

**TOWN OF RYE – BOARD OF ADJUSTMENT**

**Wednesday, December 7, 2022**

**7:00 p.m. – Rye Town Hall**

***Members Present:*** John Tuttle, Jenn Madden, Chris Piela, Chair Shawn Crapo, Vice Chair Patrick Driscoll, Gregg Mikolaities, Sandra Chororos

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

**I. CALL TO ORDER**

Chair Crapo called the meeting to Order at 7:00 p.m., explained the meeting procedures, and introduced members of the board.

**II. BUSINESS**

**Minutes - October 5, 2022**

- Member Chororos noted the documents' missing page numbers and pointed out corrections needed on page 9, and corrections to the spelling of Susan Shepcaro throughout the document.

**Motion by Chris Piela to approve the amended minutes of October 5, 2022. Seconded by Patrick Driscoll. All in favor.**

**Minutes - October 19, 2022**

**Motion by Jenn Madden to approve the October 19, 2022 minutes as presented. Seconded by Sandra Chororos. All in favor.**

**Minutes - November 2, 2022**

- Vice Chair Driscoll sought to clarify the meaning of the last paragraph on page 9. He suggested the language read, "Mr. Sullivan's map reflects the applicant's lot before the recent lot merge".
- Member Tuttle noted a correction to the spelling of Monica Keiser's last name throughout the document.
- Member Piela suggested clarification of the third paragraph on page 13. Chair Crapo suggested the language read, "Mr. Allard and Mr. Lang proceed with the application with the Planning Board".

**Motion by Patrick Driscoll to approve the November 2, 2022 minutes as amended. Seconded by Chris Piela. All in favor.**

Continuations:

**Motion by John Tuttle to continue the application of Robert Lang on behalf of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road to the January 4, 2023 meeting. Seconded by Chris Piela. All in favor.**

### III. APPLICATIONS

- **Request for rehearing and reconsideration by Ted and Pauline Simeonov, Aleph LLC owners of 720 Brackett Road, Tax Map 17, Lot 65, per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment's October 5, 2022 of variances and special exception granted to Christopher & Susan Reaney for property at 691 Brackett Road, Tax Map 17, Lot 34. Public hearing closed during Board discussion on the request.**

Chair Crapo pointed out that a rehearing must be requested on behalf of oneself; it cannot be raised on behalf of another abutter. He also explained that meeting minutes must be provided within five days of a request.

Chair Crapo summarized the new information within the applicant's packet regarding a new driveway, paving within the wetlands, and allegations on the septic. He explained the standard for granting a rehearing and noted his opinion that, based on the information provided, this application doesn't warrant a rehearing.

Member Piela, speaking as a non-voting, third-party observer, explained that the most substantive of the presented pieces of evidence would be the driveway, but noted that there was a misunderstanding by the person making the request about a gravel driveway being permeable versus impermeable. After reading the building department's response, he felt as though the driveway was completed properly. He pointed out that the live stream was posted immediately as was the notice of decision, a formal request for minutes wasn't made, and the application doesn't rise to the level of rehearing.

Member Mikolaities and Member Tuttle agreed with Member Piela.

Chair Crapo asked each member of the board if, based on the information presented, was there an error or new information that would warrant a rehearing. No member of the board voted in favor of a rehearing.

**Motion by Patrick Driscoll to deny the request for rehearing. Seconded by John Tuttle. All in favor.**

Member Mikolaities exited the meeting at 7:24 p.m.

- **Request for rehearing and reconsideration by Andrew Banks of 450 Sagamore Road, per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment's November 2, 2022 variances granted to Sandra Wadsworth of 239 Wallis Road, Tax Map 19, Lot 17, Case #53-2022.**

Chair Crapo noted that Mr. Banks received notice the day after the meeting and grappled with whether or not a procedural mistake was made at the hearing. Member Madden pointed out that Mr. Banks isn't an abutter of the property. Planning/Zoning Administrator Reed explained that Mr. Banks was included in a list of abutting neighbors by an individual, not an attorney and that it was likely a misunderstanding.

**Motion by John Tuttle to deny the request for rehearing. Seconded by Chris Piela. All in favor.**

Patricia Weathersby introduced herself as an alternate member of the Zoning Board of Adjustment and explained that she would sit in place of Chair Crapo for the remainder of the meeting, and explained meeting procedures.

1. Harold Kennedy & Mary Lynn Anderson of 1417 Ocean Blvd, Tax Map 17.4, Lot 9 request an Administrative Appeal from the Building Inspector's letter dated August 2, 2022 for certifying an apartment at 1419 Ocean Blvd, Tax Map 17.4, Lot 8 as a legal apartment per Rye Zoning Ordinance §190-2.2.I. Property is in the General Residence, Coastal Overlay District. Case #48-2022.

Attorney Jack McGee, representing Harold Kennedy and Mary Lynn Anderson, introduced himself to the board and presented the applicant's case regarding a neighbor's short-term rental property and the related difficulties that ensued.

Attorney McGee addressed the grounds upon which the applicant has appealed. He addressed the question of standing and noted that by the time Mr. Marsden had made a decision there was a new owner, JCT Trust, and an application for the certificate of legality requires an application dated prior to 12/21/21, which didn't happen.

