

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

Wednesday, June 17, 2020

7:00 p.m. – via ZOOM

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

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

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 ID #813-5968-8940 Password: 012650

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 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.

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. Gregg Mikolaities
2. Rob Patten
3. Burt Dibble
4. Shawn Crapo
5. Patricia Weathersby

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

II. APPLICATIONS

1. **William & Nanci Perocchi, Trustees Perocchi Family Trust of Pebble Beach, CA for property owned and located at 21 Carbee Drive, Tax Map 8.4, Lot 104, request variances from §190-6.3.B for demolition of existing structure and replace with new; from §190-2.3.C(3) for a house with a front yard setback of 18.7' where 34.8' is required; from §190-3.4.E and §190-2.3.C(5) for impervious dwelling coverage of 19.5% where 15% is required, for total impervious coverage of 25.7% where 15% is required; and from §190-5.1.C for parking in the front yard setback. Property is in the Single Residence and Coastal Overlay Districts and SFHA, Zone X, AO1 and VE (17). Case \$15-2020.**

Attorney Tim Phoenix, representing the applicants, spoke to the Board. He introduced Bill and Nanci Perocchi, Shannon Alther the architect, Henry Boyd from Millennium Engineering and Jay McPartland the builder for the proposed home.

Shannon Alther shared the plans on the screen for review.

Attorney Phoenix noted that the lot is 16,418 sf. When the Perocchis purchased the property, they also bought Carbee Drive which is the cul-de-sac that leads out to the main road. This is about 14,500sf and about 9,500sf of that is impervious pavement, which is about 65.7%. The Hanleys own the three other lots on Carbee Drive and have an easement for access. The existing home is very close to the highest observable tideline at about 51ft. It also violates the rear setback and the height requirement. It is about 32.6ft in height. The existing building is an old house with five bedrooms that was built in the late 60's and then modified in the 80's. It has an antiquated septic system to the north of the house. The grounds have not been taken care of and the cul-de-sac had been used for parking. When the Perocchis purchased the property, there were old cars in the cul-de-sac, which have already been cleared out along with an overall cleanup of the site. Attorney Phoenix continued that the plan is to raze and remove the existing home. The lot is very long and narrow from north to south, which leaves a fairly narrow building envelope. The building envelope is significantly impacted by Carbee Drive, which narrows even more of the building envelope. The new house will be moved about 101ft from the highest observable tideline. The entire house will meet the requirement of the DES primary 100ft setback. This will push the whole house to the north, which causes some of the relief that is needed. To the south, the proposal is for a permeable patio with a modestly sized swimming pool. All of that is about 71ft from the highest observable tideline. All of the setback requirements are met, except for the area where the house encroaches into the front setback. There will be brand new state-of-the-art septic system, which will be located under the driveway. Approval from the Town has been received for the septic and the plan has been submitted to the State for approval. Mark West is currently working on wetland permits. The State requirement for impervious surface is 30% and this proposal is well under that. Some additional impervious surface is also going to be created within the 250ft shoreland.

Attorney Phoenix explained the new home is going to have five bedrooms. It will have a small rooftop deck. The entire house is compliant with height at 28ft and the driveway will be pervious. He noted that the entire house is now in Flood Zone X but will be moved out of the flood zone. An additional 2,100sf of lawn area will be created between the lawn and the property line. The Conservation Commission held a site walk at the property and have issued a letter, dated February 27th. The Conservation Commission was pleased with what the Perocchis are doing, including moving the house twice as far back from the water as existing conditions. The Perocchis have also agreed to all the recommendations of the Conservation Commission, which are:

- The circular end of Carbee Drive to be repaved by removing the existing asphalt and replacing it with pervious pavement.
- The inner circle of Carbee Drive's cul-de-sac will be planted to a garden of native groundcover, trees and shrubs.
- The paved driveway will be replaced with pervious pavers.
- The edge of the seawall will be planted to a vegetative buffer of salt-tolerant native plants to a depth of between 2ft and 5ft.

Attorney Phoenix noted that the pool is a saltwater pool in keeping with the nearby saltwater ocean. He noted that a stormwater management plan has been prepared for the project. The Perocchis are going to convert 3,768sf of the impervious Carbee Drive to a permeable porous pavement drive area and inside the cul-de-sac is going to be totally vegetated. Right now, 67% of Carbee Drive is impervious. Once this is done, 38.4% will be impervious. With respect to coverages, the new building is going to cover 3,200sf, or 19.5%, and the overall coverage 4,214sf, or 25.7%, so relief is needed for both of those. However, the 3,768sf in Carbee Drive equals 89% of the total impervious coverage on the lot. He noted that letters of support have been received from all the closest neighbors, which have been submitted in the board's packets; the Rutland Family, Monica McCarthy, Mrs. Hanley, Paul and Maryann Houghton, and John Loftus.

