

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, October 5, 2022

7:00 p.m. – Rye Town Hall

Members Present: Sandra Chororos, Gregg Mikolities, Chair Shawn Crapo, Jenn Madden, John Tuttle, and Patrick Driscoll

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.

Introduction of board members were made.

Chair Crapo outlined the general procedures for the review of applications and asked that each party clearly state their name and address for the new stenographer.

Continuations:

Motion by Gregg Mikolities to continue the application of Harold Kennedy & Mary Lynn Anderson of 1417 Ocean Blvd. to the December 7, 2022 meeting. Seconded by Patrick Driscoll. All in favor.

Chair Crapo explained the possibility of a second meeting in October depending on the length of the evening's meeting.

Motion by Patrick Driscoll to continue the application of Joshua Alder for property owned and located at 16 Robin Road to the November 2, 2022 meeting. Seconded by John Tuttle. All in favor.

Motion by Patrick Driscoll to continue the application of Patrick McKenna for property owned and located at 139 Wentworth Road to the November 2, 2022 meeting. Seconded by Jenn Madden. All in favor.

II. BUSINESS

- Approval of Minutes:
 - August 23, 2022 site walk of 2 Merrymeeting Lane - no corrections

Motion by John Tuttle to approve the minutes of August 23, 2022. Seconded by Jenn Madden. Vote: 5-0 (G. Mikolities, P. Driscoll, S. Crapo, J. Madden and J. Tuttle)

- September 7, 2022

Corrections:

- Page 5, spelling correction needed for the word “balanced”.
- Page 11, clarification needed for the term, “bulking up”.
- Correction needed for spelling of “Mr. Scamman”.

Motion by Patrick Driscoll to approve the minutes of September 7, 2022 as amended.

Seconded by Jenn Madden. Vote: 5-0 (S. Chororos, P. Driscoll, S. Crapo, J. Madden and J. Tuttle)

III. APPLICATIONS

1. **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.**

Chair Crapo read, as listed in the agenda, the dimensions of the proposed structure and asked if there is any new relief needed aside from that which was originally stated.

Mr. Magri stated that the only relief needed is that which has already been listed.

Chair Crapo confirmed that the corner is 38.1’ and that the existing house is already closer.

Mr. Magri confirmed that this is correct.

Mr. Scamman reviewed the dimensions and reported that the side with the bulkhead is 21’.

Chair Crapo reviewed the notice and map and asked if a variance will be needed for 34.8’ to the front.

Mr. Magri confirmed that this is correct and was listed in his original application.

Mr. Scamman clarified that the measurement was taken from the overhang of the roof.

Chair Crapo noted that the 38.1’ from the front is not listed in the notice, and this would be a 2.3.C(3) because it’s a front. Chair Crapo asked the applicant if he has anything else he’d like to present.

Mr. Magri did not have anything further to present, and noted that he had the drawing that was requested as well as more accurate dimensions.

Chair Crapo asked Mr. Magri if he’d spoken to Chuck or Victor about the septic. Mr. Magri hadn’t spoken to either about the septic.

Chair Crapo recalled the previous month’s meeting where it was noted on the map that certain parts of the septic had already been installed and may or may not be able to be set back.

Ms. Madden expressed that Chuck may ask that Mr. Magri go back and review the septic plans.

Mr. Magri noted that he'd already hired a septic company to make installations and take care of permits, applications, and approvals; it's already been inspected.

Chair Crapo explained that they can step in and amend the notice of the decision to some degree, but here we would be creating a whole new item without having any of the necessary dimensions. Given that the septic was so recently installed and that nothing is changing, that is not included in the scope of work for this project.

Mr. Mikolities asked Mr. Scamman for a brief discussion of storm water.

Mr. Scamman explained that he didn't have additional information related to stormwater or drainage for this property.

Mr. Magri explained that the mud room addition and kitchen addition are being constructed over a pre-existing foundation, so the storm runoff wouldn't change, and the addition of the deck is surrounded by a lawn area that won't impact neighbors at all.

Mr. Mikolities asked if he was adding 2% impervious, and asked what was going to happen in the back yard.

Mr. Magri confirmed, 2% impervious, and explained that there would be a deck added to the back yard, where there is currently just lawn area.

Mr. Mikolities asked what is being planned for below the deck. Mr. Magri explained that it would continue to be a grassy area, that he has no plan to include pavers, concrete, or gravel.

Mr. Scamman added that there is currently an overhang on the back of the house along with some concrete walkways, so there is some existing impervious area where the deck would be.

Mr. Magri explained that some of that existing concrete walkway was removed during the installation of the septic project.

Chair Crapo asked if Mr. Magri had counted the deck installation as impervious. Mr. Magri confirmed.

Chair Crapo opened to the public for comments.

Hearing no further comments, Chair Crapo closed the public hearing at 7:25 p.m.

Vice Chair Driscoll commented that this survey answered any outstanding questions he'd held from the previous meeting, and he doesn't see any issues with the application.

Member Tuttle agreed and commented that it's a smaller house and seems to be a reasonable expansion to suit the applicant's family's needs.

Member Madden commented that it's not any less conforming than it was.

Chair Crapo agreed and added that it's a tight lot, and every square foot drives a percentage at a greater rate, and it's tight with the front corner and the two front set backs. It seems reasonable, although it does increase the runoff with the 2% jump in impervious, there is still plenty of open lawn for infiltration of stormwater, there doesn't seem to be an issue.

Chair Crapo reviewed the criteria and called for a vote on requested variances:

1. The variance is not contrary to the public interest:

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

2. The spirit of the ordinance is observed:

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

3. Substantial justice is done:

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

4. The values of surrounding properties are not diminished:

Gregg Mikolities – Yes
Patrick Driscoll – 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 that area?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

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

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

- 7. The proposed use is a reasonable one.**

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

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

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

Motion by Patrick Driscoll to approve the application for Michael Magri for property owned and located at 354 Wallis Road, Tax Map 18, Lot 80 for 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 20.9' from the rear boundary where 30' is required; and from §190-2.3.C(3) for construction 34.8' from the front boundary where 40' is required; and from §190-2.3.C(3) for construction 38.1' from the front boundary where 40' is required. Seconded by Gregg Mikolities. All in favor.

- 2. Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18 request variances to construct a single family house on existing lot 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), (g) for soffits for a house 39.7'/22.4'/16.4' and a house foundations 42.5'/25.2'/18.8', a porous drive 44.5', a**

walkway 52.8', a septic tank 67', septic system 79', an underground propane tank and landscaping from wetland where 100' is required. **Property is in the Single Residence District. Case# 33a-2022.**

3. **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.**

Chair Crapo explains that that following is a two part application for special exception and variance relief and reads through the agenda.

Member Mikolities disclosed that he is conducting some work with John Cronin in Manchester and Seabrook, which is unrelated to this project.

Chair Crapo explained the conflict rules and that Member Mikolities may choose to proceed if he feels that he can serve his duties to the board in a proper and unbiased manner.

Member Mikolities agreed that he was in a position to proceed.

Attorney John Cronin, representing the applicant, explained that there is a single-family lot that was established by an older subdivision. Some of the homes within that subdivision have been built out within a matter of feet to the wetlands, including the house next door, which was disclosed in a recent site walk, and in addition to multiple hearings, there have been at least three site walks on this property. Attorney Cronin noted that much debate and discussion has transpired regarding the treatment and delineation between the town's wetlands, and their function and value. Attorney Cronin explained that in this particular case there are two wetlands (Wetland A & B) that have been identified by wetland scientists as being over 100' from high functioning Wetland B, but there are short distances, which are called out in the notice, for which relief is required for the variance.

Attorney Cronin explained that the first meeting was used to review the application of the historical analysis in detail, at which point he asked that the board consider the Bartlett Analysis, which they did, but decided it would not apply in this case. Attorney Cronin noted that the five criteria were also discussed at that time, and the "traditional hardship analysis" within the application. He asserts that this case meets both of the hardship analyses and that there is no other economically feasible alternative for this land to be developed in accordance with the ordinance, other than a single-family home.

