

## **TOWN OF RYE – BOARD OF ADJUSTMENT MEETING**

**Wednesday, May 6, 2020  
7:00 p.m. – via ZOOM**

***Members Present:*** Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Rob Patten and Greg Mikolaities

***Note:*** Member Charles Hoyt was also present to speak on one of the applications but was not sitting for the meeting.

***Present on behalf of the Town:*** Attorney Michael Donovan, Planning/Zoning Administrator Kimberly Reed and Building Inspector Peter Rowell

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

Chair Weathersby called the meeting to order via Zoom teleconferencing at 7:00 p.m.

#### Statement by Patricia Weathersby:

As chair of the Rye Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: [www.zoom.com](https://www.zoom.com) ID #889-7293-9456 Password: 860305.

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at: [town.rye.nh.us](http://town.rye.nh.us) go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 603-379-0801 or email: Kim Reed at [KReed@town.rye.nh.us](mailto:KReed@town.rye.nh.us).

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance of members:

1. Patricia Weathersby
2. Shawn Crapo
3. Burt Dibble
4. Greg Mikolaities

*(Each board member confirmed that there were no others present with them in the room.)*

Chair Weathersby led the Pledge of Allegiance.

**II. BUSINESS**

○ **Approval of February 5, 2020 Meeting Minutes**

**Motion by Patricia Weathersby to approve the minutes of February 5, 2020 as amended. Seconded by Shawn Crapo.**

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Aye; Patricia Weathersby - Aye**

**Motion passed.**

○ **Approval of March 4, 2020 Meeting Minutes**

**Motion by Burt Dibble to approve the minutes of April 15, 2020 as presented. Seconded by Shawn Crapo.**

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Abstain; Patricia Weathersby - Abstain**

**Motion passed.**

○ **Approval of April 15<sup>th</sup> Meeting Minutes**

**\*Tabled to next meeting.**

- Diane Cohran et. al. v. Town of Rye ZBA (Lisa Lombard 1248 Ocean Blvd, Tax Map 17.2, Lot 148 Case 03-2019). Consideration of Court's Remand Order – Review and approval of clarification. **This is not a public meeting.**

Chair Weathersby noted that the members have been sent and reviewed the court's remand order, the minutes of the April 3, 2019 Board of Adjustment Meeting, CR 71 & 79, and the May 4<sup>th</sup> clarification. The court has asked the board to clarify why they felt the variance for the septic should be granted. The clarification, as drafted by Attorney Donovan, lays out those reasons. She asked the board members if there are any comments, changes or additions to the clarification.

There was one minor grammar correction made by Member Crapo. No other comments, additions or changes were heard.

Attorney Michael Donovan noted that he drafted the clarification in consultation with Chair Weathersby. This was done because the remand order mentions Chair Weathersby in two places and cites her comments in the record.

**Motion by Patricia Weathersby to adopt the May 4, 2020 draft clarification, with a single amendment ('s), and instruct town counsel to file it with the court. Seconded by Shawn Crapo. Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Aye; Patricia Weathersby - Aye Motion passed.**

Requested Continuances:

40 Brackett Road: The applicants are requesting a continuance to the June BOA meeting, with the hope of doing an in-person meeting.

**Motion by Patricia Weathersby to continue the application of Eric Cummings and Cheryl Loren for 40 Brackett Road to the June 3<sup>rd</sup> meeting. Seconded by Burt Dibble.**

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Abstain; Patricia Weathersby - Abstain Motion passed.**

741 Ocean Blvd: The applicant has requested a continuance to the June BOA meeting, as additional variances may be needed that were not originally requested.

**Motion by Patricia Weathersby to continue the application of Seacoast Apart-Hotels, LLC for property at 741 Ocean Blvd to the June 3<sup>rd</sup> meeting. Seconded by Shawn Crapo.**

Vice-Chair Crapo noted that additional variances may require the application to be re-noticed and sent to abutters.

Chair Weathersby commented that she did not see a ZBA Meeting sign on the property. She would like to make sure the applicant knows the sign needs to be posted seven days in advance of the June meeting.

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Abstain; Patricia Weathersby - Abstain Motion passed.**

### **III. APPLICATIONS**

- 1.Drew Pierce, Seacoast Modular Homes, Inc for Chris & Helen Kehas of 37 Paquette Ave. Manchester for property owned and located at 2257 Ocean Blvd, Tax Map 5.3, Lot 7, requests variances from §190-6.3 (formerly §603.2) to tear down an existing non-conforming house and replace it with a new house; §190-3.4D (formerly §304.4) for a house with a height 32' where 28' is allowed; §190-5.0C (formerly 500.3) for parking in the front setback and §190-2.4C(1) (formerly 204.3C) for the house to be located 21.44' from the Baker Ave front boundary where thirty feet is required. Property is in the General District, Coastal Overlay and SFHA, Zone AO. Case #08-2020.**

Speaking to the board members, Chair Weathersby noted that the original application did not request variances from 190-6.3 or 190-5.0C. This was brought to the applicant's attention and he amended it over the weekend. This information did get into the final meeting agenda. The notice that went to the abutters did not have that. The notice described the proposal and any interested party could look at the plans,

which describe the house was coming down and being replaced with a new home. She asked the members if they feel there is a notice issue or any reason the application should not be heard at this meeting.

Vice-Chair Crapo stated that with the tightness of that neighborhood and in today's times where people are "hunkered down" and may not receive mail as fast, the abutters should be noticed if there are going to be parking issues. Also, Section 603.2 makes it clearer that it is a tear down and replace, where they may not have realized that before. He would be in favor of continuing the application to make sure all the neighbors are aware.

Chair Weathersby commented she may have misspoken. The 603.2 tear down variance did make the notice, even though it was not asked for. Speaking to Mr. Pierce, she asked if the parking is in the same location that it has always been off Baker Ave.

Drew Pierce, representing the applicants, confirmed the parking has been in the same location since the 1970's.

Chair Weathersby commented it may be that the variance isn't even needed if it is in the same location. She asked if the parking is shown on the plan.

Vice-Chair Crapo pointed out there is a future driveway shown on the plans.