Attorney Phoenix noted that the front setback requirement is 34.8ft, which is the average of the lots on either side. The existing front setback is greater than 34.8ft and the proposal is for 18.7ft. They ask the board to consider this in the context that all the neighbors agree. Also, Carbee Drive is owned by the Perocchis as well, so essentially their front yard goes all the way out to the main road. The cars that were parking on the street will now be parking in the garage and there will be space on the lot for other cars to park. For dwelling coverage, the limit is 15% and the overall limit is also 15%. The existing home is 15% with the overall 20%. The proposal will be 3,200sf for the dwelling and 4,200sf overall, which is 25.7%. The mitigation that the Perocchis are doing on Carbee Drive is equal to 89.4% of the total impervious on the lot and over twice the 10.7% that this is over the 15% limit. There is also a request for a parking variance. The building inspector seemed to indicate that this might not be necessary because the portion of the parking space that would be in the setback are in the garage. The variance has been requested so the board can decide if the variance is needed or not. There is also a request for a variance to tear down and rebuild. To summarize, a very poor condition building is being removed that is too tall. It has a rear setback violation and is quite close to the water; within 50ft. An ancient septic system is being removed and a new state-of-the-art system is being installed. Minor front setback variances are needed. A parking variance may be needed, along with the replacement variance. A variance is being requested for coverage. The Perocchis have acted in good faith to address this issue by converting such a large area of the cul-de-sac to a permeable surface. All the purposes of the ordinance are met.

Vice-Chair Crapo asked if this is one lot or two lots. Impervious surface is being given up on a different lot in the circle; Carbee Drive. In reality, the coverage on this lot is getting much larger and it seems that coverage is being swapped on a different lot for it.

Attorney Phoenix replied that this is correct. It is two lots. Very clearly, the lots are touching so on the ground there will not be a line between one lot to the next. The Perocchis are building a home on one lot that meets their needs and lifestyle. The board is being asked to consider the fact that on an adjacent lot, which is significantly impervious and touches this lot, a large permeable area is being created. The coverage on this lot is being mitigated by creating additional permeable area immediately adjacent thereto. In looking at the underlying purposes of coverage, air, space and primarily stormwater, on an overall basis, all of that is being improved in the area. The people who would be affected by it, the neighbors, all agree because they heartily endorsed it. In addition, everything has been moved twice as far from the ocean than the existing home.

Vice-Chair Crapo asked why they would not merge the lots. He also asked if this lot can be tied into the sewer.

Attorney Phoenix explained that he spoke with the building inspector about eliminating the lot line and merging the lots, but then a variance for frontage on Old Beach Road would be needed. He pointed out the Perocchis have no intention of giving up Carbee Drive and are going to beautify that as well. However, even if it was sold to someone else it would still have the same effect on this lot by creating this permeable surface. He continued that the Perocchis want to connect to the sewer and would prefer to. The former owners had met with the Sewer Commission and received a negative response because there are significant capacity issues in this area. The Sewer Commission's rules say a property can be connected if it is within 200ft; however, this lot is about 300ft from the nearest connection.

Member Mikolaities asked if the total building height is 28ft.

Shannon Alther, TMS Architect, replied yes. He noted that the 28ft is above the rooftop deck railing line, with a tolerance of about 6 inches.

Attorney Phoenix pointed out this is compared to 32.6ft, which is the existing home.

Regarding the two-lot situation, Chair Weathersby asked if the Perocchis would be amendable to a condition that the Carbee Drive lot and the house lot remain under the same ownership.

William Perocchi, applicant, stated that he would agree to that, as it is never their intent to separate the lots.

Chair Weathersby stated that her second question is in regards to the guest quarters in the guest wing. She asked if there is any intention of using this area separately from the main house as a second dwelling or rental unit.

Attorney Phoenix replied absolutely not. The Perocchis have grown children with children and extended family. They wanted an area where family guests could stay a little bit separated. There is no full kitchen facility in this area. It is just to get a little separation.

Chair Weathersby asked if they would be amenable to a condition that the guest area will not become a second dwelling.

Mr. Perocchi stated that they would be agreeable that they are never going to rent out that area. It is always going to be used as part of the house for visiting guests.

Henry Boyd, Millennium Engineering, stated that he has worked with a lot of people in the seacoast and they are always trying to get closer to the ocean. In meeting with RCC and in speaking with DES, they are thrilled that someone is actually trying to get some more space to the ocean.

Attorney Phoenix addressed 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 the granting the variances will unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives. The purpose of the ordinance is to promote the health, safety and general welfare of the community; to lessen congestion in the streets. This is a single-family home, which will remain a single-family home. The street is also being opened up by getting the cars that are parked there off the street and onto the lot. The existing poor condition home is being replaced, along with the septic, with new. All of that combined, do not create congestion in the streets. For the same reasons, these variances and this project provides additional safety from fire, panic and other dangers. This will be a fully to code home, which will be setback further from the ocean. All of this will help promote health and general welfare. All the mitigation both on site (permeable driveway and permeable patio) and on Carbee Drive, promotes the health and general welfare. More light and air is being created by being pushed back from the ocean. The neighbors who would be most effected feel there is adequate light and air. Environmentally things are better by the house being moved back and by the agreement for the cul-de-sac and native plantings by the seawall.