Attorney Cronin outlined the second meeting, at which time there were questions as to why the wetlands scientist and landscaper were not present; he noted that they are both in attendance for this meeting to answer any questions. Attorney Cronin continued that previously the board's feedback was that a variance couldn't be granted without knowing more clearly what would be built. Attorney Cronin noted that version one of the plan included a side-loading garage, which prompted concerns related to its proximity to the wetlands as well as the removal of trees. The

question was also raised as to whether the design of the home could be changed to include a front-loading garage to minimize the impacts. In response, the applicant went back to the architect and asked if they could provide something specific and concrete for the board to grant relief upon, which has been included in the newest application.

Attorney Cronin introduced Robert Baskerville, of Bedford Design Consultants, who presented the new architectural designs and floor plans.

Chair Crapo asked if this design is different from the design presented in the last meeting, or the old version.

Mr. Baskerville explained that this is different from the old version and his plans haven't changed; but, the plans now reflect more specific information than what had previously been submitted.

Chair Crapo asked if the intent of the applicant was to seek approval of this specific set of architectural plans.

Attorney Cronin stated that wouldn't be the preference, that the applicant would like some freedom, but if it's necessary in order to gain ZBA approval then they would use these plans. The preference would be to lock in a footprint and specific distances to the wetlands and allow some freedom beyond that, but will move forward either way.

Chair Crapo summarized that this application has been put forward for peer review, included site walks, and has been given recommendations by Sebago Technics, and asked if any of these concerns have been addressed in the plans.

Mr. Baskerville commented that they received the latest Sebago comments 10 days ago, and that the submitted plans address those concerns.

Chair Crapo clarified that the board needed to understand whether the submitted plan is a concept or the plan they intend to use, and will move forward understanding that this is the plan the applicant intends to use.

Mr. Baskerville stated that, to the best of his knowledge, the I's are dotted and the T's are crossed. He continued to describe the lot, a 3.29 acre lot created in March of 1987, which the applicant purchased in May 1993. Today the lot is assessed at \$609,000. Mr. Baskerville displayed the various wetland lines measured by GIS, Jim Gove, and Mike Cuomo. Mike Cuomo agreed with the work of Jim Gove. Mr. Baskerville explained that there are no flood plains on the lot and it's zoned single-family residential, surveyed by his office. Mr. Baskerville summarized some of the questions that Sebago presented.

Chair Crapo encouraged Mr. Baskerville to be thorough and present any and all relevant information that the board would need to take into consideration and to be included as a part of the record.

Mr. Baskerville continued, describing the dimensions of the house and the square footage as 2,272 square feet. If you were to build above the garage, that would include an extra 600 square feet in addition to an unfinished basement. Mr. Baskerville noted that Sebago had questions regarding the grades around the house, which were adjusted by six inches based on Sebago's comments. The property would also include a walkout in the back.

Mr. Baskerville explained that there were questions regarding the appearance of the grades on the site walk. Using the architect's rendering of the house, Mr. Baskerville explained the grades, including the front of the house, which slopes down over the septic system and towards the road, and the back of the house, below the basement floor, where the slope goes down another 15".

Chair Crapo asked if anyone in the audience would like to see the visuals that Mr. Baskerville presented.

Mr. Baskerville explained that this is the same plan that was presented at the previous meeting and identified the building area as 1.6% and the lot area as 1.9%. The lot is on town water and will use an AVS Clean Solution septic system.

Mr. Baskerville addressed the lot's drainage. Sebago had some questions related to drainage, which Mr. Baskerville addressed. There is no increased drainage off of the site. Sebago checked the calculations of the house drip edge; the majority of the house's roofline flows toward the front or toward the back, the house has been designed to contain those flows so that everything draining off the roof would flow into the ground. There is also a pervious pavement driveway where everything is contained, and calculations have been checked. Mr. Baskerville also addressed the aquifer requirements and summarized the minor changes that were made based upon comments from Sebago. Mr. Baskerville explained that a catch basin and bag will be used during construction to catch sand, gravel, and debris. He pointed out the new stonewall, which is now shortened in the new plan, as well as a shortened fence. He explained that nothing has really changed with the plan and the location of the house.

Chair Crapo pointed out one comment about slope as it relates to the driveway, drip edge, and the air conditioner unit under the porch. He asked if Mr. Baskerville could provide more detail.

Mr. Baskerville explained that they changed the grading and, if necessary, could build a small retaining wall of timbers under the porch.

Member Madden, referring to the architect's plans, clarifies the location of the proposed retaining wall.

Mr. Baskerville confirmed the location of the retaining wall.

Chair Crapo stated that if the structure is to be built, it needs to be included in the plans because it's considered to be a structure by the building department and it needs to meet dimensional requirements.

Mr. Baskerville pointed out a note that it had to be elevated to be level; so, rather than cutting it down, the decision was made to raise it up in order to make it level.

Chair Crapo clarified that no retaining wall would be needed.

Mr. Baskerville confirmed that no retaining wall would be needed and explained that they would put in all of Robbi Woodburn's plans, at first the plan didn't make sense, so they asked that Ms. Woodburn update her plans. Mr. Baskerville introduced Ms. Woodburn, who is the architect

Mr. Baskerville introduced Ms. Woodburn of Woodburn Company Landscape and Architecture. Ms. Woodburn explained that she took the new plan with the new house footprint and the driveway that faces the street and adjusted the buffer that had been designed initially to respond to that. She explained that the plan is relatively simple but it shows a buffer at the edge of the woodland, tucked in and out of the woodland to add more native plants and thicken the buffer at that edge. The buffer includes a combination of blueberries, winterberries, witch hazels, and on the corner near the neighbors, a staggered hedge of Atlantic White Cedar. The plan also includes additional ornamental foundation plantings in the front.

Mr. Baskerville, to Chair Crapo, explained that Sebago had included a comment as to why some of the plantings were in the trees and some of the plantings were in the cut.

Ms. Woodburn explained that there's very little room between the house and the cut of the trees, and the plan was to tuck the vegetation in and among the existing trees to thicken the buffer and keep enough room between the cut of the trees and the house.

Chair Crapo clarified that the use of that technique would not be used to establish a lawn. He asked if it would remain natural or if there is any lawn space included in the plan.

Ms. Woodburn explained that yes, there would be a lawn area in the open space between the dripstrip and the edge. She explained that there was no input from anyone on the site walk that said anything to the contrary.

Mr. Baskerville added that some of Sebago's comments focused upon the cut line, and he explained that the purpose of adding vegetation in and among the cut line would be to protect, enhance and diversify the buffer. Ms. Woodburn agreed with his description of the strategy.

Chair Crapo says that it was his impression from the site walk that there would be no lawn, that it would remain natural.

Ms. Woodburn explained that the construction of the home would require cutting into the treeline to make room for machinery, and the plan is not to bring the vegetation to the base of the house, rather add vegetation to the cut line. She also explained that in time, the canopy of the trees will eventually grow towards the house and towards the sun.

Chair Crapo reiterated that his impression on the site walk was that a lawn would not be a part of the plan. He explained that the septic system would need to mitigate erosion, and that while it might be seeded, the shading of the canopy would likely keep it from growing, eventually turning back to forest floor.

Ms. Woodburn confirmed that discussion, but clarified that this has always been the plan, and there wasn't discussion around the character of the land on the edge of the woods. She explained that native grass mix, that doesn't require fertilization, could be used.

The board continued to discuss the potential of a lawn surrounding the house.

John Cronin asked Jim Gove to come forward and introduce himself.

Jim Gove of Gove Environmental Services introduced himself as the environmental scientist for the applicant. Mr. Gove recalls reading the Rockingham County environmental conservation letter and understood the discussions of the conservation commission; however, there seemed to Mr. Gove to be a distinct difference in the wetland types on this site including the combination of soils, hydrology, and vegetation within each wetland.

Wetland B is a red maple swamp, which appears to be saturated year-round, includes pit and mound topography, poorly drained organic soils, and is flat, which provides flood storage. That wetland, because of its specific characteristics, provides a number of functions including nutrient retention, flood storage, wildlife habitat, and dense fauna in the shrub layer. This is a different wetland type than Wetland A, which is more seasonally saturated, maybe 2-3 weeks during the growing season, has poorly drained soil, and doesn't include the same organic buildup as Wetland B. It slopes down toward the larger wetland. It retains very little flood storage, and because of its minimal soils, does not have the same amount of nutrient retention that the larger wetland does; it's a fringe to Wetland B.