Mr. Pierce explained the reason why it says "future driveway" is that this is where people have been parking since 1970's; however, there have never been any formal parking spaces. He continued that they were asked to designate this on the plan because additional material is being put in to make it an actual driveway.

Chair Weathersby asked if the area is covered with grass now with an intent to put in a paved driveway.

Mr. Pierce replied that he is not sure what material they will be using.

**Andrea Elliot, speaking on behalf of Chris and Helen Kehas**, confirmed that the parking area is currently grass.

Chair Weathersby stated that it sounds like they don't even need the 500.3 variance (190-5.0C).

Member Patten stated that it sounds like it is not a huge difference from what is being done now. It just sounds like they are going to be putting pavement in place.

Vice-Chair Crapo stated he is contrary to that because Mr. Pierce has just said they don't know what material it is going to be. That would lead him to believe that it wasn't in the application that went to the Building Inspectors to be reviewed for lot coverage. If they proceed forward, they may be limited to pervious surface. If they are thinking about paving, they may need to go back to the Building Inspectors to work on some calculations.

Mr. Pierce noted that he has not determined with the client if the area is going to be paved. It could remain gravel for now. If they need to pave it and need a permit, it can go back to the Building Inspectors.

Speaking to Mr. Pierce, Chair Weathersby asked what the impervious lot coverage would be on the lot, if that were to be a paved surface or impervious in some manner.

Member Mikolaities noted the proposed plan shows the impervious area calculations. The driveway is on the plan, which shows calculations of 21.74% where 30% is allowed.

Chair Weathersby asked if the lot coverage of 21.74% includes the driveway.

Mr. Pierce confirmed.

Member Mikolaities pointed out that the meeting agenda he received lists the tear down and also says “parking within the front setback”. He asked for clarification.

Chair Weathersby clarified that the notice that went to the members today had all the variances requested. The notice that went to the abutters in the mail and was posted to the website, did not have all the variances.

Planning/Zoning Administrator Reed noted that what is posted on the town’s website is the notice that everyone has today.

Chair Weathersby asked if the notice that was sent to the abutters had 500.3 listed.

Mrs. Reed explained that the application was before the board in February but was continued. What went to the abutters did not include 500.3; however, what was posted on the website did include 500.3. She pointed out that the application has been floating around to the abutters, been on the ZBA agendas twice and has been continued for a couple of months. The abutters have been aware of the application.

Chair Weathersby stated that she does not think 500.3 is necessary, as it is probably grandfathered. There is an area on the grass where the driveway will be. She thinks it is a nonissue. She asked the members if they think a variance to 500.3 is necessary.

Member Mikolaities replied yes, if they are going to pave it. If it stays grass, it does not matter because it is grandfathered. Grass going to pavement is going to affect the lot coverage, which as represented is still okay, but should be addressed for the record.

Chair Weathersby noted the variance is for parking in the front setback. The variance is for the location of the spaces regardless of the surface.

Regarding 500.3, Member Dibble stated he does not feel it is necessary. The history is pretty clear and the neighbors have had a chance to reasonably be well informed. If somebody decides they don’t like it after they have heard the board’s discussion, they have a chance to ask for a rehearing. He is content not having that variance.

Vice-Chair Crapo stated he wants the variance to be requested. Until the planning board decides to change 500.3 and make exception that pre-existing parking can be grandfathered, it should be included and be part of the process.

Member Mikolaities agreed with Vice-Chair Crapo.

Member Patten agreed that if the driveway is going to be paved it should be noticed. If it is going to stay pervious, he does not see the need.

Vice-Chair Crapo stated they need to be careful of “grandfathered” because this is a tear down with the lot being redone. If they were putting on a second floor and all the parking was staying the same, the term “grandfathered” might be used, but this gets a little dicey. He would rather not dismiss it and deem it grandfathered.

Chair Weathersby stated it seems that the members want to leave it in, so 500.3 is required. She reiterated that 500.3 was not on the notice to the abutters. It was on the meeting agenda for this meeting. She asked the board members if they feel there is a notice issue that would require the application to be postponed until June.

Vice-Chair Crapo stated if the abutters originally got their notice sometime back in December for a January meeting, they have had plenty of time to learn about the proposal. That is not so much of an issue in his mind.

The board members agreed the notice is adequate and should proceed.

Chair Weathersby noted the board has received the packet for review. She asked Mr. Pierce if he would like to summarize or add to the information received.

Regarding the parking, Mr. Pierce stated that he has received messages from the property owners’ representative that it can and will remain grass. That would be okay to keep as an approval of condition if relief is granted. He continued that the parking is also within the 30’ front setback off Baker, which the application asks for relief from. The reason there are two front yard setbacks is because there are two streets abutting the property. There is sort of an undue burden on the property owner to conform to the very restrictive 30’ front yard setbacks on both sides. Mr. Pierce continued they are asking for a height of 32’. He understands there is 2’ that is typically granted for freeboarding, as this house has to be 2’ above floodplain. The request is only for an additional 2’ from what is normally granted. Speaking to the house that is on the property currently, it is in total disrepair and is uninhabitable. The existing home is 16.48’ from the property line. The new house will be more conforming than what is there right now. It will also be a new home built to code, as well. At the rear of the property, there is 18.7’ to the property line, which is not within the 20’ side yard setback. That will be corrected when the house is placed on the property. In order to do that, the house needs to get a little closer to Baker Avenue. It will still be more than 20’ away from Baker Avenue, so they are asking to treat this as a side yard setback, as is on the application.

Ms. Elliot stated that her family started renting 14 Baker Avenue for summer vacations in 1962. In 1977, the home at 2257 Ocean Boulevard was purchased by her aunt and uncle and it became the new family estate. Five generations have been a part of the Rye community for more than 50 years. The family has outgrown the current space and does not allow for her aunt and uncle to enjoy the property in a safe and suitable way. She pointed out there are no closets in the bedrooms, the wiring is knob and tube, the electrical heating baseboards are only 50% operational and the twenty-eight year old roof is leaking causing mold in the upstairs ceilings. It became evident that the cost of repairs would be almost as much to build new. Last year, the decision was made to let the house go. They met with Mr. Pierce to pursue a plan to rebuild. The house is no longer safe or healthy for occupancy. She is asking for the board’s

support in giving the variances needed to rebuild the property and to help her family create more memories in Rye.