Clearly, the central locality of the property is larger size homes. This is going to fit in with the character of the locality and all the neighbors agree. This is not going to threaten the public health, safety or welfare.

- Granting the variances will not diminish surrounding property values. The proposed home will be further from the ocean; opening up air, light and views. There are going to be three garage parking spaces and other onsite parking spaces. The dumpster has been removed and the grounds have been cleaned up. The improvements will not decrease surrounding property values and may actually increase values.
- Special conditions exist that distinguish the property from others in the area. This is a shallow property about 78ft in width in the area closest to the water. It is a long narrow lot that creates a long narrow building envelope. Except for where Carbee Drive cuts into it, the setbacks for the side and rear are being met, where the existing house did not. The existence of the ocean, Carbee Drive cutting into the lot and the shape of the lot, create special conditions.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Setback and parking requirements are designed to achieve adequate air, light, separation of neighbors and getting cars off the street. This

project meets that by getting cars almost fully outside the setback. There is no reason to apply the setback and parking requirements, especially where the neighbors have agreed. On an overall basis in this area, the proposal is making things better. The proposed home is improving the nonconformity with respect to height and it is being pushed back from the ocean on the lot.

- 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. Any loss to the applicant, not outweighed by any gain to the general public, is an injustice. In this case, it is an older home, the cars are parked in the street and there are dumpsters on the lot. It will be a to code home with new septic. It is certainly an overall improvement.

Jaci Grote, representing the Rye Conservation Commission, confirmed that the Commission is supportive of this application, in light of the contingencies as stated in their letter. The placing of the home away from the water and the agreement to make the Carbee Drive strip more permeable, along with the vegetative buffers, is very satisfactory to the Commission.

Chair Weathersby confirmed that the board received the letter from the Rye Conservation Commission. They have also received the letters from the neighbors in support of the proposal. She opened to the public for comments or questions. No comments or questions were heard.

Vice-Chair Crapo noted there is a sizable piece of water on the Hanley property. He asked if this classifies as wetlands or a pond.

Attorney Phoenix explained that in the board's packets there is a letter from the wetland scientist who did an analysis and measured the distance, which is over 200ft from those wetlands to the property.

The public hearing was closed at 7:53 p.m.

Chair Weathersby summarized what has been discussed for proposed conditions:

- **The conditions of the Rye Conservation Commission letter set forth in their letter;**
 - The circular end of Carbee Drive is repaved by removing the existing asphalt and replacing it with pervious pavement.
 - The inner circle of Carbee Drive's cul-de-sac is planted to a garden of native groundcover, trees and shrubs.
 - The paved driveway will be replaced with pervious pavers.
 - The edge of the seawall is planted to a vegetative buffer of salt-tolerant native plants to a depth of between 2ft and 5ft.
- The guest area of the home will not become a separate dwelling, but will remain a guest wing of the single-family home.
- Carbee Drive and the house lot are to remain under the same ownership.
- The pervious pavers to be installed and maintained, according to the plan presented, in such a manner that they remain pervious.

Member Mikolaities stated that Attorney Phoenix has summarized the project well. It is consistent with the neighborhood. He likes the reduced height and the new septic system. He is fine with the proposal.

Member Patten stated the he likes the project. Moving it back from the ocean is a big plus. The fact that they are willing to do the work around the cul-de-sac adds to the attractiveness and accomplishes a goal with permeability. He is happy with the proposal.

Member Dibble commented that getting the house down to 28ft is also a significant advantage. He is fundamentally in agreement with the comments the others have made. The septic, bringing the house to current code and setback from the water are excellent features. He assumes that Carbee Drive and the house lot would be united as a single property.

Chair Weathersby explained they are not planning to merge the lots into one parcel. A condition would be that the Carbee Drive parcel and the house parcel are to remain under the same ownership. To be owned by the same entity, now and in the future.

Vice-Chair Crapo stated there has been enough reference to what is to be done. Part of the reason he even brought it up, is so that in the future, the owner of Carbee Drive does not sell it off to the owner of the Hanley parcel, so they could use it to maximize square footage. By making this a condition, if it changes ownership, this lot is now out of compliance and they lose their approvals. He continued there is a lot of good going on with this project. His observation is that they are building a box here and he is not a fan of box architecture. He thinks stretching across the maximum length of the property is pushing the limit, but they are not asking for side variances. The front setback variance is doable. He thinks that in the past with frontage issues, it is kind of moot when it is already a developed lot, but this would be a whole separate analysis.