Attorney McGee outlined four criteria within the zoning ordinance and presented a letter of support from a former tenant who mentioned that significant renovations were made to the property. Attorney McGee interpreted this as an attempt to enlarge the unit beyond the size that was permitted. He also presented an issue with the categorization by Mr. Marsden of what existed as a result of the certificate of legality. He explained that the principal dwelling units are primarily used as short-term rental properties with tenants who aren't respectful of the applicant's property. Attorney McGee stated that he hoped, based upon the presented information, that the board would grant the application; if the board chooses to grant a certificate of legality then they would put into place a restriction to short-term rentals.

Chair Weathersby asked Attorney McGee how he came up with the square footage of the property.

Attorney McGee explained how he determined the square footage, which was based on a diagram from 1987 within Attorney Phoenix's packet.

Hearing no questions for Attorney McGee from the board, Chair Weathersby opened to comments from Chuck Marsden, Building Inspector.

Mr. Marsden stated that the complaint and application came simultaneously and met the deadline. Mr. Marsden explained the square footage, floor plan, and use of the property as well as the tax assessor's notes. Mr. Marsden explained that this property was issued a certificate of legality because it is two separate buildings, which would indicate they were legal apartments. He stated that he didn't see an issue with the procedure that was laid out.

Attorneys Monica Keiser and Tim Phoenix sat before the board. Attorney Keiser explained that the 2020 amendments to the ordinance were designed because there was housing being utilized for which permits never existed. There was a concerted effort to ensure that those apartments were safe for tenants and that property owners had the ability to avail themselves of opportunities in a legal manner. Attorney Keiser explained that this property is a poster child for that ordinance. She explained the history of the apartment, the application of the current owner, and the submission of the alleged complaint which was submitted in November. Attorney Keiser presented a document that listed one month of weekly or bi-weekly short-term rentals within 2020, the only short-term rentals within a 30-year history. Short-term rentals are no longer occurring. There is an ongoing history between these property owners regarding other issues; what is relevant is whether Mr. Marsden appropriately interpreted the ordinance. Attorney Keiser explained why standing would not be a concern. She went on to explain the evidence that demonstrates the initial criteria are satisfied and her assessment that Mr. Marsden did appropriately interpret the ordinance.

Attorney Phoenix commented that Attorney McGee's argument regarding standing is ridiculous. He continued that there is nothing in this ordinance that says someone can't transfer their property during dependency. He also addressed the square footage of the apartment, the topic of short-term rentals, and rentals within detached buildings. Attorney Phoenix emphasized that the applicant has taken great care to provide documentation to show that all requirements are met and that the appeal should be denied.

Attorney Keiser presented Exhibit 18, a letter from the current property manager, Gerry Clinton.

Member Piela asked if there is an interior door separating the units. Mary Ellen Morse explained that the units are only connected through a covered breezeway, but there is no interior door. Attorney Phoenix clarified that this is not an ADU.

Speaking to Attorney Keiser, Member Chororos, referring to page six, noted that they had ceased short-term seasonal rentals and now have long-term tenants. She asked if there would there be any consideration to make that a condition.

Attorney Keiser stated that it's not something her client is prepared to do, considering their role as trustees. There was continued discussion regarding the rental property and the various

challenges of short-term rentals. Ultimately, the owners don't intend to use the property as a short-term rental.

Chair Weathersby noted that the applicant is before the board for an administrative appeal, rather than a variance.

There was discussion of the evolution of heating within the unit as well as the replacement of the roof.

Vice Chair Driscoll asked Mr. Marsden if he had measured the space. Mr. Marsden responded that the unit is approximately 618 square feet without the sunroom. Member Piela confirmed that there is no door between the sunroom and the living room, to which Ms. Morse responded that there is not.

Ms. Morse clarified that she and her brother have no ownership rights and that the rent from the rentals is used to help care for their parents, who are ill. She explained that by no means is this an abandoned property, that it is actively cared for by Mr. Clinton. With respect to the short-term rentals, Ms. Morse explained that they tried it for two months but ultimately decided against continuing short-term rentals for a variety of reasons. She also explained that leading up to and since that short-term rental, there has been little turnover of the rental space.

Speaking to Ms. Morse, Chair Weathersby asked if the trustees of the JCT Trust had permission to continue the application. Ms. Morse confirmed and explained that her mother likes to be involved in managing her rental properties as much as she is able.

Chair Weathersby invited any members of the public to speak in favor of the administrative appeal.

Clementine Alexis of 1447 Ocean Boulevard, an abutter to the property, expressed her concern over short-term rentals. She explained that the driveway is very narrow and felt that the traffic at that time was a danger. She also corrected that she has never had an issue with the right-of-way with the Wenners.

Leanne Spees of 1443 Ocean Boulevard presented a statement from Ellen Labrie, an abutter who couldn't attend the meeting. She also explained the layout of the property in relation to the neighboring properties and the driveway.

Warren Purdy of 1443 Ocean Boulevard presented photos of the property to the board and pointed out a 10-foot-wide driveway, the lack of visibility from the drive, and the limited parking space.