Because of the structural differences, the combination of upland and wetland hardwoods, the density of the herbaceous layer, and its fewer species that attract birds and animals, it's essentially a different structural wetland than Wetland B.

The higher functioning wetland is approximately 128' from the construction. The other wetland is much closer. Mr. Gove felt that it was important in his analysis to point this out. He acknowledged that it may not have any effect on the decision, but it's important to note that the wetlands have very different functions. Mr. Gove opened to any questions.

John Cronin asked if the variances are granted and this house is built, will it have any negative impact on the quality and function of those wetlands?

Mr. Gove first explained the aspects of water quantity; he asked if the quantity of the water from the impervious surface was going to be impactful to the wetlands at the rear. Mr. Gove referred to the engineer's assessment that the water quantity would be controlled up to the 50 year storm. Mr. Gove then addressed the water quality; based upon infiltration, drip edges, etc. the water quality will be protected. Mr. Gove then addressed wildlife habitat; he emphasized that there are animal trails around the edges of Wetland B. He also noted the surroundings, which includes several other nearby structures. He summarized by stating that the placement of this house will have relatively minimal impact to the wildlife that is utilizing the area. Mr. Gove asked if anyone had anything to add.

Mr. Baskerville noted that during the site walk it was observed that there is no understory, and there is currently very little food to support wildlife. He pointed out that the landscaping plan was designed, in part, to support the wildlife with native vegetation such as blueberry, etc.

Mr. Gove clarified that the site can be naturalized using various plants and vegetation.

Attorney Cronin offered to go through the variance criteria.

Chair Crapo asked if anyone had additional questions first.

Member Driscoll asked if there is any sump pump or hole included in the plans.

Mr. Baskerville confirmed, there is no sump pump or hole included in the plans, it's a walkout and grade.

Member Madden asked if everyone was finished with their questions.

Attorney Cronin, using the town's GIS, observed that several of the surrounding homes in the neighborhood are currently located on what is considered to be wetland, or within feet of the wetland. He said he was happy to hear that another similar case brought before the Rye Conservation Commission with a setback issue to the wetland buffer was voted upon favorably.

Attorney Cronin summarized the Bartlett Analysis and restated for the record that a case had been made at a previous meeting that this site, which has existed since the origination of the subdivision, and which was properly approved at the time of purchase, should not be retroactively held to the standards and laws created after the site's approval, and that the applicant should be permitted to build out in the same way that the other homes have within the same subdivision. Attorney Cronin recalled that the zoning board, at the previous meeting, had not been supportive of that notion.

Attorney Cronin summarized the criteria for granting a variance and stated that it's his position that the proposed structure fits within the criteria. The structure is to be a single-family home, which is expressly allowed by the ordinance, built in a neighborhood with other single-family residential homes. Attorney Cronin referenced criteria #4, which discusses the impact of the structure on the value of the surrounding properties. Attorney Cronin noted some of the concerns expressed during the site walk, but made the case that these concerns aren't a true test of the criteria; a more accurate test would be if the relief granted would diminish the value of the neighboring property; Attorney Cronin is of the opinion that it would not diminish the value of the surrounding properties.

Attorney Cronin next addressed the balancing test, posing the questions "what will the harm be to the applicant be if the variances and special exceptions are denied versus what would be the benefit to the public?" Attorney Cronin outlined several reasons to support the professional opinion that the proposed construction would not negatively impact the wetlands or the community at large.

Attorney Cronin addressed the hardship criteria. He noted that the requirement of a 100' setback was put in place after this lot was created and diminishes the value of the property. Attorney Cronin also pointed out that the applicant has paid taxes on the lot since its purchase and he believes all can agree that this is unfair. Attorney Cronin states that this plan has been vetted to an extreme degree and the plans have been laid out in careful detail in hopes that the board would have the necessary information and modifications and an approval could be granted.

Attorney Cronin referred to a variance statute which discusses the alternative basis for relief on hardship, which states that if you are unable to demonstrate satisfaction under prong one, you can still maintain the hardship argument by showing there is no alternative, economically reasonable use of the land based on the strict application of the ordinance. If the ordinance is applied strictly, then there is nothing that can be done with that lot; therefore, Attorney Cronin believes that the applicant meets each one of the criteria to warrant the issuance of a variance.

Attorney Cronin addressed the special exception. The driveway was relocated at the suggestion of the ZBA. The initial plan called for a side loading garage, and the plan was amended to include a front loading garage which is now 54' from Wetland A.

Chair Crapo clarified that the board never made an official recommendation to move the driveway; rather, Chair Crapo had asked during a site walk if there could be an alternative plan for the driveway.

Speaking to Chair Crapo, Attorney Cronin stated his interpretation of that comment was that the odds of having a variance granted were slim if the driveway was not moved.

Attorney Cronin closed his presentation and opened to questions of his team, with the opportunity to briefly rebut if necessary.

Member Driscoll asked for clarification as to who on the board had been present for the various site walks. Member Madden and Chair Crapo clarified that not everyone had been present for all site walks, but everyone on the board is familiar with the case and application.

Speaking to Attorney Cronin, Chair Crapo reiterated that if this case leads to approval, the applicant would be tied to the presented plans. Attorney Cronin confirmed that he understood. Chair Crapo pointed out that Mr. Baskerville had presented alternate possibilities for the construction of the area above the garage during his presentation. Chair Crapo stated that there needs to be a clear plan presented of whether or not they will build above the garage.

Member Driscoll stated his understanding that there would be no changes to the shell of the building; that it would be unfinished space that could be finished but wouldn't require dormers.

Speaking to Mr. Baskerville, Chair Crapo asked if anything would change outside of the building. Mr. Baskerville confirmed that nothing would change.

Referring to page four, Member Mikolities discussed the pervious asphalt maintenance, he asked if there is a maintenance section for permeable pavers.

Mr. Baskerville pointed out that Sebago had asked for details about the permeable pavers in the walk. He clarified that he set the location of the walk, but it should be up to the landscape architect as to what type of pavers will be used.

Member Mikolities explained that his primary concern was about the maintenance of the pervious pavers.

Mr. Baskerville clarified that they were discussing the pavers in the driveway and commented that not all pavers need the same maintenance, and that he would be okay with applying the same maintenance to the driveway.

Member Mikolities commented that there is a good section written about the driveway maintenance, but he didn't see a maintenance section for the walkway, and every square foot matters.

To Mr. Baskerville, Member Madden reviewed the blueprint and asked if there would be a living space built over the garage.

Garage is four steps below the first floor, then you could go up another four or five steps to a finished area above the garage, then you could go up another four or five steps to the second floor.

Member Madden clarified for the record that the board doesn't care about this for an approval, but that there is a living space above the garage.

Mr. Baskerville confirmed and explained that the shell of the building does not change, nor does the setback to the wetlands, and nothing that's put in place to protect the wetlands will change. If the owner chooses to move the rooms around in the future, the footprint of the house will not change. He doesn't want this blueprint to tie the applicant to the architectural plans inside of the home.

Member Madden, still speaking to Mr. Baskerville, asked if there had ever been discussion of moving the structure's placement further to the left. Mr. Baskerville and Chair Crapo discussed the various reasons as to why the house likely wouldn't be moved to the left.

Speaking to Mr. Gove, Member Madden asked if it's his opinion that sufficient mitigation measures have been taken to address the issue of wetland impact.

Mr. Gove explained the effects of an impervious surface on a wetland including water quality, water quantity, and the impact on wild habitat. Based upon the analysis of the presented design, the aspects of water quality and quantity are taken care of because there will not be an excess flow of untreated water into the wetlands. There is already a fair amount of development surrounding this lot that has pushed some of the more sensitive wildlife to the back, and what's left is the wildlife that's much less sensitive. It was Mr. Gove's opinion that wildlife habitat would not be significantly impacted. So, to the question of mitigation for wetland impacts, it will be mitigated by the physical aspects of what is engineered and built there.