Chair Weathersby stated there is a lot of good happening here. She shares some of Member Crapo's concerns about the box. She is very glad the house is being moved back away from the ocean and out of the flood zone. The front setback is pretty much a non-issue because it is so far away from the travelled road, which is Old Beach Road. She does not have a problem with the front setback. She likes that the impervious coverage on these two lots is improving significantly. She likes that the parking is now on the property and not in the roadway. She also likes the new septic and other attributes. This is a project she can get behind with the conditions that have been discussed. She asked the board if they have any comments or changes to the conditions discussed.

Member Mikolaities commented he is fine with the conditions.

Member Patten asked if there is zoning that prohibits them from renting that extra fifth bedroom. He asked why this would be a condition.

Chair Weathersby noted that this would be so it does not become a second dwelling on the lot and be condominized.

Member Patten stated he would be less concerned about it becoming a separate condominium. He does not see it as being separate enough to do that. If they do not mind the condition, he does not mind going along with it. He just thinks it is unnecessary.

Member Dibble asked if they could manufacture wording that would restrict it from being rented on a short-term basis. The words he was thinking about would be “used only as a single-family home”.

Chair Weathersby stated that the language that the guest wing remain part of the single-family home is good.

Referring to the condition that it not become a separate dwelling, Vice-Chair Crapo stated that he would like to add; “or an accessory dwelling unit (ADU)”.

Chair Weathersby agreed with that addition.

Chair Weathersby called for a vote on the variances to 190.6.3.B; 2.3.C; 3.4.E; 2.4.3.C(5) and 5.1.C:

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The purposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to grant the variance request of William and Nanci Perocchi, Trustees for the Perocchi Family Trust for the property at 21 Carbee Drive as advertised with the following conditions;

- 1. The four conditions in the Rye Conservation Commission's letter be abided by;**
- 2. The property be used only as a single-family residence and not as an Accessory Dwelling Unit;**
- 3. Carbee Drive and the house lot are to remain under the same ownership; and**
- 4. The pervious pavers be installed and maintained so they remain in pervious condition.**

Seconded by a Shawn Crapo.

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

Motion passed.

Note: Shawn Crapo recused himself for the following application and Patrick Driscoll was seated.

- 2. James Broom for property owned and located at 80 Sagamore Road, Tax Map 22, Lot 31 requests a Special Exception pursuant to §190-3.1.G(2) for a driveway in the wetlands buffer. Property is in the Single Family, Business District and Costal Overlay Districts. Case #16a-2020.**

3. **James Broom for property owned and located at 80 Sagamore Road, Tax Map 22, Lot 31** requests variances from §190-2.2.M for a lot with upland soils of 19,758sf where 44,000sf is required; from §190-2.2.N for access to the lot with frontage on Sagamore Road of 134.96' where 150' is required and on Stoneridge Road of 149.91' where 200' is required; from §190-2.3.C(3) for a house with a front setback (Stoneridge) of 29.2' where 40' is required; from §190-2.3.C(6) for area per lot in the single residence district of 5,240sf where 66,000sf is required; from §190-2.11.C(6) for area per lot in the business district of 14,975sf where 44,000sf is required; from §190.3.1.H(2)(a) for 9.413sf of surface alteration within the wetlands buffer; from §190-6.3 demolition of an existing structure and replacement with new; from §190-3.1.H(2)(a)(g) for a retaining wall 10.8' from the wetlands where 75' is required. The applicant requests a waiver from §35-14.C(1) for a septic system 4.12' to restrictive layer where 6' to restrictive layer is required. **Property is in the Single Family, Business District and Coastal Overlay Districts. Case #16b-2020.**

Chair Weathersby stated that she would like to first have a discussion about the variances being requested. It seems to her that this is an existing lot of record and a lot of the variances that have been requested aren't needed. The upland soils, frontage and area per lot are not needed. Even the driveway, where it is going in the same spot, may not need the special exception. She would like to address whether or not the requirements for creating a lot apply to this parcel.

Attorney Frank Quinn, representing the applicant, noted that he is present with Eric Weinrieb from Altus Engineering. The applicants are also on the meeting, along with the builder Dick Southwick. He noted that the extra variances were noticed out of an abundance of caution. If the board is okay with going with the building inspector's denial letter, they are willing to proceed on that basis. It's just these other variances were flagged in their variance analysis.

Chair Weathersby asked Mr. Quinn to confirm this is an existing lot of record and that the lot lines are not changing.

Attorney Quinn confirmed.

Chair Weathersby stated it is her understanding that if this is an existing lot of record, 2.2.M for upland soils, 2.2.N for frontage and 2.3.C(6) for area of the lot are not required. She asked the board members if anyone feels differently.

Member Mikolaities asked what part of the existing structure is being preserved.

Attorney Quinn replied the proposal is for a tear down and rebuild.

Member Mikolaities commented that is why he thought the variances kicked in, because it is a tear down.

Chair Weathersby explained it is a tear down but on the same lot. There is no way now they can meet the requirement for frontage per lot; same for area per lot.

Member Mikolaities stated he is fine with it either way. The building department has provided something to go by.