Chair Weathersby opened to the board members for questions.

Vice-Chair Crapo stated the height variance is where he is having an issue. He understands the 2' freeboard and floodplain requirements; however, it is the other 2' he thinks design wise could be avoided. In looking at the plans, it seems that between the ceiling joists of the first floor and floor joists of the second floor there is a 22" set of joists in the middle, which is driving at least 1' of the relief requested. It seems like the choice of construction is driving the height and is not some sort of hardship.

Mr. Pierce explained it is 18" between the first and second floor, which picks up an additional 6" as compared to site-built construction. He noted that the roof pitch can be adjusted; however, it will end up looking like a mobile home because it will be a very shallow roof pitch. It could end up looking like a double-wide. He thought that asking for the additional 2' would be better than putting something that looked like a double-wide on Ocean Blvd. He is trying to make this look more in line with the surrounding structures.

Vice-Chair Crapo pointed out that it says 2x10 floor joist and then it says 2x12 for the others, which is 22". He knows that the applicant's choice is the modular home. This would probably be fine if height wasn't an issue. He does not see that choice of construction drives a hardship.

Member Mikolaities asked the status of the sewer permit.

Mr. Pierce replied this has been applied for and approved.

Referring to the height, Chair Weathersby clarified that right now the house is a 7:12 pitch. She asked what the pitch would be if it was dropped by 2'.

Mr. Pierce replied that the next available truss size would be a 3.5:12 for a modular home. Otherwise, it would be a significant financial burden on the property owner if the roof was to be built on site, which goes against the theory of modular construction.

Member Dibble asked how much this would reduce the height.

Mr. Pierce commented it would be at least 2'.

Chair Weathersby asked about the FEMA requirement. She asked if this was being built at grade or being raised by a couple of feet.

Mr. Pierce explained the house has to be 3' above grade for the requirement. He noted there is a height cross-section in the packet.

Vice-Chair Crapo asked if they are still able to have a full basement in that zone. He asked if the mechanicals will be in the basement.

Mr. Pierce replied the mechanicals will be in the attic, which will be an issue if they have to go with a shorter roof. There will be a slab on grade, but it is not a basement.

Vice-Chair Crapo stated the plans show a basement foundation wall.

Mr. Pierce explained there is a footing underneath the wall. It is a frost wall that sits on a 10x20 footing and a slab that is poured at grade.

Vice-Chair Crapo asked Building Inspector Rowell to weigh-in. He noted that the plans seem contrary to what is proposed.

Building Inspector Peter Rowell noted that Chuck Marsden reviewed this plan, so he did not have a lot to do with this project. He continued that in the file it looks like it is showing a 4' crawl space. The elevations are done from the construction drawings. The basement level is at 11.5 and the top of first floor at 16.

Member Mikolaities stated there is a lot of confusion. There are two sets of plans. One is the typical sections which shows an 8' basement. There is another plan with an A-2 Sheet that shows a 4.5' crawl space. This shows a 1' slab below grade and it was testified the slab was at grade. If the slab is at grade, does the whole building go up another foot?

Referring to Sheet A-2, Mr. Pierce clarified that the only thing that is incorrect is the height of the grade. There will be a 4' crawl space above grade because the building has to be raised up above the grade.

Member Mikolaities asked why a 4' crawl space is needed if the mechanicals are in the attic. He asked if it could be a 2' crawl space.

Mr. Pierce noted this would bring the first floor frame back into where it is not supposed to be because of freeboarding.

Vice-Chair Crapo asked how much freeboarding is required for this site. On Sheet A-2, it shows the ground on one side and the base flood elevation, up a foot, on the other side, and the top of foundation at 3.5' above.

Mr. Pierce explained the freeboard is 1' above the base flood elevation. The base flood elevation is 1' above grade. It needs to be 1' above grade to get to base flood elevation and another 2' is needed for the freeboard. The framing of the house will be at least 3' above the grade that is existing.

Chair Weathersby asked why a 4' crawl space is needed, if it needs to be 3' above grade.

Mr. Pierce replied this can be amended to be a 3' crawl space.

Chair Weathersby asked if this means they will be requesting a maximum height of 31'.

Mr. Pierce replied this would just be bringing up the slab. Nothing else is being adjusted. Referring to the plans, he stated that what is being shown should actually be a 3' crawl space. The application and all the other details support it as being at 3'.

Chair Weathersby asked if they will still need the 32' height variance.

Mr. Pierce replied that is correct, unless the height of the roof is significantly reduced, which can be done.



Chair Weathersby asked for further questions from the board.

Vice-Chair Crapo commented that he would like to have clear drawings. He is back to thinking this should've been continued.

Member Patten stated that he does not have any questions. As far as the height, he has significant concerns.

Hearing no questions from the board, Chair Weathersby opened to the public.

**David Choate, 108 Washington Road, Demolition Review Committee Chair**, stated he wanted to speak to the application only in the sense of using it as an example of a concern the committee has about applications coming before the board with a demolition of the structure. This application went to the Demolition Review Committee in March. This was before the Town voted that demolition permits will be the last permit issued from now on. If this was a new application, it would go through the process and then go to demolition review. The reason for this is because historically demolition permits were granted and then they would go to the boards. For example, if this application was denied and they were not able to replace the structure, it could have already been demolished. The concern is not so much with structures that have been built in the 50's, but there could be an application for an 1850 home. Mr. Choate noted the committee is only advisory. They do not have the ability to stop the demolition, unless it is in the Historic District. In looking at this application, one thing to consider is if the variances are really required. The lot size is 9,300sf, which is one of the larger lots in the Baker Ave area. The reason relief is being requested from Baker Ave is because they want a bigger house. He would really like the board to think long and hard about granting variances just because someone wants a bigger house on the property. When a petition involves demolition, the board should consider that granting the variances would enable the demolition of a structure that might be considered historic and potentially significant.

Chair Weathersby asked Mr. Rowell if he had any comments.

Building Inspector Rowell commented that the contractor did a pretty good job explaining the height requirements. This is an AO-1 zone so it requires 1' for the base flood elevation and 2' of freeboard, which means the building has to be elevated 3' above the existing grade.