Ms. Spees continued to explain the neighborhood's background and the long-standing relationship between neighbors that has afforded them the ability to peaceably share the driveway described by Mr. Purdy. She described the challenges that arose when the Wenners vacated the property in order to rent it. She presented a letter written by the abutting neighbors to the Wenners requesting that they cease short-term rentals, to which there was no response, at

which point a complaint was filed. Ms. Spees made a case for a condition barring short-term rentals at the property.

Mr. Purdy explained his perspective of the difficulties presented by the Wenners' short-term rentals and noted the police assessment of the potential dangers of speeding through the right of way which Mr. Purdy explained was a common occurrence by renters. He noted that the expansion required a building permit, and to his knowledge there was none. He also expressed concern that there are ten parking spaces allotted to a narrow drive that can park four cars at a time. Chair Weathersby explained that they've satisfied the requirement for parking and the issue isn't before the board at this meeting.

Chair Weathersby invited anyone from the public to speak in favor of the administrative appeal; hearing none, Chair Weathersby invited anyone from the public to speak in opposition of the administrative appeal.

Ms. Morse addressed Mr. Purdy's comments and explained that an original permit was never found as the building was constructed in the 1950s before zoning for apartments existed. She addressed the parking, the deed, and the easement to the driveway and commented on the matter of speeding.

Vice Chair Driscoll asked how long the current tenants of the apartment have rented the space. Ms. Morse explained that the current tenants of the apartment have been there for three years and the tenants in the house signed a one-year lease in March 2022. Previously, a tenant rented the house for 18 months; prior to that, a tenant had lived there for 14 years.

Attorney McGee made some clarifications regarding the statute of limitations, the issue of the building permit, and the details of the building layout submitted by Mrs. Wenners.

Chair Weathersby asked if it is still Attorney McGee's contention that at the time the application was filed the unit didn't have an interior floor area of 600 square feet.

Attorney McGee argued that the space itself was illegally created. He also addressed the short-term rentals. Mr. Marsden didn't think he had the authority to address short-term rentals. Attorney McGee disagrees, he believes that Mr. Marsden has the right to consider matters of health and safety. He continued to explain his position that the board has the right to place a condition upon the application barring short-term rentals.

Chair Weathersby closed the public for deliberation.

Harold Kennedy commented that their primary concern is with short-term rentals; he expressed his hope that the board would put into place a condition so that future owners wouldn't have the opportunity to reinstate short-term rentals.

Attorney McGee clarified that if the JCT Trust will agree to no short-term rentals as a condition, they will drop any further appeals.

The board agreed to take a break to allow for discussion.

The meeting reconvened at 9:04 p.m.

Attorney Phoenix explained that Ms. Morse doesn't want to make that decision on her own; furthermore, she doesn't want to restrict the rights of future owners to short-term rentals at the property.

Chair Weathersby closed the public for deliberation.

The board discussed the property and noted that it was transferred between family members. The board agreed that the grounds for the appeal don't have merit. It was also agreed upon that Mr. Marsden didn't err in the issuance of the certificate to JCT Trust. The board discussed the floor plan and square footage. It was determined that the property is well over the 600-square-foot requirement. Vice-Chair Driscoll clarified the board's role at this meeting, which primarily focuses on building codes rather than variances or ordinances. Chair Weathersby clarified that the decision is ultimately whether the building inspector made an error, which is what the board will vote upon.

The board discussed whether the property qualifies as two principal dwellings, triggering the larger square footage requirements. It was determined that this property does qualify as an accessory dwelling unit, which doesn't trigger the lot coverage issue. Chair Weathersby discussed the possibility of issuing a new certificate to clarify the property's categorization. The board discussed the parking spaces and determined that the property supports four legal parking spaces. It was also noted that the Wenners satisfied all other criteria of the conversion requirements; the big issue is that the building inspector didn't place a condition on the certificate stating no short-term rentals. Chair Weathersby commented that, while sympathetic to the neighbors, it is unfair to impose this restriction on this one property, and not one for the board to fix. Member Piela agreed and noted that many of the surrounding neighbors have properties and units conducive to renting. The board continued to discuss the matter and Mr. Marsden's choice not to place a condition on the certificate.

Chair Weathersby summarized the discussion and determined that the board agrees Mr. Marsden didn't make an error. She asked the board their opinion: should Mr. Marsden's certificate of occupancy of legality be set aside so that a new certificate with a provision of no short-term rentals can be issued? Chair Weathersby noted that, despite her feelings of sympathy for the neighbors, doesn't feel inclined to do so. The board discussed and Chair Weathersby called for a vote.

Chair Weathersby stated that this concerns the certificate of the building inspector dated August 2, 2022, certifying the apartment as a conversion from an illegal to a legal apartment with no conditions.

**Has there been an error in the order requirement decision of determination by administrator in the enforcement of any zoning ordinance adopted to RSA 674:16?**

**Vote: 5-0**

**Motion by Chris Piela to deny the administrative appeal and to affirm the building inspector's decision. Seconded by Sandra Chororos. All in favor.**

**2. Robert Lang on behalf of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road** requests a variance from §190-5.0.C for a driveway 6' where 10' is required and from §190-2.3.C (2) for a shed 12' from the side boundary where 20' is required. The property is in Single Residence District. Case #55-2022.