Chair Weathersby noted that the building inspector's letter addresses the wetlands buffer; the front yard setback; septic system and the special exception for the driveway. She stated that she is going to make an executive decision that the extra variances requested are not necessary. She reiterated that the building inspector's letter lists the front setback, surface alteration in the buffer, what used to be 603.1, the retaining wall in the wetlands, septic waiver and the driveway. She opened to the applicant.

Attorney Quinn stated he has submitted a detailed packet which has a revised plan set. It has a letter from the Conservation Commission. The Commission held a site walk on May 19th and submitted a letter dated May 29th, which is part of the record, voicing no objection to the project. This is the former site of the Montessori school at 80 Sagamore. The Brooms purchased the property last year. This application is a culmination of their plan to tear down the school, improve the site conditions both esthetically and environmentally, and build a single-family home that will be occupied by their in-laws. It is a unique site in many ways. One of the unique aspects of this site is that the dividing line between the Business District and Single Family Residence District goes through the property. The current building on the property is within the wetlands buffer. The reception on the project from the neighbors has been favorable. The board's packets contain letters and emails of approval from the abutters. There is a concern from the abutter to the left of the property in regards to drainage. He believes that when the board looks at the application and what is being proposed, in terms of removing impervious conditions and impervious materials on the site, they will see it represents an overall improvement environmentally and will make an improvement to the drainage conditions on the site. Hopefully, this will satisfy the concerns raised by that abutter. He turned the presentation over to Eric Weinrieb.

Eric Weinrieb, Altus Engineering, presented the plans on the screen for review. He pointed out the location of the existing building, the property lines and the line for the Business District, which runs through the site. He noted that the driveway for the property is in the Single Family Residence District. There is an accessway off Sagamore Road and a secondary drive off Sagamore north of the existing building. The primary entrance is off Stoneridge Drive with parallel parking current on site. He continued that everything that is existing on the property will be removed. The wetlands come onto the property slightly in the back corner of the lot. There will not be any work within the wetland, but everything upslope of the wetland will essentially be disturbed through the site work activity. The pavement is being removed, along with the existing building. The septic system, which is partially within the 75ft buffer, will also be removed. The proposed building will be built in generally the same area as the existing building. The garage does encroach slightly closer to the wetland than the existing building. A new driveway will be installed in the general location of the existing driveway off Stoneridge Drive. The driveway goes up in grade to get up to both garages with a turnaround area to exit back onto Stoneridge. The reason the building was sited in this location is due to many competing site constraints; the wetland buffer, side yard setback; front yard setback and the location of the septic outside of the wetland buffer. He noted that the design of the septic to be outside the wetland buffer, pushes the building back towards the wetland system.

Mr. Weinrieb stated that instead of going from elevation 20 at the edge of Stoneridge and down into the site to elevation 18, the proposal is going away from the roadway at the property and will start to go up. This will put the property at a finish garage floor elevation of 24. For the house design, in order to have gravity positive drainage for a perimeter drains system around the house, there is a reduced basement height. The finished floor of the house is 25.2 and the basement slab is 17.25. This leaves about a 5.5 to 6ft basement height, which is enough for mechanicals. The existing building has a history of water in the basement. They wanted to be sure they were getting out of a drainage situation on the site. Pumping the groundwater is costly and it also impacts downgradient properties. By getting the property up, the

groundwater will no longer be pumped. From a stormwater management standpoint, the impervious is being reduced by approximately 3,800sf. Because of that, the stormwater is sheetflow. There is no need for detention, infiltration systems or raingardens because the runoff is being reduced that leaves the site. There was peak runoff and volume decrease in all the storm events modeled.

Mr. Weinrieb noted that the plans that are in front of the board show a retaining wall extending out to the wetland a bit further. In discussion with the Conservation Commission, they have suggested that the retaining wall be out a bit further, in order to have a larger, flatter area around the garage and house. There will be a conservation seed mix in the area downgradient of the retaining wall. That area is intended to be naturalized and not disturbed. The lawn area will be the front of the house. The area of active use will be between the garage and the house. There are some mechanical pads on the north side of the house and there will be an underground propane tank.

Member Dibble asked about the degree of fill that might be required to get this elevation and get the basement out of the water table.

Mr. Weinrieb replied that it is approximately 725 cubic yards of fill to be placed in the wetland buffer area. He noted that they did not provide a computation for the rest of the fill on the site.

Member Mikolaities asked the height of the building.

Mr. Weinrieb explained the maximum height is 35ft. The proposal is for 34.97ft.

Referring to Sheet C-2, Member Mikolaities asked about the noted 52.97ft. He asked if 6 to 8ft of fill is being added.

Mr. Weinrieb noted this is the actual elevation.

Member Mikolaities about the grading and fill.

Mr. Weinrieb explained the existing grade in front of the building is elevation 17.9. The finished floor is 25.2. The building height from the finished floor to the peak is 27.67, which brings it to 52.87'. Taking the 27.67' (height of building) and the difference between 25.2' to 17.9', brings it to 34.97'.