Chair Weathersby asked Mr. Pierce if has anything else to add.

Mr. Pierce stated it was mentioned that these owners just want to build a bigger house, which is not true. The home has the same number of bedrooms as the existing house on the property. As codes change, there are certain requirements and houses just require more space than they did 70 years ago. This property already has a non-conforming structure on it. This application for relief brings the property more in to conformance with today's zoning in Rye.

Ms. Elliot stated that when the property was purchased, it was considered a double lot. When the Town widened the road and took some of the lot, it shrunk the property a little bit. The shape of the lot causes some restrictions. The whole purpose of this was to update the house and to create a safe environment for two elderly people, who have owned the property since the 70's.

Referring to Sheet A-2, Member Mikolaities asked if the structure is going to be 29' with it being raised 3' because of the flood. He commented the math is not working, as he sees it.

Mr. Pierce explained that from the bottom of the first floor framing to the very top of the peak is 27'6". This is shown on the front page; cover. That measurement was rounded to 28', in case anything was off with the foundation. He noted they could technically get away with 31'6".

Member Mikolaities pointed out that 27'6", plus 3', is 30'6".

Mr. Pierce commented that the base flood zone is 1' above the ground elevation then there is 2' to the house, so this is 3' from the ground. The height of the building is 27'6". He stated there is incorrect math on his end, not on the actual drawing. The drawing shows that not as much relief is needed that is being requested.

Vice-Chair Crapo stated this would be measured from grade, not from base flood elevation. The 1' base flood elevation would be included. The measurement from existing grade to the top of the peak, allowing for 2' of freeboard, still cannot be more than 30'. It looks like another 8" or 1' is being requested, depending on the calculations. The drawings may be dimensioned wrong.

Member Mikolaities commented it is clearly dimensioned wrong. He sees this as needing 6" of relief.

Mr. Pierce replied that is correct.

Chair Weathersby asked Mr. Pierce if they are now making a request for a house 30.5' feet in height, as opposed to the 32'.

Mr. Pierce confirmed.

Member Dibble noted that the new building is still going to be 3' taller than the existing building.

Chair Weathersby commented it is a half foot taller than what the ordinance allows with the 2' freeboard.

Member Dibble stated he is trying to envision how much taller the building will look, as compared to the existing building. He has an interest in how it is going to compare to the adjacent structures.

Speaking to Mr. Pierce, Chair Weathersby asked the height of the existing house.

Mr. Pierce replied he does not have that information. He pointed out that in looking at Google Earth, there are a lot of two-story homes with a similar roof pitch.

Chair Weathersby commented the board members have been down to the area and are familiar with it. Hearing no further comments, she reclosed the public hearing at 7:28 p.m. She opened to the board for deliberations. She noted the board will be voting on a house with a height of 30.5'. They will also be voting on the second front boundary on Baker Ave with a setback of 21.44'.

Member Patten stated that looking at it now, after discussion, he feels a little differently. It is a lot easier for him to look at the lot setbacks and recognize a hardship than it is with the height. The height is driven by the design of the home. With that said, if it really is only 6" that is being requested, he does not have a huge problem with it. He continued that the house could have been designed in such a way that would not require a height variance.

Member Dibble stated that he understands the need for the height. To some degree, he is convinced by the argument of the esthetics, especially in looking at the adjacent house, which has a pretty steep roof. He thinks this house will fit in well in the general nature of the neighborhood. He is not as worried about a fraction of a foot, as much as what the neighborhood is going to look like. He is not in opposition to the request for the height. He was very favorably influenced by the notice that the Town widened the road and took away part of the yard, which is something the owners had no control of. The board has a habit of allowing some leeway for properties that have a very small building envelope. He is not as troubled by the setbacks; although, he finds it totally unconvincing that by virtue of the fact there are two fronts on this property, the owner is somehow disadvantaged. It is clearly stated in the zoning ordinance. There are two fronts on this property.

Member Mikolaities stated this is a corner lot. The proposal is well under the maximum lot coverage. It is a modest house size and will improve the neighborhood. What he likes is that there are no gables or bulk. The 6" is basically the peak of the roof. He would like on the record that this will not come back some day for two dormers on the side. In looking at the pictures and the surrounding houses, they are all squared off and bulky with full dormers on the second floor. So, he is less troubled by the 6" for the peak of the roof. He would encourage the applicant to double check the math and get some correct drawings into the building department. That way it will not be half way into construction with it coming back for a request of 3'. He noted that he will not be happy sitting for a 3' variance when the discussion has been 6" at this meeting. Other than that, he thinks it is a modest house in that neighborhood.

Vice-Chair Crapo stated he has no problem with the placement on the lot, driving the setback from Baker, and the fact it is a tear down and rebuild. Nor does he have a problem with the parking, as it is par for that neighborhood. He still has an issue with the height. When this discussion was started, it was that the alternative to the height was different trusses that was going to drop it to a 3.5:12. That is when the discussion was when it was going to have to gain a 1.5' of drop and now it is 6" above. The house could be modified and reduced down. He cannot get to a hardship. It is not even the roof pitch for snow loading that is causing a hardship. Modular has come a long ways and there is a time and place for it. But here, having that huge gap between the ceiling of the first floor and the floor of the second floor is driving the height up. He can't come to a hardship on it, even though it is just 6".

Chair Weathersby stated her struggle is similar to Vice-Chair Crapo's. She is fine with the parking. In fact, she thinks it might be grandfathered. The parking is in the logical space and on the lesser travelled street. The setback on that road, which is not heavily travelled, is sufficient. The lot size and the double frontage convinced her that the setback will be adequate. She struggles with the height. The Town has now said that with the freeboard there will be the extra 2' but not more. That was clearly the intent of the voters. She struggles with the fact that the house is already made and certain dimensions is what is requiring this height variance. She has nothing against modular homes and this house looks adorable. It is the way it is constructed, and the roof pitch with the extra gap between the floors, which is causing that half foot. It has been heard from the applicant that the roof can be adjusted. It can be built in a non-modular manner. It could be dropped down. She struggles with the hardship. It is the type of construction that is driving the height. To her, that is not really a reason to grant it. She really cannot see a hardship. A house can clearly be built, of a very similar size and dimensions, that would fit within the 30'. She takes a lot of pause with Member Mikolaities' comment that it is just the top of the roof and there are not dormers and if they wanted to add something like that it would have to come back to the board. Hopefully they would not do this. A condition could even be added that dormers are not allowed, if the board thought this would be appropriate. She reiterated that right now she is struggling with the fact that the type of construction is driving the necessity for a height variance.