*Application continued to January 4, 2023 meeting (see motion above).*

**3. Eric & Donna Johnson for property owned and located at 2000 Ocean Blvd, Unit 9 Tax Map 8, Lot 56** request variances from §190-2.4.C(3) for a generator 24' from the front boundary where 30' is required and from §190- 3.1.H.2(a),(f), and (g) for a generator 50' +/- from the wetlands where 100' is required. Property is in the Single Residence District, Coastal Overlay District. Case #56-2022.

Chair Crapo, noting the time at 9:30 p.m., summarized the evening's agenda and stated that it's unlikely that the board will get to agenda numbers five and six.

Bruce Scamman of James Verra & Associates, representing the applicants, presented some documents and an application completed by the applicants to the board. Referring to a map within the document package, Mr. Scamman pointed out the locations of the property, setbacks, and proposed generator. He explained his prior work on the property's culvert replacement. Mr. Scamman summarized the dimensions of the property setbacks and explained that he attended a site walk with the RCC, and is willing to elaborate as much as the board would like on the conditions of the variance. He also explained that the applicant is older with some health concerns and mobility issues, which is why they'd like this generator. He noted an RCC concern that this condominium complex is fed by a water line heated by the Rye Water District.

Chair Crapo asked if the condo association has signed off on approval. Mr. Scamman confirmed.

Member Madden asked about the air conditioning compressor.

Mr. Scamman noted that it's a small compressor and explained that he could provide pictures from the site.

Member Madden asked if the applicant knows about the waterline.

Mr. Scamman responded that everyone is aware of the waterline and accepting of it.

Vice Chair Driscoll asked how many of the nine units have standby generators. Mr. Scamman didn't know the answer. The board discussed the possibility of multiple generators within the condominium complex. Chair Crapo discussed the history of propane tanks within the development and Mr. Scamman assured the board that there will not be any new fuel source within the title buffer.



Hearing no further comments from the board, Chair Crapo opened to the public.

Karen Oliver of the Rye Conservation Commission noted that the RCC would ordinarily ask for native plantings, but as this is an HOA they didn't require native plantings. She also commented that the proposed location is a good one.

Hearing no further comments, Chair Crapo closed to the public for deliberation.

Vice Chair Driscoll commented that it may be logical for units seven and eight to use a generator and advised that the applicant not take all of the useable space in the instance that other generators are needed.

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

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

**2. The spirit of the ordinance is observed:**

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

**3. Substantial justice is done:**

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

**4. The values of surrounding properties are not diminished:**

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

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

John Tuttle – Yes  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – 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.**

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

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

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

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

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

**Motion by Patrick Driscoll to approve the application for the property owned and located at 2000 Ocean Blvd, Unit 9 Tax Map 8, Lot 56 as presented. Seconded by Jenn Madden. All in favor.**

**Motion by Chris Piela to continue the application of Patrick & Jenny Donnelly for property owned and located at 5 Whitehorse Drive, Tax Map 11, Lot 15-2 to the January 4, 2023 meeting. Seconded by Patrick Driscoll. All in favor.**

**4. Michael Keeley & Michael Valliere for property owned and located at 7 Holland Drive, tax Map 20.2, Lot 31 requests variances from §190-2.4.C(3) for a new home 27.4' and stairs 24.2' from the front boundary where 30' is required; from §190-2.4.C(2) for a generator 15.7', a shed 10.6', permeable paver walkway 13.4' and retaining wall 2.4' from the side boundary where 20' is required; from §190-3.1.H.2(a)(b)(e)2, (f) & (g) for a retaining wall 2.8', 32.2', a house 11.0', s septic tank 30', a leachfield 30.6', a shed**

22.1' (rear), 36.9' (right side) and remove +/- 8 trees from the wetland where 75' is required; from §190-3.4.D for a house height of 32.32' where 28' is allowed; from §190-6.3.B for replacement of a house after a fire which is slightly more compliant and building code relief from §35-14.B(2)(a) for an advanced treatment septic tank 30' and leachfield 30.6' from the wetland where 75' is required; from §35-14.C(1) for septic 3.17' above bedrock where 6' is required; and from §35-14.C(2) for a septic 2' above seasonal high water table where 4' is required. Property is in the General Residence, Coastal Overlay District and SFHA, Zone AO3 & AE8. Case #57-2022.

Attorney Monica Keiser, representing the applicant, introduced Attorney Tim Phoenix, Corey Caldwell, Charlie Hoyt, Michael, Michael, and Justin Macek. Attorney Keiser introduced the property via a satellite overview and explained that the house burned down in February 2021. She pointed out that the house was close to the left-side lot line. She also noted that the septic treatment was poor and the subject of complaint. She pointed out that it's a long, narrow lot within the wetlands buffer. There is a flood zone on the property, the house is not within that zone. Attorney Keiser explained the proposal for the new home including the total footprint and the new septic system. She noted their building permit application and explained their communications with the Rye Conservation Commission, specifically a recommendation letter, referred to as Exhibit J. Attorney Keiser expressed that they believe the proposed plan will be a great improvement to the property's structure.