Member Madden summarized that there were three categories of mitigation and the answer to all three was "yes". Mr. Gove confirmed.

Chair Crapo opened to the public for comments.

Jeff Gardener of 6 Brackett Road, speaking for the Rye Conservation Commission, explained that he was present with other members to correct the record. He explained that this is not a project that the RCC approves. It's a vacant lot that exists entirely within the buffer and 30' from the wetlands. He asked the board to consider whether this project is in the spirit of the ordinance and also to consider the town's water issues.

Susan Shippiro of 45 Recreation Road and of the Rye Conservation Commission added that the majority of the house is not only within the 100' buffer but also within the 75' buffer, which was an ordinance long before.

Karen Oliver of 1159 Washington Road and of the Rye Conservation Commission wanted to speak as a member of the public. Chair Crapo explained that she would need to be an abutter in order to speak as a member of the public. Ms. Oliver explained that she could speak on the issue as a member of the RCC. She summarized that the RCC's issue in granting these significant variances, of which there are nine, would make the buffer regulations meaningless. She stated that the purpose of the buffer regulations is to protect the wetlands. She stated that there was a commission and a ZBA years ago that denied this and she hopes that this board will too.

Susan McFarland, Chair of the Rye Conservation Commission, asked the board if they had looked at map 14 of the natural resource inventory. She pointed out that this site is one of the 6th highest ranking prioritized habitat blocks in the state, detailed on map 9 in the NRI. She also wanted to be sure that the board had read the June 30, 2021 letter and also the June 2022 letter which detailed the lot of record and all the components that Attorney Cronin had discussed.

Member Madden asked Chair McFarland, "how big is the 6th largest?"

Chair McFarland explained that she doesn't have the actual area, that there is a scale on the map, but the area includes the Packers Bogg, upper Barry's Brook watershed. She explained that it's a large area. She explained that on the town's water protection maps the orange details the prioritized protection for the town and the blue is the water. All the new mapping is from 2018 by the Nature Conservancy, New Hampshire Granite, and Connect to Protect. She reiterated that this is a high priority area, and expressed that it's unfortunate as it probably was not considered to be high priority when it was purchased.

Member Madden commented that it includes 23 acres.

Amos Rogers of 37 Old Parish Road, an abutter to the property, explained that he has attended all of the meetings that have addressed this application. Mr. Rogers asked if the applicant is planning to build a house on this lot.

Chair Crapo said that he would let Attorney Cronin respond, but that his understanding is that the applicant may not build this house, but the building is tied to this set of plans as far as the foundation layout and its structure. It's up to the board how specific a motion would be tying it exactly to the internal layout, but it's his understanding that the current applicant and owner may not be building it, but they are seeking the relief at which point a new owner would benefit from or be handicapped by this relief.

Mr. Rogers, for clarification, asked if the variance is granted on those conditions, then they would have to build to the plans that are approved?

Chair Crapo explained how it will depend upon the vote.

Mr. Rogers stated that it's his understanding that this is subject to a homeowners association that has certain requirements on the actual building. One such requirement is a minimum square footage and the other is approval by the homeowners architectural review committee, which since the last meeting has been reestablished. Mr. Rogers asked the board if either of those HOA requirements have been taken into consideration.

Attorney Cronin responded to the question and explained that the minimum square footage was taken into consideration but that the covenants have since lapsed and are no longer relevant.

Chair Crapo asked Attorney Cronin if there was ever an HOA meeting.

Attorney Cronin responded that there wasn't, to his knowledge, an HOA meeting and explained that they wouldn't present these plans in such a meeting unless they were approved. He further explained that in looking into these covenants, it was his understanding that there was never an architectural committee established. He explained his opinion that the revival of a committee at this point in time would be "too little too late", and it's separate from zoning and variance law, it would be more of a civil matter between the association members and property owners.

Chair Crapo commented that the effect of the construction on the value of surrounding properties and the covenants that were in place should be taken into account.

Attorney Cronin responded that the board's enabling authority is broad, but does not include specifics regarding the style, design, layout, etc.

Chair Crapo clarified that the board is tasked with evaluating variances and whether they do or do not diminish the value of abutting properties.

Attorney Cronin responded that this is only with respect to the relief that's been requested; the design of the house and the layout of the covenant have no bearing on the relationship between the house and the wetlands. Attorney Cronin explained that if they have to comply, then they will, and if they have to come back to the board, that's a risk that they will take. As of tonight, those plans have not been submitted to the HOA, and if it's deemed that they have to be, they will, and if they have reasonable comments for revision and we have to make them, then that's on us.

Mr. Rogers explained that there is a minimum requirement of 3,500 square feet. If a building is approved with a variance substantially less than that then someone has to make a significant change to that plan to be able to build and to conform with the HOA.

Member Madden commented that this was addressed in the last meeting and the applicant is taking that risk.

Mr. Rogers pointed out that all of the other houses within the HOA meet or exceed that requirement, and that the proposed home would not be consistent with the HOA requirements, and therefore would diminish the value of the surrounding properties. With respect to the elevation and drainage, it appears that the elevation change from the front of the property to the back of the property is roughly 8-10', which means that the elevation change from the side of the property toward Mr. Rogers' property is roughly the same, 8-10', and all of the runoff will run away from the house. Mr. Rogers wondered how he could be assured that the substantial work that will be done won't impact his property negatively since there is wetland between the two properties to begin with. Mr. Rogers expressed his concern that the removal of trees will impact the level of ground water and the possibility of the wetland area encroaching upon his property and wondered what recourse he would have. Mr. Rogers then addressed concerns regarding the home's design: the only open space is the porch on the side of the house, which is the closest

point to the open space on his property. Mr. Rogers had concerns that noise from the proposed property would carry to his home, given the site's positioning and proximity. He also pointed out that the application has been denied in the past and that the application has been brought back on the basis of some material changes to the property, which should be considered again. Mr. Rogers disagreed with this notion and stated that this is essentially the same application which had been previously denied.

Chair Crapo commented that this was the board's first discussion; if they hadn't reached that threshold then the board would have denied the application. Chair Crapo asked Mr. Rogers if he'd seen the letter from Sebago. Mr. Rogers had not. Chair Crapo explained that, in response to the questions raised at previous meetings, the board has taken steps to find answers to these questions and concerns. There was also a peer review conducted by independent reviewers hired by the town and paid for by the applicant. Discussing stormwater management, Chair Crapo said the reviewers were more concerned with the permeability of the driveway and walkways. There was no mention of the right side, closest to Mr. Rogers' property. Chair Crapo commented that the applicant is still obligated under zoning law not to increase the amount of runoff towards Mr. Rogers' property. Chair Crapo offered copies of Sebago's four page analysis and explained that much of Sebago's commentary was fine tuning, notes, instructions, and general documentation for any party involved in the construction of this site. Chair Crapo offered copies of Sebago's analysis for anyone who wanted access. He also offered copies of Michael Cuomo's letter, which discusses the conservation aspect of the peer review.

Mr. Rogers acknowledged that a lot of work has been done by a lot of people, but that the fundamental issue is that the applicant is asking to build a house that is 100% in a significant and high priority wetland buffer. Mr. Rogers also pointed out that across the street from his house is a property very similar to the one being proposed. He reported that the property was recently sold and the new owners clear cut the lot. He presented a photo of the property to the board. Mr. Rogers felt that this was an example of what any homeowner in that area would like to achieve; an open lawn area to enjoy. He believes that if these variances are granted, it will open the door for future variances to be granted to achieve a property similar to the others in the neighborhood. He also reiterated that this property doesn't make sense from the perspective of practical use, neighborhood, or conservation.

Susan Shapiro, speaking for the Rye Conservation Commission, pointed out that this property is contiguous to two conserved properties: the Holloway Property and the Liam Property. Liam abuts the neighborhood and Holloway is next to that. Ms. Shapiro pointed out that the wildlife corridor runs through the upper part of this property, which is also available on the wildlife map in the NRI. She also noted that in New Hampshire there is no such thing as a "Type A" and "Type B", a wetland is a wetland. She emphasized that wetland and wildlife should carry a lot of weight in this project.