Vice-Chair Crapo pointed out that the discussion where 3.5' was thrown out was when it was trying to drop a 1.5'. Now it has evolved into any modification to the pitch would only need to gain 6".

Chair Weathersby stated that it was said that the roof could be built in a typical manner. She understands this would be more expensive and she struggles with that. However, that really cannot be a designing factor.

Member Dibble commented it really comes down to economics with a stick-built roof. He does not know what that difference is but in terms of overall construction of the building, it seems like a small matter.

Vice-Chair Crapo stated it is not really being driven by the roof trusses. It is being driven by the floor joists and the ceiling joists stacking together on the first to second floor transition. Part of his fear is the next applicant will come in with an engineering decision on why their stick-built structure needs big beams in-between the floors, when ultimately, they want to gain a foot to get higher towards the ocean for a view. The roof could be done as proposed with the 12:7 pitch if they figure out how to not have the gap between the two floors.

Member Dibble commented those structured units are like that. The entire house would have to be converted to stick-built, if the floor was to be changed. That would be a meaningful change. However, it seems that 6" of roof peak could be found by just getting rid of the roof trusses and having a stick-built roof.

Chair Weathersby noted they are going to go through the criteria and vote on what has before the board. She also noted that she is going to go through the criteria for each variance separately.

**Chair Weathersby called for a vote on the variance to §190-5.0C (formerly 500.3); parking:**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes

Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - 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?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**Chair Weathersby called for a vote on the variance to §190-2.4C(1) (formerly 204.3C); front setback:**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - 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?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**Chair Weathersby called for a vote on the variance to §190-3.4D (formerly §304.4); height of 30'6":**

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

Shawn Crapo – No  
Burt Dibble – No  
Rob Patten – No  
Gregg Mikolaities – No  
Patricia Weathersby - No

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

Shawn Crapo – No  
Burt Dibble – No  
Rob Patten – No  
Gregg Mikolaities – No  
Patricia Weathersby - No

**3) Substantial justice is done?**

Shawn Crapo – No  
Burt Dibble – No  
Rob Patten – No  
Gregg Mikolaities – No  
Patricia Weathersby - No

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

Shawn Crapo – No  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – No  
Patricia Weathersby - No

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

Shawn Crapo – No  
Burt Dibble – No  
Rob Patten – No  
Gregg Mikolaities – No  
Patricia Weathersby - 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?**

Shawn Crapo – No  
Burt Dibble – No  
Rob Patten – No  
Gregg Mikolaities – No  
Patricia Weathersby - No

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

Shawn Crapo – No  
Burt Dibble – Yes  
Rob Patten – No  
Gregg Mikolaities – No  
Patricia Weathersby - No

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

Shawn Crapo – No  
Burt Dibble – No  
Rob Patten – No



Gregg Mikolaities – No  
Patricia Weathersby - No

Chair Weathersby stated that 603.2 is for a tear down and rebuild of this house. She thinks that if the vote was “no” for the height variance, it should be “no” for this one.

Vice-Chair Crapo stated he would agree if they are stuck with these plans. The other interpretation would be if they got the other variances but do not get the height, as long as they come in at or under the 30’ and can satisfy the height, then they could proceed. It depends on how specific it should be to this plan and them having to come in with a whole new application.

Member Patten agreed with Vice-Chair Crapo’s way of thinking on this. It can be treated such that if the height came in not needing a variance, the rest of the request could be approved.

Member Dibble commented they could deny the height and approve the rest. If they come in with a height that meets the requirement and does not need a variance, the denied variance has no impact.

Chair Weathersby stated if the variances for the setback and the parking are granted, and the other was denied, if they came in with the same house under the height, 603.2 would not be needed because it would then be conforming.

Vice-Chair Crapo stated that if they came in and just got a setback variance and then came back four months later, by this argument they would not need 603.2 because it would be a conforming structure. With this application, it is all being applied for at once. If they came in not needing a height variance, they would still need 603.2 because the current is non-conforming and the proposed still needs a variance. He thinks 603.2 is needed either way.

Chair Weathersby noted that the board seems to be in favor of a house with the footprint, just not the height. She thinks they do need to vote on 603.2, as proposed.

Vice-Chair Crapo stated that if this was another package with a bunch of stuff in it but one was denied, they could still approve the 603.2 because it is saying they can tear down the house that is there and rebuild as proposed. On this one, he thinks there should be a condition that they get a final proper set of plans with an elevation certificate, which can be submitted to the building department before they start construction. The shell of the house, the design and look, is the concept before the board. He thinks there is enough on the record saying that if the height part of this is denied, they can still achieve what they are trying to achieve by dropping the height of the roof somehow. They will need to do it to building code. If they then satisfy the building department with regards to the building code, he does not see why they cannot proceed with 603.2 for the general construction of a new home without a variance for the height.

Member Dibble stated it would not be out of accord with the way the board has done business in the past by approving this application with the condition that the height of the building not exceed 30’.

Chair Weathersby commented she disagrees.

Member Mikolaities stated the way he looks at 190-6.3 is that the board is giving them permission to rebuild a building in which they have asked for relief. He would not put a condition on the height because the board cannot be approving positives. It is just not approving a variance. It gives the building

department latitude, if the applicant comes in with a footprint that the board has approved with the same setbacks and lot coverage.

Referring to 603.2, Chair Weathersby stated she thinks the proper procedure is to vote on it now and vote it down because this house, as proposed, will not be built in the exact dimensions. The other variances can be granted. The applicant can then come in with a plan for a house with this footprint and it will not need 603.2 relief because it will conform. She asked Planning Administrator Kim Reed or Peter Rowell to clarify.