Member Dibble stated there has often been discussion about leaving a little wiggle room, so the as-built does not show that it went over the limit.

Mr. Weinrieb stated an as-built would be necessary so when this is done there is not an issue.

Member Mikolaities stated he is not convinced they do not need a height variance. They have added an extra 8ft.

Mr. Weinrieb explained the grade from finished floor to peak is 27.67ft. This is staying under 35ft.

Member Driscoll commented there is an existing curb cut onto Stoneridge Drive. He asked if this could be moved 30ft closer to Sagamore. If this was done, would it lessen the impact on the wetlands.

Mr. Weinrieb explained that they used the same location for a couple of reasons. One is to be as far away from the intersection as possible for safety. Also, it gives the best opportunity to get up in grade. If it was to be moved, it would be a lot steeper driveway and the garage would have to be lowered. He noted that they are trying to have the house blend in to the front yard. There is also a pretty good buffer of existing trees along the Stoneridge side and there are no plans to touch any of those.

Member Driscoll asked if it would have a difference in how it would affect the wetlands.

Mr. Weinrieb noted that they are removing a lot of the impervious on the site. Also, a retaining wall is being put in which will pitch the water down the along the edge and over.

Member Driscoll asked if there was any dialogue with the Conservation Commission about the fill not being filtered and having invasive species seeds in it, which would have an effect on the wetland.

Mr. Weinrieb replied they did not have that conversation, but it is important for every site. Where there is minimal site activity in the buffer area and it is very isolated, he thinks it would be pretty easy to inoculate the top layer of the soil coming into the site. He would not have an issue with that.

Attorney Quinn noted that the existing site has three access points, two of which are off Sagamore. All of that asphalt is going to go away. The trees are being preserved in the front and the property is being moved back from Sagamore. The driveway that is off of Stoneridge exists and is the safest point of access to this property. He summarized the criteria for granting the variances:

- Granting the variances will not be contrary to the public interest and would be in the spirit of the ordinance. This project could be left as a business with 120 car visits per in the morning and afternoon. A single-family residence is dramatically reducing the toll this property is taking environmentally, congestion and safety wise. It does not depart from the character of the neighborhood. This is in keeping with the character of the neighborhood and will be consistent with the area.
- Substantial justice will be done by granting the variance. There is no gain in denying these variances, particularly if the site is left as is, or as a business property. The impervious is being reduced on the site. There is not going to be any further impact or harm to the wetlands.
- There will not be any diminution in property values. This is a marked improvement on what exists on the site. A single-family home is only going to enhance property values.
- In terms of hardship, there are many challenges to the lot in regards to size of the lot. There is also the boundary of the Business District through the middle of the property. The wetlands buffer encroaches on the current building. The building envelope is in itself a hardship. The principal variances are for yard areas and impact to wetland. Demolition of the existing property has to be done to improve the site. As to the yard requirements, the purpose of the ordinance is to make sure there is adequate space between neighbors; overall light, air, and reduced congestion on the lot. Granting the variance will promote those purposes. As to the wetlands buffer, the variances will not further threaten the environment or the wetlands. The septic will improve the site. The reduction of impervious will improve the site.
- The application is overall a reasonable one. A single-family residence is the least impactful use of the site.

Attorney Quinn stated that because there is a crossing of the wetlands, the building inspector's letter requested a special exception for the driveway. The access point that was chosen is the most reasonable point of entry and will take the entryways off the front onto Sagamore. This promotes all the aspects of zoning and therefore, the special exception should be granted. Lastly, a waiver is being requested to the building code for the depth of the septic. The conditions of the ground prevent the septic from going any further than 4.5ft, where the requirement is 6ft. For all these reasons, he is asking the board to grant the variances and special exception and to allow the waiver to the building code.

Referring to the driveway, Chair Weathersby stated it looks like it is in the wetland buffer and not in the wetlands.

Mr. Weinrieb noted that the driveway is in the buffer and pointed out the wetlands on the plan to show the location. He noted there is no wetland impact with the project. The only state permitting is for the new septic system.

Chair Weathersby stated that 190-3.1.H(2) is for roads in wetlands. She asked Attorney Quinn if he still thinks a special exception is needed.

Attorney Quinn commented that the building inspector cites it. The building inspector's denial talks about it being in the wetland buffer. He continued that he agrees that the ordinance speaks in terms of the wetlands itself and not the buffer.

Chair Weathersby stated that the neighbors wanted an assurance that there be no further encroachment of the water table into the property at 70 Sagamore Road. She asked Mr. Weinrieb to speak more to that.

Mr. Weinrieb explained the runoff from the site is being reduced by the reduction of impervious of 3,800sf. A portion of the site drains to the front and to the right. There is a swale at elevation 18 and at 17. All the water coming off that side of the site is going to run along the swale on the property at 80 Sagamore and to the wetland system. There is nothing being done that will create additional runoff onto the northerly abutter. As far as groundwater, by nature of pulling the building up higher, there will no longer be pumping creating a surface condition on the back of the property.