Corey Caldwell of TF Moran explained that one of the unique features of the property is that it doesn't contain one square foot of buildable land per the zoning ordinances. He explained their aim to center the house on the property. He explained the challenge of leach field elevation and the board discussed the relief being requested. Mr. Caldwell explained plans for the driveway, plantings, and tree removal. He also discussed a plan to offset the home's grading. He noted the removal and replacement of a shed and addressed the property's stormwater management and reduction plan and explained the landscaping plan. He explained that a small Bobcat machine was used to remove debris after the fire and explained the removal of a tree from the buffer. The RCC set a condition to remove slash and restore the area with native plantings.

Chair Crapo asked Mr. Caldwell to speak to one of the RCC's conditions in their recommendations letter. Mr. Caldwell, referring to a photo of the area, explained that there was very little disturbance or grading in that area. Member Piela asked for clarification about the shed being moved closer to the home. Attorney Keiser and Mr. Caldwell clarified the plan.

Speaking to Karen Oliver, Chair Crapo asked if the language in the RCC recommendations letter referring to hand tools could be amended to express the right tool for the right application and to achieve an ecological minimization of the disruption.

Ms. Oliver clarified that the intention was to recommend hand tools in the disturbed areas in order to restore the area. The board discussed how to amend the language.

The applicant explained that a custom track is being welded for a Bobcat to gently remove the slash. Chair Crapo expressed that the use of hand tools may be overly burdensome. Ms. Oliver explained the RCC's position.

Member Madden asked for clarification of the plan for the retaining wall. Vice Chair Driscoll agreed. Attorney Keiser reminded the board that the applicant isn't in need of relief as retaining walls under 6' don't require relief. The board discussed this matter as well as the existing swale and stormwater runoff.

Vice Chair Driscoll asked about tree removal in the wetland buffer and the height of the shed. Member Madden asked if other locations were considered for the shed. Mr. Caldwell explained their decision of where to place the shed and the board discussed it.

Charlie Hoyt, representing the applicant, reviewed the square footage and dimensions of the proposed house. Chair Crapo asked for clarification on the existing grade. Attorney Keiser explained that the requested relief height is 32.32.

Speaking to Mr. Wrobel, Chair Crapo stated that the board would likely not be able to review his application at this meeting.

Attorney Keiser reviewed the ordinance criteria on page four and summarized the ways in which they would meet each criterion.

Vice Chair Driscoll stated that the application and building code relief look straightforward. He explained that he would like more information regarding the shed and the house's height. Attorney Keiser reiterated the challenge that the entire property is within the wetland buffer.

The board discussed the impacts of the proposed garage. Mr. Hoyt discussed his design. Chair Crapo asked about the interior ceiling height. Mr. Hoyt responded that it will be seven to ten feet and explained the challenges presented in creating a design.

Attorney Keiser explained the shed in more detail to Vice Chair Driscoll. Mr. Caldwell elaborated upon the choice of the shed location. Ms. Oliver commented on the shed location as it relates to wetland impacts and the board discussed this matter. Speaking to Mr. Caldwell, Chair Crapo asked for clarification on the plans for tree plantings and the shed's location in relation to the opposing side's wetland.

Chair Crapo opened to the public.

Tarsten Schwanbeck of 105 Parsons Road posed a question regarding stormwater runoff. He expressed concern that there is tremendous stormwater runoff creating standing water in the street, and that should be taken into consideration. Chair Crapo asked if this was an issue with the previous structure. Mr. Schwanbeck said that it wasn't an issue prior to the damage of the lot. Chair Crapo noted that there is a detailed stormwater management plan in place with the construction of this home.

Gwen Cougan of 11 Holland Road clarified Mr. Schwanbeck's sentiment that the stormwater issue hasn't changed since the damage to the lot occurred. She also expressed concern about the stormwater runoff.

Vice Chair Driscoll noted that this is a very detailed stormwater management plan that alleviates any of his concerns.

Chair Crapo invited Mr. Schwanbeck to review the plans on display.

Justin Macek of TF Moran responded to the abutter's concerns using a pre and post-development map referring to a grading and drainage plan. Chair Crapo asked if the culvert will cause this property to be a recipient of water from across the road. Mr. Macek confirmed and explained. Chair Crapo asked if there is a drainage easement. Mr. Macek explained the function and flow of the culvert and drainage patterns in an attempt to answer the abutting neighbors' concerns. He invited them to view their full report.

Al Lawrence of 95 Parsons Road asked Mr. Macek about the swale map which Mr. Macek explained in detail.

Chair Crapo closed to the public for deliberation at 11:13 p.m.

Vice Chair Driscoll proposed that the applicant remove the plan for the shed entirely and explained his thoughts on the matter.

Karen Oliver noted that the RCC's initial recommendation to move the shed forward made it closer to another wetland; this was new information to the RCC. The RCC's intention was to remove it from the disturbed area to prevent erosion.