Mrs. Reed explained that anytime there is a tear down and rebuild with anything that is, or was, non-conforming, the board has always voted on 603.2, which is now 190-6.3, because it is a non-conforming structure on a non-conforming lot. Her thought is that if the board grants 603.2 and the other variances, except for the height, it would be then be up to the building department to allow it to be built, as long as it is under or at 30'.

Building Inspector Rowell agreed.

Vice-Chair Crapo stated there is enough on the record to show the intention of the board's vote. There may be modifications to this drawing and this set of plans that will allow them to still have similar esthetics just 6" lower.

**Chair Weathersby called for a vote on the variance to §190-6.3 (formerly 603.2); tear down and rebuild:**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - 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?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**Motion by Shawn Crapo to deny the height variance §190-3.4.D. Seconded by Burt Dibble.  
Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Aye;  
Patricia Weathersby – Aye  
Motion passed.**

**Motion by Burt Dibble to grant variances to §190-5.0.C, §190-3.4.D and §190-6.3. Seconded by Shawn Crapo.**

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Aye; Patricia Weathersby – Aye**

**Motion passed.**

**2.Seacoast Apart-Hotels, LLC for property owned by Stephen & Beth McCaan and located at 741 Ocean Blvd, Tax Map 23.1, Lot 28 requests variances from §190-6.3 (formerly §603.1) to expand a non-conforming structure to build an office/manager’s studio; §190.2.10C(3) for construction of the office/manager’s studio with a front setback of 14’ where 30’ is required; from §190-5.1.A(2) & C (formerly §501.1B) for 2 signs totaling 60sf where 16sf is permitted; §190-5.0.C (formerly 500.3) for parking in the front setback; and from §190.5.0.A (formerly 500.1) for 10 parking spaces sized 9’x18’ where 10’x18’ is required. Property is in the Business, Coastal Overlay District. Case #12-2020.**

- **Continued to the June 3, 2020 meeting. (*see motion above*)**

**3.Carolyn & Emmett Horgan of 412 South Broadway, Salem NH for property owned and located at 3 Robin Road, Tax Map 20.2, Lot 101, request variances from §190-2.4C(2) (formerly §204.3B) for a garage with a side setback of 15.5’ where 20’ is required; and from §190-2.4C(5) (formerly §204.3E) for dwelling coverage of 17.0% where 15.0% is required; and overall coverage of 45.2% where 30% is required. Property is in the General Residence, Coastal Overlay District. Case #13-2020.**

Chair Weathersby noted the board has received the packet and all information. It is difficult to do a full presentation in this venue. She does not think it is really necessary. She asked Attorney Phoenix to speak to the application.

**Attorney Tim Phoenix, representing the applicants,** stated that the property is at the corner of Robin Road and Fairhill Ave. The parcel is 9,529sf and the existing home is covering 1,617sf. On the south side, along Fairhill, there is a large driveway parking area from midway on the main house to the back of the house. There is also a large concrete patio against the house. The back of the existing home is about 1.5’ from the sideline at the westerly end and about 3.5’ from the sideline at the easterly end. The house has existed there for many years. The existing leach field is on the easterly side, which takes up a good part of the side yard. The septic tank is underneath the existing driveway. The project entails building a new one-story garage with a deck in the location of the patio. The garage footprint is a little bit bigger than the patio. There is paved driveway on the southwesterly side of the property which is being removed and some areas are going to be permeable. The existing house coverage is 17.0% today and will not be changing. The existing overall coverage is 45.3%. By adding the garage and removing some of the pavement on the westerly side of the existing paved driveway, the overall coverage will be reduced from 45.3% to 45.2%. The relief needed is to have the garage 15.5’ from the sideline, where 20’ is required. Attorney Phoenix stated that originally, Peter Rowell set this as a rear setback line, which only needed 16.5’ from the setback. It was discovered that where there are two fronts, which is how it is here, the rear is opposite of the address front. On this property, the rear would be the opposite of Robin Road. That would leave Fairhill as an additional front and the remaining as a side. So, they are asking for 15.5’ where 20’ is required. He noted that they asked for dwelling coverage, even though it didn’t change, and

overall coverage, even though it got less, in abundance of caution. Since the house does not change at all, he questions whether they need coverage for that. Also, under the former 603.2 which is now 190-6.4.B, since the coverage is getting less it should be okay, but he felt the safest thing to do would be to ask for the variance.

Attorney Phoenix stated the variances are very modest. The lot is very narrow. The house is set where it is and a garage is typically attached. There is no other place to put a garage, even moving in to the yard to the east, as it would be interfering with the leach field. This is really the only place a garage could go.

Attorney Phoenix reviewed the criteria for granting the variances.

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The test is whether granting the variances will unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. Will granting the variances alter the essential character of the locality or threaten the public health, safety or welfare? There are numerous small lots and many homes in the area that encroach. The garage at its closet point is farther away than the closest point of the house. Adding a garage, which will help get cars off the street and provide additional storage, will not alter the essential character of the locality and will not threaten the public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. A garage attached to the house with a corresponding minimal reduction in impervious surface is not going to diminish surrounding property value.
- Special conditions exist that distinguish the property from others in the area. This is a 9,500sf lot with a building that is to the far north of the lot. The only place to put the garage is where it is proposed. The size, shape and narrowness of the lot and location of the house, create special conditions that leave no other adequate place for the location of the garage.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Yard requirements are intended to ensure adequate space between neighbors, air and light. Nothing is going to change with respect to air, light, space and sight lines. Where there is a slight decrease in impervious pavement, the stormwater treatment will be the same. A stormwater management plan will be required.
- The proposed use is reasonable.
- Substantial justice will be done by granting the variance. If there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied. The public is in no way harmed by allowing this garage in that location attached to the house. The applicants would be harmed by not having a garage.

Chair Weathersby opened to the board for questions.

Vice-Chair Crapo asked if the property and the road overlap. It seems like the driveway is partially on Fairhill, unless the survey plan is not quite right.

**Henry Boyd, Mellennium Engineering**, explained that the edge of the pavement, as it exists, does encroach slightly onto Mr. Horgan's property. The survey lines are correct.

Vice-Chair Crapo commented it is probably only a few square feet. He asked if this is accounted for in the lot coverage.

Mr. Boyd confirmed that they calculated everything on the lot and it was included in the calculations.

Vice-Chair Crapo asked if there is a separate apartment.