Chair Crapo asked if Ms. Shapiro feels that the wildlife corridor is different from what Mr. Gove spoke of earlier.

Ms. Shapiro responded that she didn't know exactly where the corridor falls, but according to the map it's a well used corridor in that general area. She noted that it is the Barry's Brook watershed buffer, so of course that's where wildlife would go.

Vice Chair Driscoll clarified that Ms. Shapiro was noting the difference between a corridor and a game trail; that the corridor is a general area as opposed to a specific trail. She agreed.

Susan McFarland provided a map from May 2021 created by the Nature Conservancy, New Hampshire Granite, and Fish and Game. She shared it with the board, then with Attorney Cronin and Mr. Baskerville who were both familiar with the map.

Ms. Shapiro commented that the Holloway and Liam easements are 68 acres in total that are conserved in the area near Blueberry Lane and Mountain View, which comes up behind Merrymeeting Lane. There are huge swaths of land between White Horse Lane, Liam and Holloway, with a lot of wildlife.

Chair Crapo pointed out that the members of the RCC are more familiar with the lines and he asked if the property in the photograph Mr. Rogers presented is in the wetlands or wetlands buffer.

The RCC agreed that the property would not be considered to be in a wetland.

Chair Crapo explained that if this property were to be approved and a similar action were taken (clear cutting), they would have a lot of enforcement to deal with and a very expensive reparation plan.

Mr. Rogers reiterated his concerns about the proposed property.

Attorney Cronin presented a rebuttal. He responded to Mr. Rogers' concerns and explained that no relief is being requested regarding noise ordinances and the applicant will abide by any present ordinances, and he would expect the same. With respect to the water runoff, Attorney pointed out that Mr. Rogers' house also sits within the buffer on the wetland. He explained that the applicant has the same obligation as every property owner; you cannot artificially alter the runoff to go onto someone else's property or you would have a trespass claim and Mr. Rogers would have legal rights to make sure that doesn't happen. With respect to trees within the buffer, Attorney Cronin commented that he wouldn't recommend it, but that any person could go in and cut them as long as they did not impair the ordinance. He pointed out that the variance issues relate to the other side of the property. He also wanted to state for the record that the Rye Conservation Commission has made a great case for how valuable this land is. Attorney Cronin explained that after the first meeting the applicant stated they would be willing to engage in discussion with the town about acquiring this property if it's valuable to the community and the wetlands. He offered to discuss market value and financing to meet budgetary requirements. He explained that they get the current use fees to buy and acquire land; Londonderry does it all the time. Attorney Cronin stated that the RCC's response was that they'd like to donate it.

Chair Crapo commented that this issue isn't before the board.

Attorney Cronin responded that it is before the board; if you can't do anything with this property and it's so valuable, then you need to put your money where your mouth is and buy it. You can't deny someone the productive use of their property because it's good for everybody in town. You have a right to use your property in some meaningful way, particularly when you're paying taxes on it with an assessment of \$600,000. He continued that everyone is forgetting about that component; this is someone's private property. Government has a right to regulate and zoning has a right to zone. He pointed out that this application has had every expert look at it to address all of the board's concerns and make sure it doesn't have a negative impact on the wetlands, and that's the real issue here.

Susan McFarland, Chair of the Rye Conservation Commission, responded. She explained that she and Attorney Cronin did have a conversation about acquiring this land, and her answer was that the RCC is always open to acquiring land, but the conversation did not go any further.

Mr. Rogers explained that he was unaware of whether or not his home was in the wetlands at the time it was built. He reiterated that he did not build his house. He suggested that it was possible that his house wasn't in the wetland or the wetland buffer at the time. He assumes that the property of discussion was not in a wetland at the time of purchase, but the wetland has grown and the buffer has changed. He sympathizes with the applicant, but wanted to point out that the applicant has owned this property for 29 years and could have done something with it, but they chose not to. They're choosing to do something now, but the circumstances have changed, which is why they are asking for a variance.

Hearing no further comments, the public hearing was closed at 9:16 p.m.

Chair Crapo opened to questions and comments from the board.

Vice Chair Driscoll commented that he'd like to know Member Chororos' thoughts, despite the fact that she won't be voting. He started by explaining where he agrees with the applicant. He explained that he doesn't think the HOA requirements have any standing on the voting on the five variance requirements, he sees that as something separate. As a subsection on that, he'd like to see the house plans for stormwater management more than anything else. He thinks it's a much higher threshold if he cannot see what's going on with the house, rooflines, and gutter systems.

Chair Crapo asked if Vice Chair Driscoll is asking for more detail.

Vice Chair Driscoll responded no, he wasn't going to ask for more detail, but wanted to explain that for an application, it's very nice to have. He continued that he doesn't have a problem with the dimensional requirements on this application. He is aware that the propane tank is on that side, but the house is situated from the side yard and setbacks in such a way that he doesn't see how he could vote against it. He explained that, for him, it's all about the wetlands.

Chair Crapo clarified that this comment is focused on the non-wetlands setback.

Vice Chair Driscoll confirmed. He continued that the applicant made a point that the application was, "beat to a pulp", but the applicant is asking for a very large house to be built very close to the wetlands and that is not discounted by him. He reiterated that this is a very big ask by the applicant and very rarely does the board see someone come in with an undeveloped lot and try to build a house this large that close to the actual wetlands, within the wetlands buffer. Wanting to keep things as efficient as possible, noting that this application process has been inefficient thus far, he continued that the RCC works with the majority of applicants to try and bring their projects to completion. He felt that it was unfair of the applicant to make an assumption that the RCC is challenging to work with. He reiterated that the RCC does an incredible job for the town in working with the townspeople and for the board and this shouldn't be discounted here. The items Vice Chair Driscoll had trouble with included public interest; namely, the wetlands and wildlife; spirit of the ordinance; substantial relationship between the general purpose of the ordinance provision. The proposed use is reasonable, but he wanted to rely upon Chair Crapo's legal background to answer some questions. He explained that the use as a single residence property is reasonable, but this situation makes him question whether this is considered "reasonable" due to the size of the house and its proximity to the wetlands. He reiterated that those were his struggles with the application and he's very interested in hearing what the rest of the board has to say about this application.

Chair Crapo agreed with the Vice Chair's assessment of the RCC and wanted to reiterate that the board has seen numerous applications where the RCC has requested certain conditions in order to recommend a project, and they have recommended against projects too, it's not isolated to just one.

Member Madden added that she recalled from the first meeting that the RCC's letter had recommendations.

Chair Crapo explained his recollection that the letter recommended nothing be built on the property.

Member Madden believed that the second RCC letter stated that this property is an unbuildable lot, but the first letter had recommendations.

Chair Crapo reopened to the public.

Susan Shappiro, speaking for the RCC, stated that the RCC's position has never changed. The RCC has always recommended that nothing be built on this lot. It's against everything the RCC stands for.

Member Madden asked again, were there ever recommendations made?

Ms. Shapiro suggested that the RCC may have suggested that the applicant try for a different plan, but their recommendation was that nothing should be built upon this lot. She read a section from the initial RCC letter to the applicant.

Member Madden alluded to a letter she had read where her interpretation was that there was not a flat out rejection.

Ms. Shapiro feels that Member Madden misremembers that detail.

Member Madden explained her thoughts: the wetlands are the wetlands, a buffer is a buffer, this is a property that has continued to be deemed a buildable lot and assessed as such. She understands building in a wetland, but building in a buffer is different from building in the wetlands. The abutter didn't know or think that the lot was buildable when they purchased. She also wanted to ask the opinions of the people who went on the site walk, though she's walked the site herself independently.

Chair Crapo explained some of the benefits of attending the site walk but reassured Member Madden that she likely gleaned the same information by walking the site herself.

Member Tuttle pointed out that it's a large house and a large property to be built in the wetlands.

Member Mikolities explained that his opinion is similar to Member Madden's. He summarized some of the information related to the lack of wetland impacts, the taxes, the septic system, drainage, and his assessment of the abutter's complaints. He praised the landscaping plan. He reiterated that he hadn't formed an opinion yet, and looked forward to hearing other thoughts from the board.

Chair Crapo noted that there is technically a request for relief in that setback for the propane tank.