Speaking to Ms. Oliver, Membe Piela asked for her professional opinion as to whether it's better to have a vehicle enclosed or parked in a wetland buffer. She responded that it's better to have a vehicle enclosed.

Member Madden asked Vice Chair Driscoll for clarification as to what was not included in the original scope. Vice Chair Driscoll pointed out the tree removal plan.

Member Piela stated his concerns regarding the ridge height and the matter of parking. The board continued to discuss the property, its unique challenges in its proximity to the wetland buffer, and the applicant's right to rebuild, and what that right entails.

Vice Chair stated that he would vote in favor of the other variances aside from the shed and the ridge height.

The board discussed how much of the plan is tied to the ridge height and how much of the plan would be affected should the variance for height not be granted.

Chair Crapo discussed the shed plan and stated that it ultimately won't have a significant impact on the wetlands. Member Piela agreed with Chair Crapo and added that the shed location isn't in a bad spot and noted the necessity of a shed at this property which is on a slab. He pointed out a letter from abutters at 6 and 10 Holland Road who approved of the plans.

Chair Crapo reopened to the public so that the aforementioned abutting neighbor in attendance could explain that she doesn't have any problem with the plans. She presented a photo of the property to the board.

Chair Crapo confirmed that this property is in the coastal overlay district.

Attorney Keiser noted that several abutting neighbors are in attendance, none of whom have presented concerns regarding the structure's height.

Referring to the photo of the original property, Mr. Hoyt stated that the proposed height is approximately the same height as the original. Member Madden asked whether the proposed house is higher than the original. Mr. Hoyt explained that it's lower. He also explained the consequences of changing the height of the home.

Chair Crapo closed to the public.

Member Madden summarized that none of the abutting neighbors take issue with views or light. She noted that the design is cleaner without cars parked on the road or on the driveway. Member Piela explained his thought that the garage would be more beneficial to the wetland buffer.

The board continued to discuss the proposed structure's dimensions and lot coverage and its impact on runoff. They also discussed the location of the shed and the removal of seven trees from the property.

Member Piela and Member Madden agreed that the height of the ridgeline is designed to accommodate a garage and mitigate lot coverage in a wetland buffer. The board discussed other solutions and Vice Chair Driscoll expressed that he was not in agreement with the presented design.

Chair Crapo noted in the event that the application is approved, the board will likely reference the letter for conditions, but they need to be amended. He summarized each of the amended sections and the board discussed.

Chair Crapo explained that the board would be isolating and parsing the application into multiple votes.

**Variances from §190-2./4.C(3) for a new home 27.4' and stairs 24.2' from the front boundary where 30' is required**

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

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

**2. The spirit of the ordinance is observed:**

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

**3. Substantial justice is done:**

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

**4. The values of surrounding properties are not diminished:**

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

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

John Tuttle – Yes  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – 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.**

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

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

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

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

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

**Vote: 5-0**

Chair Crapo noted that he didn't get the board's unanimous consent to continue past 11:00 p.m.



**Variances from §190-2.4.C(2) for a generator 15.7', permeable paver walkway 13.4' and retaining wall 2.4' from the side boundary where 20' is required.**

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

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

**2. The spirit of the ordinance is observed:**

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

**3. Substantial justice is done:**

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

**4. The values of surrounding properties are not diminished:**

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

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

John Tuttle – Yes  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – 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.**

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

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

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

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

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

**Vote: 5-0**

**Variances from §190-2.4.C(2) for a shed 10.6' from the side boundary where 20' is required.**

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**2. The spirit of the ordinance is observed:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**3. Substantial justice is done:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**4. The values of surrounding properties are not diminished:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**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.**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes

Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**Vote: 2-3**

**Variances from §190-3.1.H.2(a)(b)(e)2, (f) & (g) for a retaining wall 2.8', 32.2', a house 11.0', a septic tank 30', a leachfield 30.6', and removal of 7 trees from the wetland where 75' is required.**

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

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

**2. The spirit of the ordinance is observed:**

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

**3. Substantial justice is done:**

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

**4. The values of surrounding properties are not diminished:**

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

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

John Tuttle – Yes  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – 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.**

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

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

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

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

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

**Vote: 5-0**

**Variances from §190-3.1.H.2(a)(b)(e)2, (f) & (g) for a shed 22.1' (rear), 36.9' (right side) from the wetland where 75' is required.**

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

- 2. The spirit of the ordinance is observed:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**3. Substantial justice is done:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**4. The values of surrounding properties are not diminished:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**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.**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No

Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**Vote: 2-3**

**Variances from §190-3.4.D for a house height of 32.32' where 28' is allowed.**

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

- 2. The spirit of the ordinance is observed:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

- 3. Substantial justice is done:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

- 4. The values of surrounding properties are not diminished:**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**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.**

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

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

John Tuttle – No  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – No  
Shawn Crapo – No

**Vote: 2-3**

**Variances from §190-3.4.D for a house after a fire which is slightly more compliant.**

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

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



**2. The spirit of the ordinance is observed:**

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

**3. Substantial justice is done:**

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

**4. The values of surrounding properties are not diminished:**

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

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

John Tuttle – Yes  
Jenn Madden – Yes  
Chris Piela – Yes  
Patrick Driscoll – 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.**