**Charles Hoyt, Architect on behalf of applicant**, replied that it is one dwelling.

Member Mikolaities stated that there was a letter from an abutter who talked about the drainage. He asked if they could explain.

Mr. Boyd stated there is not a whole lot of difference in the impervious surface. There will not be any grading done to change the drainage patterns. He noted that he read the letter from the abutter and took some time to go to the site to view. There is a crown in Fairhill Ave. The drainage from the lot sheets to the abutter line and the edge of the pavement. In front, it is extremely flat. He does not see that any of the water that comes off the site currently, or what would come off as a result of the proposed changes, would ever get to the other side, as the abutter letter is talking about. He does understand the concerns because the abutter's lot sits down quite a bit lower than the paved road surface. That lot certainly receives all the runoff from the crown to the south. Everything that is falling from the sky is running onto that lot from the midpoint of the road. He reiterated that he does not see any of this lot's water getting to the abutter.

Chair Weathersby asked if a stormwater management plan has been created.

Mr. Boyd replied not yet. He commented that the ordinance disallows crushed stone driveways from being included as pervious. He thinks this would be correct if it was hardpacked gravel. This is a loose crushed stone and there is some infiltration that already takes place through the driveway. There will be some benefit in leaving that as a crushed stone driveway, but it is included in the calculations for impervious.

Vice-Chair Crapo commented that part of what is being asked for is a coverage variance. They are showing overall coverage at a higher point than needed. He questions whether or not that needs to be included, if it is true crushed stone driveway.

Mr. Boyd noted the calculations are included in the impervious to be conservative. He is not sure of the subgrade material below the crushed stone. It could be a hardpacked surface. He reiterated that there is some benefit in leaving this as a crushed stone surface.

Speaking to Mr. Boyd, Attorney Phoenix asked if he is saying that this project will not contribute to any additional runoff onto the abutter's property.

Mr. Boyd replied that he cannot see how it would add water to the abutting property.

Member Patten asked for clarification on the dwelling coverage.

Attorney Phoenix explained that under 190-2.4 it states that "no dwelling shall occupy more than 30% of its lot", but the Coastal Overlay reduces that to 15%. It also says, "dwellings plus open porches, decks, garages, and carports shall not occupy more than 30% of the lot". The way this is interpreted, the garage fits under the 30% overall. If this garage had a living space over it, then it would be considered as part of the dwelling.

Chair Weathersby stated that she noticed the existing paved driveway is going to stay. She asked why that needs to stay if they will be able to park in the garage and on the crushed stone driveway.

Attorney Phoenix replied that part of the existing driveway is going to be removed. That whole area is a driveway with part of it paved and part crushed stone. There is not a lot of area and place to park off site. The applicants want to maintain as much parking off the street as possible.

Chair Weathersby asked if there is parking for two cars in the garage and two in front of the garage.

Mr. Boyd confirmed.

Chair Weathersby pointed out that the area where the proposed garage is going to be attached almost looks like a garage. She asked for clarification.

Mr. Hoyt replied it is not a garage. It is living space.

Chair Weathersby asked if the garage is going to access the house from that space.

Mr. Hoyt referred to Sheet A-2 which shows how the house will be accessed from the garage.

Chair Weathersby opened to the public for comments. She noted that letters were received from;

- Ned Hogan
- Addorisio, 4 Robin Road
- Tetreault, 7 Robin Road
- Patricia Harris

Planning Administrator Reed stated that she looked through the history file and there was an addition built, where the patio space is, for living space. It seemed that someone was living there. She asked if there is going to be additional living space. She asked if there is, or will be, an apartment in that space.

Mr. Hoyt replied no.

Chair Weathersby asked if there is any living space in the proposed garage.

Mr. Hoyt replied no. He noted they are actually taking away living space in order to accommodate the garage, as shown on Sheet A-2.

Mrs. Reed commented that she has heard from abutters that there are people living in the patio space in the location of the proposed garage. She pointed out that the lot is tight. Because this is an attached garage and there was an addition that was done less than 20 years ago, the impervious coverage seems to be pretty stretched for that property.

**Ned Hogan, abutter**, stated he is fine with the deck. He just wants to be sure that the runoff drains towards Robin Road and not 17 Fairhill Ave where it seems to be catching a lot of street drainage nowadays. The grade of the road is a lot higher than it was when it was first repaved back in the 80's. He commented that it seems like his property is catching a lot of ground water in the area.

Mr. Boyd stated that he understands the plight of the neighbor. There is very little that can be done with the pitch because it is a town road. He pointed out that currently there is nothing around the concrete patio to keep the water from running to the gutter line and displacing itself to the west or east. He stated they can do some stormwater infiltration strips to help reduce what is coming off already. There is nothing that can be done to change or force the water to run all in the direction of Robin. He noted that about 75% of the water currently flows that way anyways.

Mr. Rowell noted the area is very heavily covered by impervious. This plan is not adding to that a lot, but it is very dense.

Hearing no further comments, Chair Weathersby closed the public hearing at 9:55 p.m.

Member Mikolaities commented that he appreciates that they are taking away a portion of the pavement. He is fine with the proposal.

Member Patten commented it is reasonable. He does not have any issue with it.

Member Dibble stated it looks like a swap on the ground and it will improve property value. It's a good project in his view.

Vice-Chair Crapo stated it is fairly reasonable. He suggested a condition for the stormwater management plan. One of the variances is for the lot coverage. The plan needs to corroborate the final analysis that the runoff is not going to change on the property.

Chair Weathersby stated she is fine with the side yard setback and the building coverage. She would agree with Attorney Phoenix that they probably do not need relief for impervious coverage, but they can still go through it. With that said, she would feel a whole lot better about this project if some of the paved driveway was to be removed. She thinks it would be better for the property and there would still be adequate parking. It would really go a long way in helping with some of the runoff issues in the area. She commented that Vice-Chair Crapo wants to add a condition that the applicant has to present a stormwater management plan demonstrating that there is no additional runoff as a result of this proposal.

Member Dibble asked why they would need to make this a condition if the building department is requiring one.

Vice-Chair Crapo stated the final analysis has not been done yet. If it turns out that it increases any runoff, he does not want the variance to still kick in. He does not know if putting a condition on gives any different "teeth" to enforce.