Member Tuttle agrees with Member Mikolities that this lot is developable to some extent, perhaps not to this extent.

Member Madden clarified that it's 2896 square feet, which is less than required per the HOA requirements.

Chair Crapo reiterated that the board needs to be sure that they keep their decision tied to zoning.

Member Madden agreed that it's not relevant.

Member Chororos stated her opinion that it's much too big of an ask and it's setting a precedent in the wetlands.

Chair Crapo stated that he's mostly in the middle. It's a lot to ask for this lot, but it's less than what was asked for previously, and what tips the scale is that the relief is the relief and they've pulled it back from what the plan was before. They've removed the driveway and, alluding to Member Tuttle's comment, it's difficult to feel that it's reasonable to not have anything on this lot. He doesn't necessarily subscribe to the way the applicant has interpreted the Bartlett case, but is slightly leaning towards approving this design or a very similar one. If the plan was much smaller, the impacts wouldn't be substantially different. He's balancing the rights to build versus rights to relief. If the peer review came back with a different assessment he may have felt differently, but he's leaning towards approving the project.

Vice Chair Driscoll acknowledged that the peer review brought up some good points and commented that it's coming from a blue collar perspective, not knowing the legal paths, but knowing that previous applicants have gone to the supreme court after the board has denied them and who've gotten everything that's asked for. The board's best path is to put some requirements on this so that it's as good for the area as it possibly can be. This is where the board typically relies upon the RCC, and he would like to have some specific recommendations from the RCC related to this property.

Chair Crapo discussed his assessment of the back lawn.

Member Mikolities commented that this would require some sort of enforceable restriction, especially considering the abutter's perspective.

Vice Chair Driscoll asked if Member Mikolities is leaning in favor of granting the application.

Member Mikolities explained if they can get a septic system, they're paying taxes, and they're not impacting wetlands, then it's not going to remain an open space. The question is do we approve it now or do we discuss it in the future; it's going to be built upon.

Member Madden asked to open the meeting to the public for clarification. Chair Crapo opened the meeting to the public at 9:44 p.m.

Member Madden explained the minutes from the January meeting where it was stated that the RCC recommended that the dwelling should be no larger than 2,500 square feet, the plan is for a home of 2,749. She explained that this is what she'd referenced previously.

Chair Crapo closed the meeting to the public at 9:45 p.m.

The board discussed the pervious and impervious materials of the driveway and walkway.

Member Mikolities pointed out that the board doesn't set precedents; each application is unique.

Chair Crapo agrees and added that there are trends. Member Madden commented that they're rendering a decision on the merits of the specific application, not on the past.

Vice Chair Driscoll discussed putting the walkway maintenance plan in place, which would be in line with the driveway plan. He added that there should be restrictions on the lawn area and removal of trees. He'd like to review the RCC recommendations, and the native plantings should be retained.

Chair Crapo noted that the typical letter references an 85% survival rate after one year. The one caveat is that any restrictions on the lawn comply with septic regulations with chuck, they may need to grow regular grass on the top of the septic system. Opening to the public at 9:48 p.m., Chair Crapo asked Mr. Baskerville for information about this.

Mr. Baskerville commented that as long as the grass doesn't have deep roots, it should be okay.

Ms. Woodburn also commented that the front of the house is open to the south and the lawn will survive there. She discussed possible plant varieties considered for each side of the house, given the regulations and concerns presented.

Vice Chair Driscoll clarified that he agreed with Ms. Woodburn, and his concerns are primarily about the lawn.

Chair Crapo discussed the possibilities of straw or non-seed-producing mulch with Ms. Shapiro. Speaking to Attorney Cronin, Chair Crapo asked if he sees any objections that the applicant may have related to the discussed restrictions.

Attorney Cronin responded no, with the exception of the landscaper's comment about the lawn. The deed to this property is already conveyed, typically covenants would be placed upon the deed, or the zoning decision with conditions for approval is required to be recorded, which is the cleanest way to do it. Amending the deed doesn't give protection that the board is looking for.

Vice Chair Driscoll thanked Attorney Cronin for the information. He added that it's important to note, no machinery in the wetlands during the project, the wetlands should be clearly delineated, and retainage of native plantings at 85% or better after one year, and no fertilizer after the plantings are established.

Chair Crapo reclosed to the public at 9:53 p.m.

Attorney Cronin asked about the use of organic fertilizer. Ms. Blackwood asked for clarification on what fertilizer would be considered organic. Planning/Zoning administrator Kim Reed added some detail about previous and present regulations on fertilization and best management practices. Chair Crapo added some more clarification on the discussion of best management practices.

Chair Crapo reclosed to the public at 9:56 p.m. He commented on the time and explained that this meeting will run past 10:00 p.m. He decided that the board will need to hold a second meeting.

The board discussed which applications they could still discuss this evening, and which applications could be postponed until October 19, 2022.

Chair Crapo asked the board if they were good with the conditions before he begins running votes.

Vice Chair Driscoll wanted to add pervious maintenance to the walkway, and verbiage surrounding the lawn, seeding and removal of trees. Chair Crapo explained the notice of decision will be recorded, which puts the public on notice as to what the restrictions are, no matter how many times the deed changes hands. He continued to answer the board's questions related to restrictions.

Attorney Cronin made a suggestion on the conditions: make reference to clearance prohibited in accordance with the plans on file with the town of Rye.

The board continued to discuss documentation of the restrictions. They also discussed voting upon the specific plans that were submitted.

Vice Chair Driscoll summarized: pervious pavers, retainage of native plantings at 85% or better after one year, no machinery in wetlands, clear delineation of wetlands, no walking, storing, or disrupting of wetlands, straw or non-seed producing mulch, best management practices in regards to fertilizer, silt socks as shown on plan, and all work done to plans as submitted, and the conditions recorded with the registry of deeds.

Chair Crapo commented that this is on the record, and it will be as stated prior to the vote.

Chair Crapo called for a vote on requested variances to §2.3.C(2) for a propane tank 8' from the side boundary where 20' is required

1. Granting the variance is not contrary to the public interest?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

2. The spirit of the ordinance is observed?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

3. Substantial justice is done?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

4. The values of surrounding properties are not diminished?

Gregg Mikolities – Yes
Patrick Driscoll – 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?

Gregg Mikolities – Yes
Patrick Driscoll – 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?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

7. The proposed use is a reasonable one?

Gregg Mikolities –Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

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

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

Vote: 5-0 (G. Mikolities; P. Driscoll; J. Madden; J. Tuttle; and S. Crapo)

Chair Crapo called for a vote on requested variances to §190-3.1.H.2(a),(b), (g) for soffits for a house 39.7'/22.4'/16.4' and a house foundations 42.5/25.2'/18.8', a porous drive 44.5', a walkway 52.8', a septic tank 67', septic system 79', an underground propane tank and landscaping from wetland where 100' is required.

1. Granting the variance is not contrary to the public interest?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – No
Shawn Crapo - Yes

2. The spirit of the ordinance is observed?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – No
Shawn Crapo - Yes

3. Substantial justice is done?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – No
Shawn Crapo - Yes

4. The values of surrounding properties are not diminished?

Gregg Mikolities – Yes
Patrick Driscoll – 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?**

Gregg Mikolities – Yes
Patrick Driscoll – 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?**

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

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

Gregg Mikolities –Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – No
Shawn Crapo - Yes

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

Gregg Mikolities –Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo - Yes

Vote: 4-1 (G. Mikolities; P. Driscoll; J. Madden; J. Tuttle; and S. Crapo)

Motion by Vice Chair Driscoll to approve the application of Craig & Denise Benson for the property owned and located at 2 Merrymeeting Lane as advertised with the conditions of adding a maintenance plan to the walkway for pervious pavers; retainage of native plantings at 85% or better after one year; no machinery within the wetlands; a clear delineation of the wetlands; no walking, storing, or disruptions within the wetlands; straw or non-seed producing mulch to be used; best management practices in regards to fertilizers; silt socks as shown on the site plan; all work to be done within the plans as

submitted and presented. The conditions will be recorded with the registry of deeds. Seconded by Member Mikolities. Four in favor, one opposed.