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

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

John Tuttle – Yes  
Jenn Madden – Yes

Chris Piela – Yes  
Patrick Driscoll – Yes  
Shawn Crapo – Yes

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

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

**Vote: 5-0**

**Building code relief from §35-14.B(2)(a) for an advanced treatment septic tank 30' and leachfield 30.6' from the wetland where 75' is required.**

**Would enforcement of the (the specific provision) do “manifest injustice and be contrary to the spirit and purpose of the building code and the public interest”.**

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

**Vote: 5-0**

**Building code relief from §35-14.C(1) for septic 3.17' above bedrock where 6' is required.**

**Would enforcement of (the specific provision) do “manifest injustice and be contrary to the spirit and purpose of the building code and the public interest”.**

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

**Vote: 5-0**

**Building code relief from §35-14.C(2) for a septic 2' above seasonal high water table where 4' is required.**

**Would enforcement of (the specific provision) do “manifest injustice and be contrary to the spirit and purpose of the building code and the public interest”.**

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

**Vote: 5-0**

**Vice Chair Driscoll presented a condition for the recommendations on December 5, 2022 within the Rye Conservation Commission letter with the following three edits:**

- **#1 - All debris within the disturbed buffer area to be removed using the least disruptive method.**
- **#5 - Strike**
- **#7 - Invasive plants currently on the property should be removed including but not limited to Bittersweet, Barberry, Multiflora Rose, and Autumn Olive. If such plants are located in the buffer they must be removed using the least disruptive methods.**

Chair Crapo summarized that there were three requests that failed 3-2. The board will not condition those that don't pass.

**Motion by Patrick Driscoll to approve the following variance requests for property owned and located at 7 Holland Drive, tax Map 20.2, Lot 31:**

- **From §190-2.4.C(3) for a new home 27.4' and stairs 24.2' from the front boundary where 30' is required;**
- **From §190-2.4.C(2) for a generator 15.7', permeable paver walkway 13.4' and retaining wall 2.4' from the side boundary where 20' is required;**
- **From §190-3.1.H.2(a)(b)(e)2, (f) & (g) for a retaining wall 2.8', 32.2', a house 11.0', a septic tank 30', a leachfield 30.6', and remove 7 trees within the wetland where 75' is required;**
- **From §190-6.3.B for replacement of a house after a fire which is slightly more compliant.**

**Seconded by Chris Piela with conditions as previously stated. All in favor.**

**Motion by Patrick Driscoll to approve the building code relief for property owned and located at 7 Holland Drive, tax Map 20.2, Lot 31 with the conditions as stated above from the December 5, 2022 Rye Conservation Commission letter including the three edits.**

- §35-14.B(2)(a) for an advanced treatment septic tank 30' and leachfield 30.6' from the wetland where 75' is required;
- §35-14.C(1) for septic 3.17' above bedrock where 6' is required
- §35-14.C(2) for a septic 2' above seasonal high water table where 4' is required.

Seconded by Chris Piela. All in favor.

Motion by Patrick Driscoll to deny the request for variance for property owned and located at 7 Holland Drive, Tax Map 20.2, Lot 31 for §190-2.4.C(2) for a shed 10.6'; for §190-3.1.H.2(a)(b)(e)2, (f) & (g) for a shed 22.1' (rear), 36.9' (right side) from the wetland; for §190-3.4.D for a house height of 32.32' where 28' is allowed. Seconded by John Tuttle. Three in favor, Two Opposed.

Motion by John Tuttle to continue the application of Matthew & Marlana Wrobel for property owned and located at 30 Acorn Acres, Tax Map 16, Lot 97 to the January 4, 2023 meeting. Seconded by Chris Piela. All in favor.

Motion by Chris Piela to adjourn at 12:17 a.m. Seconded by John Tuttle. All in favor.

Respectfully Submitted,  
Emilie Durgin

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant:**

Ted and Pauline Simeonov, Aleph LLC of  
720 Brackett Road, Tax Map 17, Lot 65

**Property:**

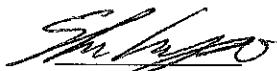
Request for Rehearing for property 691 Brackett Road, Tax Map 17, lot 34  
owned by Christopher & Susan Reaney

**Date:**

December 7, 2022

**Decision:**

The Board voted 5-0 to deny the request for a rehearing and reconsideration by Aleph LLC because the Board found no error of law in the Board's October 5, 2022 decision for variances and a special exception nor no new information was presented



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:**

Andrew Banks of 450 Sagamore Road

**Property:**

Request for Rehearing for property 239 Wallis Road  
owned by Sandra Wadsworth

**Date:**

November 2, 2022

**Decision:**

The Board voted 5-0 to deny the request for a rehearing and reconsideration by Aleph LLC because the Board found no error of law in the Board's October 5, 2022 decision for variances and a special exception nor no new information was presented

  
Shawn Crapo, Chair

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

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Robert Lang, Applicant  
Tucker D. Allard & Mary Coppinger, Owners

**Property:**

457 Central Road, Tax Map  
Property is in the Single Residence District.

**Application case:**

Cases #55-2022

**Date of decision:**

12-7-2022

**Decision:**

The Board voted 5-0 to continue the application to the January 4, 2023 meeting to allow the applicant to provide drawings with adequate distances to lot lines, turn-around and a plan that shows the removal of the existing parking/driveway.