Member Mikolaities asked if this property is in the Wetland Overlay District.

Mr. Weinrieb replied that the overlay is not a special district.

Chair Weathersby explained there is the Wetlands Conservation District, which is Section 3.1 of the ordinance; tidal marshes, freshwater marshes, streams, ponds and wetlands. There is a wetlands buffer. This is in the buffer. If a road is in the buffer, it does not need a special exception.

Member Dibble stated his only concern is the distance beneath the bottom of the septic field and the impervious under layment. He did not hear any discuss that the system that's being installed will not require more beneath it than what is being asked for.

Mr. Weinrieb explained the design meets the state criteria for the separation between impervious surface and the seasonal high-water table. The system does not meet the requirement for the town's criteria for impervious and the bed bottom. Otherwise, it is a fully compliant system. It was felt that raising it up

higher, would not look right in front of the property. Also, an AOS system is an appropriate design for this use. He noted that the existing system is partially in the buffer and is much lower.

Chair Weathersby noted that letters have been received from;

- Sharon Cannon and Myrtle Moore, who wanted to understand the waterflow;
- Lauren and Anthony Zanetti, 4 Stoneridge Drive, who are in support;
- Kelly Moore, 70 Sagamore Road, who is in support;
- Davin and Robin Robinson, 2 Stoneridge Drive, in support; and
- Rye Conservation Commission.

Chair Weathersby opened to the public for comments.

Sharon Cannon, niece of Myrtle Moore, stated that she has sent in letters regarding the property and the concern with the build up of elevation. They are adding an additional 7ft to the base foundation. Water runs downhill and will pool back towards the back of her aunt's property. The concern is that the waterflow will be detrimental to her aunt's property and potentially lower the property value. She wants to be sure there is some type of assurance that there will be some way to get restitution, if there becomes a problem with water.

Chair Weathersby noted the Rye Conservation Commission has sent in a letter dated May 22nd saying they have no objections with the proposal with the seven conditions.

Jaci Grote, RCC, stated the Commission held a site walk and were very satisfied with the considerations that were given to the wetlands and the overall design of the plot. The Commission had no issues and the recommendations are in the letter.

Referring to Sharon Cannon's concerns, Mr. Weinrieb noted that the water runs along the property line and does not really get to the property. There is an abundance of impervious adjacent to the property line. All that impervious is going to be removed. Stone drip edge is being installed around the house. As runoff comes off the pitch of the roof, there is a very defined swale at elevation 18 which prevents the water from running uphill to the abutter's property to the north. The water is going to continue down to elevation 17 and to the wetland system. There is really no opportunity for an increase in runoff onto the northly abutter.

Hearing no further comments or questions, Chair Weathersby closed the public hearing at 9:09 p.m.

Chair Weathersby summarized the conditions of the Rye Conservation Commission as outlined in their letter of May 22nd. She opened the public hearing to ask Mr. Weinrieb a question about the screening of the top soil for invasive species. She asked what the wording should be for not getting invasive species in the soil.

Mr. Weinrieb replied the best term might be "to inoculate against invasives".

Member Dibble commented that it seems it may be appropriate to use the words "pretreated to prevent".

Shawn Crapo (not sitting on application) pointed out that having the soil kill dried is about the only way and it is ridiculously expensive. He is not sure how practical that would be.

Member Patten stated that this is his concern. When they get into stipulations, they do so without knowing the true impact cost wise. He thinks they need to be careful about making stipulations on something they know little about.

Mr. Weinrieb stated that he would rather do some treatment if invasives start to be seen. He would rather stay away from an expensive treatment of that top soil.

Chair Weatherby reclosed the public hearing. She would like the board to discuss the relief being requested; which is, the front setback of 29.2ft, surface alteration including the fill in the wetlands buffer, demo and replace, retaining wall of 10.8ft from the wetlands buffer and the building code waiver for the septic.

Member Mikolaities stated he is fine with the proposal for a lot of the reasons mentioned; the reduction in the two curb cuts on Sagamore, reduction in lot coverage, reduction in traffic and they are building a house that is consistent with the neighborhood.

Chair Weathersby asked him how he feels about the top soil needing to be inoculated or treated in some manner against invasive species.

Member Mikolaities replied that he does not know enough about it.

Member Patten stated it is a nice project. It is an improvement over the current site in many ways. He is uncomfortable with conditioning treatment of soil in the preempted way. It is perfectly reasonable to put the soil in place and treat things that come up. Without knowing more, he is uncomfortable with that condition.

Member Dibble stated that he thought he heard there was going to be 720 cubic feet of fill in the buffer.

Mr. Weinrieb replied it is 925.

Member Dibble asked if they need to state that in any way.

Chair Weathersby explained if it is on the plan it does not need to be a condition.