Chair Crapo called for a vote for 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.

1. Is it injurious or detrimental to the neighborhood?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo – Yes

2. Is it in harmony with the general purpose and intent of the zoning ordinance and is it in accordance with the general or specific rules contained therein?

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Jenn Madden – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Motion by Vice Chair Driscoll to approve the application of Craig & Denise Benson for the property owned and located at 2 Merrymeeting Lane for 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 with the same conditions as the variance. Seconded by Member Madden. All in favor.

Vote: 5-0 (G. Mikolities; P. Driscoll; J. Madden; J. Tuttle; and S. Crapo)

Motion by Vice Chair Driscoll to continue the application of Shoals Realty (#7) at the next meeting, October 19, 2022. Seconded by Member Tuttle. All in favor.

Motion by Member Tuttle to continue the applications of Charles Potter (#8) and Daniel Maguire (#10) at the next meeting, October 19, 2022. Seconded by Vice Chair Driscoll. All in favor.

Motion by Chair Crapo to continue taking applications after 10:00 p.m. All in favor.

- 4. 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)/ §-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.**

Monica Kaiser appeared before the board to represent the applicant along with the designer of the septic system. Ms. Kaiser also appeared before the board in August. Referencing some questions that the board had at the previous meeting. In addition to bringing the septic's designer to answer questions, Ms. Kaiser presented some information in order to address the board's questions and show improvements that have been made. The big change is the septic system has been changed from a conventional system to an advanced on site clean solution system for the Parson's Creek Watershed. She explained the differences between the two types of systems. She believes that this improves the application significantly.

She addressed the board's concerns with overlapping conveyances and shared the findings of a title search. She clarified that the tax map has the correct information for Baldwin. She also pointed out Exhibit F and that she agrees with the proposed boundary line adjustment.

Chair Crapo asked about the dimensional relief for the setback. Ms. Kaiser responded that they don't need dimensional relief.

Matt, the septic system designer, explained the details of the septic system that was previously presented. He explained the changes that have been made to the new GeoMatt septic system being proposed. He explained that they'd considered raising the house, but this ran into several issues. Instead, they propose elevating the back by about 1', which will be an improvement in treatment and separation.

Member Mikolities asked for clarification of whether this is a one or two bedroom home. Matt explained that it's currently a one bedroom, but it's a proposed two.

Matt continued presenting the design of the GeoMatt system and explaining how it works.

Member Mikolities asked if it's oversized with the intent of three bedrooms. Matt clarified that it is oversized but not with the intent of three bedrooms, but that the applicant wanted some surge protection.

Chair Crapo asked if they've already run enough test pits to confirm that you don't have ledge in the area. Ms. Kaiser explained that they're before the board because there is ledge on the property. Matt pointed out the ledge probes on the survey plans.

Vice Chair Driscoll asked if the two systems, treatment on treatment, are known to be successful. Matt responded that both are successful individually. Vice Chair Driscoll asked if others have used this system with success. Matt confirmed. Vice Chair Driscoll asked if the land surveyor was from their team or not. Ms. Kaiser responded yes, he's from their team, Henry Foye. Referring to the ledge, Vice Chair Driscoll asked if the creation of this septic system will create more water on the abutting property. Matt responded, no, the septic system design will give the water more time to absorb into the soil. Vice Chair Driscoll asked if there is any pitch to the top of the leach field. Matt responded yes, there is some pitch and confirmed that there will be enough infiltration to absorb the water, and that the land is virtually flat.

Chair Crapo opened to the public for comments at 10:39 p.m. Hearing no comments, Chair Crapo closed to the public at 10:40 p.m.

The board discussed the improvements of the application and Ms. Kaiser asked that they refer to the updated plans from 9/26/22. Chair Crapo explained the verbiage of building code relief.

Would enforcement of (the specific provision) do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest?

Sandra Chororos – Yes

Gregg Mikolities –Yes

Patrick Driscoll – Yes

Shawn Crapo - Yes

John Tuttle – Yes

Vote: 5-0 (S. Chororos; G. Mikolities; P. Driscoll; S. Crapo; J. Tuttle)

Motion by Member Madden to approve application for 163 Parsons Road, Tax Map 20, Lot 1 for relief from §35-14.C(2)/ §-14.D(1)(b) and §35-14.C(1) as requested, presented, and as per the plan submitted as of 9/26/22. Seconded by Member Mikolities. All in favor.

Attorney Tim Phoenix asked to be heard. Chair Crapo asked the board if they're okay to continue, all agreed to continue.

Chair Crapo read through the applications for review:

5. **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. The property is in the Single Residence District and Wetland Conservation Overlay District. Case #38a-2022.**
6. **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.**

Chair Crapo clarified that Member Chororos will be voting in place of Member Madden, who recused herself from this application.

Attorney Phoenix, speaking on behalf of the applicants, introduced himself as well as Cory Caldwell and Justin Masick of TF Moran, who've done the technical work. He explained that they have a letter addressing some concerns presented by abutters of the property. He presented a letter of support written by Joel Fied, one of the abutters. Also present is Danielle Mobius who did the design work. Attorney Phoenix presented the rendering of the proposed property created

by Ms. Mobius, focusing on details including the barn, back deck and driveway. He explained the building plan as it relates to the wetland buffer. He discussed the storm water management plan, the restoration of the wetlands buffer, the pervious pavement maintenance plan, and RCC's support of the project. He reviewed the wetland buffer requirements and the property's dimensions. He explained the need for a variance as well as a special exception. He continued by reviewing the criteria of the variance and special exception request as it relates to this property.

Cory Caldwell of TF Moran presented pictures of the existing barn and site and pointed out the front and back of the barn and the ways in which the historic structure is being preserved.

Justin Masick, an engineer from TF Moran, presented the stormwater management plan. He explained that they received a letter from an abutting neighbor with some objections on the day of the last ZBA meeting. They decided to continue the review of the application this month so that those concerns could be addressed. TF Moran submitted a letter to the board addressing the neighbor's concerns with a drainage analysis. He summarized the details of the drainage analysis and stormwater management plan for the board.

Chair Crapo asked the board if they were all okay with continuing the meeting at 11:06 p.m.

Member Mikolities asked why the barn couldn't be renovated to be a garage. Attorney Phoenix suggested that Ms. Mobius answer the question. She explained the design choices of the barn in order to preserve the historic facade of the property. Mr. Caldwell explained the interior design of the barn and the choices that were made for the purposes of preservation. Attorney Phoenix pointed out the efforts that were made in this plan to address issues of stormwater. Member Mikolities and Mr. Caldwell continued to discuss concerns related to the proposed garage.

Vice Chair Driscoll asked about the pervious pavers and runoff. Mr. Masick explained the engineering behind the stormwater management plan as it relates to pervious and impervious pavers. Vice Chair Driscoll clarified that what Mr. Masick has proposed is healthier for the wetland and buffer. Mr. Masick confirmed.

The board continued to discuss the details of the driveway with Mr. Masick and Mr. Caldwell.

Member Mikolities asked about the dimensions of the barn and loft. Ms. Mobius clarified. Member Chororos asked about the intention of the barn aside from the garage below. Ms. Mobius clarified the plans for the barn and loft area; it will be seasonal, non-heated space primarily used for storage. She also addressed the phasing.

Chair Crapo opened to the public at 11:30 p.m.

Iain Moody of 62 Portsmouth Avenue, New Castle, New Hampshire, speaking on behalf of the applicant's neighbor, stated concerns regarding water runoff and the design of the barn; it seems to be created to be a future living space. Mr. Moody explained the applicant's concerns about the design as it relates to water runoff towards the wetlands. Mr. Moody asked about the barn as a living space. Ms. Mobius clarified that a barn is a unique structure, but the intent is not to create a heated living space. She also addressed the concerns of the barn as a garage space. Mr. Moody

reiterated his concerns that this design is to become an extension of living space. He expressed concerns about the drainage analysis.

Member Mikolities questioned the dimensions and design of the garage. Chair Crapo responded and explained his understanding of the plan. Ms. Mobius explained their plans and their focus upon salvaging and rehabilitating the structure as much as possible, which has presented various dimensional and economic challenges. Vice Chair Driscoll acknowledged the challenges associated with turning an old barn into a garage. The board continued to discuss the plans with Ms. Mobius.

