircase 62.3' from the wetland and marsh.
- §190-3.1.H(2)(a),(b),(e)(2), (f) & (g) for a porch 28.3' from the wetland and marsh.
- §190-3.1.H(2)(a),(b),(e)(2), (f) & (g) for a garage 53.3' from the wetland and marsh.
- §190-6.3.B for demolition and replacement of existing nonconforming structure.

The Board voted 5-0 to grant relief from the following section of the Building Code as written and presented.

- §35-14.B(2) for a septic 50.0', 88.8' 100'+ from the wetland where 75's is

The variances and building code relief were granted with the following conditions from the Rye Conservation September 7, 2022 letter:

1. An old mulch pile near the barn to be removed. Machinery on the driveway is permissible for this.
2. Sand, plastic, concrete and granite post behind the barn to be removed.

**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.

3. The area from the north end of the pond to two (2) large trees at the edge of the pond shall be left in the current natural condition, or if desired it may be planted with native plantings. This natural area to extend inland thirty (30) feet from the edge of the pond. This is a no mow/low mow area.
4. Retaining wall on the south side of the home will be built on crushed stone and contain 'weepholes' to let water flow through if necessary.
5. Everything beyond the retaining wall to be left natural. Trees that fall to be left. Logs and stumps to remain. Sticks may be picked up.
6. Yard waste currently beyond the wall area to be removed.
7. Silt sock and silt/construction fence to be in place during construction.

  
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:** Ben Stout of Bayberry & Company for Marvin Family Revocable Trust

**Property:** 80 Locke Road, Tax Map 8, Lot 34  
Property is in the Single Residence and Coastal Overlay Districts

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

**Date of decision:** 09-7-2022

**Decision:** The Board voted 5-0 to grant variances from the following section of the Rye Zoning Ordinance as written and presented.

- §190-3.1.H.2 (a) & (g)

The variance was granted with the following conditions from the Rye Conservation April 8, 2021, letter:

1. The planting areas along the lawn edge are planted to a minimum depth of 10'.
2. No machinery is used in the wetland and machinery is used minimally within in the wetland buffer.
3. The entire driveway is constructed of pervious materials as determined by the DPW.
4. Installation of the permeable asphalt is documented and submitted upon completion and remains permeable throughout the life of driveway.
5. The plantings have a survival rate of 85% or better after one year.
6. The Building Inspector or his agent may revisit the project upon completion to assess its survival and compliance.

  
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:** Michael Magri

**Property:** 354 Wallis Road, Tax Map 18, Lot 80  
Property is in the Single Residence District

**Application case:** Cases #43-2022

**Date of decision:** 09-7-2022

**Decision:** The Board voted 5-0 to continue the application to October 5, 2022 for the application to provide additional information.

  
Shawn Cropp, 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:** Matthew & Natasha Goyette

**Property:** 750 Brackett Road, Tax Map 17, Lot 66  
Property is in the Single Residence District

**Application case:** Cases #36-2022

**Date of decision:** 09-07-2022

**Decision:** The Board voted 5 to 0 to continue the application to the December 7, 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:** Michelle Bingham & Wayne Maciejewski

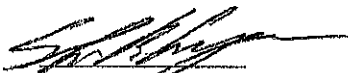
**Property:** 1 Central Road, Tax Map 11, Lot 73  
Property is in the Single Residence and Coastal Overlay Districts

**Application case:** Cases #42-2022

**Date of decision:** 09-7-2022

**Decision:** The Board voted 5-0 to grant variances from the following section of the Rye Zoning Ordinance as written and presented.

- §190-2.4.C(3) for a hot tub 30' from the front property boundary.

  
Shawn Grapo, 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

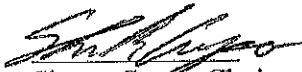
**Applicant/Owner:** Shoals Realty LLC/Splaine of 81 Cable Road

**Property:** 28 Pine Street, Tax Map 5.2, Lot 51  
26 Pine Street, Tax Map 5.1, Lot 50  
Properties are in the General Residence and Coastal Overlay District.

**Application case:** Cases #44-2022

**Date of decision:** 09-7-2022

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

  
Shawn Crapo, Chair

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** 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:** 09-7-2022

**Decision:** The Board voted 5 to 0 to continue the application to the October 5, 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

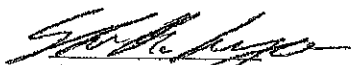
**Applicant/Owner:** Christopher & Susan Reaney

**Property:** 691 Brackett Road, Tax Map 17, Lot 34  
Property is in the Single Residence and Wetland Conservation Overlay Districts

**Application case:** Cases #38-2022

**Date of decision:** 09-07-2022

**Decision:** The Board voted 5 to 0 to continue the application to the October 5, 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.