Speaking to Mr. Rowell, Member Dibble asked if the garage will require an occupancy permit.

Mr. Rowell explained they do not typically issue an occupancy permit; however, a final inspection will be done to make sure it is safe to occupy. He noted the stormwater management ordinance says that they have to mitigate any increase in the flow from the development. The increases off that site would probably be minimal, at best. If the board wanted something to improve the site, a raingarden or infiltration could be installed to pick up some of the water coming off the site already. This would be the condition he would recommend putting on it.



Vice-Chair Crapo asked what the minimum requirement is to have the crushed stone area not be considered impervious.

Mr. Rowell replied he would push this back to the engineer. There is a lot of ledge in this area and very little infiltration on that site. The engineer would have to look at the subsurface and design a system to make that pervious.

Chair Weathersby asked Vice-Chair Crapo if he still feels there is a need for a condition regarding the stormwater management plan.

Vice-Chair Crapo replied not as strongly.

Chair Weathersby commented that Mr. Rowell suggested that the board require a raingarden or some other mitigation. She would love for the applicant to do that, but for the board to require them to do that when they are reducing the coverage slightly, would be a bit of an overreach. She does not feel comfortable imposing a condition for them to reduce runoff by any significant amount. They have already made some attempt in that regard.

Vice-Chair Crapo stated the condition would be more on the line that if it was determined in the final analysis there was more runoff than anticipated, they would have to show the building department how they were dealing with the runoff. They might have to come up with methods which could include raingardens or some other infiltration.

Member Dibble stated that he thinks everyone recognizes there is a water issue in this area; however, it is not going to be fixed with this project. Part of the problem is because of the nature of the town road and that should not be imposed on this development.

**Chair Weathersby called for a vote on the variances to §190-2.4C(2) (formerly §204.3B) and §190-2.4C(5) (formerly §204.3E):**

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - 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?**

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Burt Dibble – Yes  
Rob Patten – Yes

Gregg Mikolaities – Yes  
Patricia Weathersby - Yes

**Motion by Burt Dibble to approve the application of Carolyn and Emmett for property owned and located at 3 Robin Road, as advertised. Seconded by Shawn Crapo.**

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Aye; Patricia Weathersby – Aye**

**Motion passed.**

**4. Eric Cummings & Cheryl Loren for property owned and located at 40 Brackett Road, Tax Map 22, Lot 90 request variances from §190-6.3 (formerly §603.1) for 2<sup>nd</sup> floor expansion of a non-conforming structure; from §190-2.3.C(3) (formerly 203.3C) for stairs with a front setback of 18.4' and a porch with a front setback of 21.3' where 40' is required; from §190-3.1.H(2)(a), §190-3.1.H(2)(b) and §190-3.1.H(2)(g) (formerly §301.8(B)1,2,7) for surface alteration <5', a leach field 28.9' and a septic tank 32.5' from fresh water wetlands where 75' is required and for a leach field 93.1' from a tidal wetlands where 100' is required. They also request relief from Building Code §35-14.B(2)(a) (formerly §7.9.2.2) for a septic field 28.9' and a tank 32.5' from fresh water wetlands where 75' is required; and from §35-14.D(1)(a) for surface alteration <5', leach field 28.9' and a septic tank 32.5' from fresh water wetlands where 75' is required and for a leach field 93.1' from tidal wetland where 100' is required. Property is in the Single Residence, Coastal Overlay District. Case #14-2020.**

- Continued to the June 3, 2020 meeting. (*see motion above*)

#### **ADJOURNMENT**

**Motion by Patricia Weathersby to adjourn at 10:12 p.m. Seconded by Shawn Crapo.**

**Roll Call: Shawn Crapo – Aye; Burt Dibble – Aye; Rob Patten – Aye; Gregg Mikolaities – Aye; Patricia Weathersby – Aye**

**Motion passed.**

Respectfully Submitted,  
Dyana F. Ledger

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant:** Drew Pierce of Seacoast Modular Homes, Inc.

**Owner:** Paul & Helen Kehas of 37 Paquette Ave, Manchester NH

**Property:** 2257 Ocean Blvd, Tax Map 5.3, Lot 7  
Property is in the General Residence, Coastal Overlay and SFHA, Zone AO

**Application case:** Case # 08-2020

**Date of decision:** May 6, 2020

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

- §190-6.3 to tear down and replace a non-conforming structure;
- §190-2.4C (1) for a house 21.44' from the Baker Ave front boundary; and
- §190-5.0 (C) for parking in the front (Baker Ave.) setback.

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

- §190-3.4.D for a house with a height of 30'6"

Reasons for denial include:

- The height of the proposed home was driven by the type of proposed construction (modular home) and a home with the same footprint could be built and meet the height requirement. Thus, denying the variance does not result in unnecessary hardship.



**Patricia Weathersby, 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:** Seacoast Apart-Hotels, LLC

**Property:** 741 Ocean Blvd, Tax Map 23.1, Lot 28  
Property is in the Business, Coastal Overlay and  
SFHA, Zone AE 9'

**Application case:** Case # 12-2020

**Date of decision:** May 6, 2020

**Decision:** The Board voted 5-0 to continue the application to the June 3, 2020 meeting.



**Patricia Weathersby, 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 Cummings & Cheryll Lloren

**Property:** 40 Brackett Road, tax Map 22, Lot 90  
Property is in the Single Residence, Coastal Overlay District

**Application case:** Case # 14-2020

**Date of decision:** May 6, 2020

**Decision:** The Board voted 5-0 to continue the application to the June 3, 2020 meeting.



**Patricia Weathersby, 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:** Carolyn & Emmet Horgan of 412 South Broadway, Salem NH

**Property:** 3 Robin Road, Tax Map 20.2, Lot 101  
Property is in the General Residence, Coastal Overlay Districts

**Application case:** Case # 13-2020

**Date of decision:** May 6, 2020

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

- §190-2.4C (2) for a garage 15.5' from the side boundary;
- §190-2.4C (5) for a dwelling coverage of 17%; and
- §190-2.4C (5) for overall coverage of 45.2%.



**Patricia Weathersby, 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.