Mr. Caldwell and Ms. Mobius continued to explain with more detail the plans for the dimensions, foundation, and grading of the barn. Member Mikolities reiterated that the submitted plan was confusing to interpret. Ms. Mobius clarified the challenges in balancing economics with the aim of restoring and rehabilitating an old barn.

Attorney Phoenix pointed out that this comes down to what the effect is upon the wetland, and what is considered to be "hardship" and summarized the three prongs.

Chair Crapo asked Mr. Caldwell some additional questions related to the structure's impact on the wetland buffer.

Member Chororos asked Mr. Caldwell about additional lot coverage, considering the garage. Mr. Caldwell clarified the lot coverage and building coverage and added that there will be one tree removed and additional landscaping. Chair Crapo asked about the tree removal and what, if any, plants will be added. Mr. Masick explained the analysis of ground cover in detail. Mr. Caldwell added that they are improving the site's water quality where currently no protection of wetlands exists.

Hearing no further comments, Chair Crapo closed to the public at 12:03 a.m.

Vice Chair Driscoll explained that the plan makes sense to him and that he appreciated the dialogue as well as the level of detail provided. He acknowledged the difficulty of a barn restoration. He understands the abutter's concern but the board is not here to tell someone how they can use their property. He acknowledged Member Mikolities concerns as well. He made suggestions to the design, but ultimately he has no issues with the application.

Member Mikolities felt as though the team's clarifications were sufficient to him.

Member Chororos approved of the presentation and the team's plan.

Vice Chair Driscoll asked if the applicant is okay with the RCC's requirements. Attorney Phoenix confirmed, yes.

Chair Crapo called for a vote for special exceptions from §190-3.1.G(2)/3.1.H.2(f) for a driveway 38.4' from the wetland where 75' is required.

3. Is it injurious or detrimental to the neighborhood?

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

4. Is it in harmony with the general purpose and intent of the zoning ordinance and is it in accordance with the general or specific rules contained therein?

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

Motion by Vice Chair Driscoll to approve the application of Christopher & Susan Reaney for property owned and located at 691 Brackett Road for special exception as advertised and presented with the conditions as stated in the RCC's April 28, 2022 letter. Seconded by Sandra Chororos. All in favor.

Vote: 5-0 (S. Chororos, G. Mikolities, P. Driscoll, S. Crapo, J. Tuttle)

Chair Crapo called for a vote on requested 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.

9. The variance is not contrary to the public interest:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

10. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

11. Substantial justice is done:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

12. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

13. There are special conditions of the property that distinguish it from other properties in that area?

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

14. There is no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property.

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

15. The proposed use is a reasonable one.

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

16. Therefore, literal enforcement of the ordinance would result in unnecessary hardship.

Sandra Chororos – Yes

Gregg Mikolities – Yes
Patrick Driscoll – Yes
Shawn Crapo - Yes
John Tuttle – Yes

Vote: 5-0 (S. Chororos, G. Mikolities, P. Driscoll, S. Crapo, J. Tuttle)

Motion by Vice Chair Driscoll to approve the variance request of Christopher & Susan Reaney for property owned and located at 691 Brackett Road as advertised and presented including the conditions as set forth in the RCC's letter dated April 28, 2022. Seconded by Sandra Chororos. All in favor.

Motion by Member Tuttle to adjourn at 12:09 a.m. Seconded by Vice Chair Driscoll. All in favor.

Respectfully Submitted,
Emilie Durgin

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: 10/05/2022

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

- §190-6.3.A for expansion of a nonconforming building and structure;
- §190-2.3.C(1) for construction 2.1' from the rear boundary;
- §190-2.3.C(3) for construction 38.1' from the Long John Road front boundary;
- §190-2.3.C(5) for a building area of 19%.


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: Harold Kennedy & Mary Lynn Anderson

Property: 1417 Ocean Blvd, tax map 17.4, Lot 9

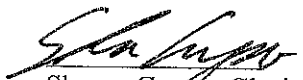
Appeal Property: 1419 Ocean Blvd, Tax Map 17.4, Lot 8

Properties are in the General Residence and Coastal Overlay District.

Application case: Cases #48-2022

Date of decision: 10-5-2022

Decision: The Board voted 5-0 to continue the application to December 7, 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: 10-05-2022

Decision: The Board voted 5-0 to grant relief from the following sections of the Building Code in accordance with plans dated 9-26-2022 as presented to the Board.

- §35-14.C(1) to replace an existing cesspool with a septic system with a distance 3.47' to bedrock/impermeable substratum.
- §35-14.C(2)/ §-14.D(1)(b) for septic system distance 2' to estimated seasonal highwater.


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: Joshua Alder

Property: 16 Robin Road, Tax Map 20.2, Lot 112
Properties are in the General Residence District.

Application case: Cases #51-2022

Date of decision: 10-5-2022

Decision: The Board voted 5-0 to continue the application to November 2, 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:

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:

10-5-2022

Decision:

The Board voted 4-1-0 to grant variances from the following section of the Rye Zoning Ordinance as advertised and presented.

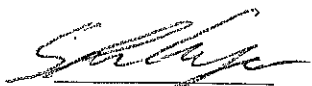
- §190-2.3.C(2) for a propane tank 8' from the side boundary.
- §190-3.1.H.2(a),(b), (g) for soffits for a house 39.7'/22.4'/16.4' from the wetlands.
- §190-3.1.H.2(a),(b), (g) for a house foundations 42.5'/25.2'/18.8' from the wetlands.
- §190-3.1.H.2(a),(b), (g) for a porous drive 44.5' from the wetlands.
- §190-3.1.H.2(a),(b), (g) for a walkway 52.8' from the wetlands.
- §190-3.1.H.2(a),(b), (g) for a septic tank 67', septic system 79' from the wetlands.

The Board voted 5-0 to grant a special exception from the following

- §190-3.1.G/§190-3.1.H.2(f) for a driveway 44.5' from the wetland.

The variances and building code relief were granted with the following conditions

1. *Add Maintenance plan to the walkway same language as the driveway.*
2. *The plants have an 85% survival rate after one year.*
3. *No machinery within the wetlands.*
4. *No walking, Storing of equipment or disruption of the wetlands throughout the construction of the project.*
4. *Lawn and seeding shall be done in accordance with BMP's (i.e straw or non seed fertilizers) and no fertilizers after establishment.*
4. *A clear delineation shall be created for the wetlands.*
5. *Silt sock and silt/construction fence to be in place during construction.*
6. *All work to be in accordance with the plans submitted and presented.*
7. *Notice of Decision to be recorded at the RCRD.*



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:

10-05-2022

Decision:

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

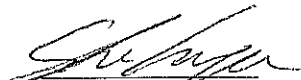
- §190-3.1.H.(2)(a),(f) &(g) for a barn 31.6' from the wetlands.
- §190-3.1.H.(2)(a),(f) &(g) for a deck 30.7' from the wetlands.
- §190-3.1.H.(2)(a),(f) &(g) for a retaining wall 69.2' from the wetlands.
- §190-3.1.H.(2)(a),(f) &(g) for a garage 57.9' from the wetlands.
- §190-3.1.H.(2)(a),(f) &(g) for a pervious driveway 38.4' from the wetlands.
- §190-3.1.H.(2)(a),(f) &(g) for an impervious walkway 68.4' from the wetland.
- §190-6.3.A for expansion of a barn.

The Board voted 5-0 to grant a special exception from the following

- §190-3.1.G(2)/3.1.H.2(f) for a driveway 38.4' from the wetland

The variances and special exception were granted with the following conditions per the Rye Conservation Commission letter dated April 28, 2022.

1. All debris is removed from the wetland.
2. The February 22, 2022 planting plan is implemented.
3. The plants have an 85% survival rate after one year.



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:

Patrick McKenna

Property:

139 Wentworth Road, Tax Map 24, Lot 32
Properties are in the Single Residence District.

Application case:

Cases #52-2022

Date of decision:

10-5-2022

Decision:

The Board voted 5-0 to continue the application to November 2, 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.