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:**

Harold Kennedy & Mary Lynn Anderson of  
1417 Ocean Blvd, Tax Map 17.4, Lot 9

**Property:**

1419 Ocean Blvd, Tax Map 17.4, Lot 8  
Property is in the General Residence and Coastal Overlay Districts

**Application case:**

Cases #48-2022

**Date of decision:**

12-7-2022

**Decision:**

The Board voted 5-0-0 to deny the request for an administrative appeal from the Building Inspector's August 2, 2022 certification of legality for an apartment at 1419 Ocean Blvd. The Board did not find any error in the Building Inspector's decision.

A handwritten signature in blue ink, appearing to read 'Patricia Weathersby', is written over a horizontal line.

Patricia Weathersby, Acting-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:**

Eric & Donna Johnson

**Property:**

2000 Ocean Blvd, Unit 9, Tax Map 8, Lot 56  
Property is in the Single Residence and Coastal Overlay District

**Application case:**

Cases #56-2022

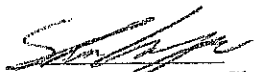
**Date of decision:**

12-7-2022

**Decision:**

The Board voted 5-0 to grant the following variances from the Rye Zoning Ordinance as presented with plans dated 12-7-22 from James Verra Associates:

- §190-2.4.C(3) for a generator 24' from the front boundary; and.
- §190-2.3.C (2) for a shed 12' from the side boundary.



Shawn Crapo, Chair

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

# BOARD OF ADJUSTMENT

## -Rye, New Hampshire-

### NOTICE OF DECISION

**Applicant/Owner:** Michael Keeley & Michael Valliere

**Property:** 7 Holland Drive, Tax Map 20.2, Lot 31  
Properties are in the General Residence, Coastal Overlay and SFHA,  
Zones AO(3) and AE(8)

**Application case:** Cases #57-2022

**Date of decision:** 12-7-2022

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

- §190-2.4.C(3) for stairs of a house 24.2' and overhang 27.4' from the front boundary;
- §190-2.4.C (2) for a generator 15.7', Permeable Paver Walkway and retaining wall 2.4' from the side boundary; and
- §190-3.1.H.2(a), (b), (f) & (g) for a retaining wall 2.8' and 32.2', a house 11.0', a septic tank 30.0', leachfield 30.6' and the removal of 7 trees from the wetland.

The Board voted 5-0 to grant the following relief from the Building Code as presented:

- §35-14.B(2)(a) for a septic tank 30' from the wetland;
- §35-14.C(1) for a septic tank 3.17' above bedrock; and
- §35-14.C(2) for a septic tank 2' above the seasonal high water table.

These variances and building code relief were granted with the following conditions from the Rye Conservation Commission letter dated 12-3-2022:

1. All debris in the disturbed area of the buffer to be removed using the least disruptive method.
2. The three (3) red maples located in the back area of the property will remain.
3. After restoration to the natural grade, the buffer area will be thickly planted with native plantings.

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

4. Mulch used within an area being restored shall be natural straw or equivalent non-tox, non-seedbearing organic material, in accordance with Env-Wt 307.12(d).
5. Lawn will end at the side of the shed.
6. Invasive plants currently on the property should be removed. Including but not limited to bittersweet, barberry, multiflora rose and autumn olive. If such plants are located in the buffer they must be removed using the least disruptive method.
7. The RCC believes that an 85% or greater survival rate of the planted vegetation after one (1) year is sufficient.

The Board voted 3-2 to deny the following variances from the Rye Zoning Ordinance:

- §190-2.4.C(2) for a shed 10.6' from the side boundary;
- §190-4.3.D for the height of the house 32.32'; and
- §190-3.1.H.2(a),(b),(e)2.(f) & (g) for a shed 22.1' from the rear and 36.9' from the right side from the wetland.

The variances were denied for the following reasons:

1. The ridge height of the house does not satisfy the variance criteria because it does not have to meet FEMA regulations, higher than surrounding homes in character of neighborhood and does not meet the hardship criteria.
2. The shed moved closer to the wetland resources is not reasonable and does not satisfy the hardship criteria.

  
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:** Matthew & Marlana Wrobel

**Property:** 30 Acorn Acres, Tax Map 167, Lot 97  
Property is in the Single Residence District.

**Application case:** Cases #58-2022

**Date of decision:** 12-7-2022

**Decision:** The Board voted 5-0 to continue the application to the January 4, 2023 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:** Patrick & Jenny Donnelly

**Property:** 5 Whitehorse Drive, Tax Map 11, Lot 15-2  
Property is in the Single Residence District and Coastal Overlay

**Application case:** Cases #59-2022

**Date of decision:** 12-7-2022

**Decision:** The Board voted 5-0 to continue the application to the January 4, 2023 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.