Member Dibble clarified that the only relief being requested is for 3.1, 6.1, 1.4 and the special exception.

Chair Weathersby replied no special exception. She summarized the requested variances;

- **2.3.C – Front setback**
- **3.1.H.2(a) – Surface alteration**
- **6.3 – Demo and replace**
- **3.1.H.2(g) – Retaining wall**
- **35-14.C(1) – Building code waiver**

She opened to the applicant to confirm.

Attorney Quinn confirmed the list is accurate.

Member Dibble proposed wording for a possible condition regarding invasive species; “any evidence of invasive species, in any areas where fill is brought onto the property, be addressed in a timely manner.”

Member Driscoll stated overall he likes it. It was nice to have the stormwater management plan as part of the package. Coupling that with the roof lines, especially of the detached garage, it seems to funnel a good amount of water in between the two homes and it can be controlled far easier there, rather than towards the wetlands. He likes the plan in general. In regards to invasive species, he thinks it is something that they should be considering. Maybe they can get more detail through Conservation on mitigation. However, it sounds like the applicant is aware of it and wants to do something. Even with Member Dibble’s wording, he would be in favor.

Chair Weathersby stated one of the conditions of the RCC was placing riprap at the outlet of the basement drainage pipe within the wetland buffer. She opened the public hearing to ask Mr. Weinrieb to show the location of the drainage pipe. She asked why there is a basement drain into the wetlands.

Mr. Weinrieb explained there is a foundation drain draining the house portion. It is not expected to see heavy flow. It was more the comments the Conservation Commission made that they wanted a bit of riprap to make sure there is no erosion as the water discharged out into the vegetative area. He has no concern with adding that to the plans.

Chair Weathersby stated this proposal solves a lot of issues this lot has, both from topography and the prior use with the amount of impervious surface, the multiple traffic outlets, etc. It is a more environmentally friendly, safe and esthetically pleasing proposal. The only setback that is needed is the front setback. There is still a good amount of space between Sagamore Road and the home. She does not think that is a safety issue. She understands why the other requests are being made and are reasonable given the constraints of the lot. She is in favor of the proposal. In regards to the invasive species issue, she could go either way. It would be nice if the invasive species are addressed in a timely manner, but this is tricky to enforce. She polled the board on whether or not to have a condition that “any invasive species in areas of the fill be eradicated in a timely manner”.

It was the consensus of the board to add that wording as a condition.

Chair Weathersby called for a vote on requested variances to 2.3.C Stoneridge setback, 3.1.H.2(a) surface alteration in wetland buffer, 6.3 demo and replace, 3.1.H.2(g) retaining wall;

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

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll - Yes
Rob Patten - Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby – Yes

7) The purposed use is a reasonable one?

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on building code waiver for the septic being 4.12ft to the restrictive layer;

- **Would enforcement of Building Code 35-14.D(1)(c) do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

Gregg Mikolaities – Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Rob Patten - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of James Broom for property owned and located at 80 Sagamore Road, for variances to §190-2.3.C(3), §190.3.1.H(2)(a), §190-3.1.H(2)(a)(g) and §190-6.3 and to grant relief to Building Code §35-14.C(1); conditioned upon the six recommendations of the Rye Conservation Commission, stated in their letter of May 22nd, with the additional condition that the owners will address, in a timely manner, any appearance of invasive species. Seconded by Patrick Driscoll.

Roll Call: Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes; Rob Patten – Yes; Patricia Weathersby – Yes

Motion passed.

Note: Patrick Driscoll was unseated and Shawn Crapo reseated.

4. **Joel & Lauren Feid for property owned and located at 705 Brackett Road, Tax Map 17, Lot 34-02 requests a variance from §190-2.3.C.2 for a shed 10' from the side boundary line where 20' is required. Property is in the Single Residence District. Case #17-2020.**

Chair Weathersby stated that before getting into the merits of the application the board has to decide whether to accept jurisdiction. The application has to be materially different from the application that came before the board before. Mr. Feid sent some new materials this week and amended his application. She asked Mr. Feid if he would like to speak to the material difference issue.

Joel Feid, 705 Brackett Road, stated that previously he had an application in to develop the property, which was in 2017. That application had a completely different house proposal. It was intrusive into the wetlands. There was concern around the septic and wetlands impact. In whole that project was denied. The concern was focused around the septic and the wetlands, not the shed. In total, the board thought the project was too much. In 2018, they prepared a completely different plan that was then approved. Additionally, the shed has been moved roughly 8ft further back to the rear of the property so it will be further from the abutters. The size of the shed has also been reduced by 13%. Initially, the request was for a 10x16 shed and it is now a 10x14. The side yard coverage is also being reduced. On the 2017 application, the request was for 5.7ft. The request now is for 10ft, which is a 22% reduction. At the time of the 2017 application, it was a conceptual project. It is now a habitable residence. During the 2017 proposal, it was tough for people to visualize the house, deck and septic in the tight buildable area, due to the seasonal stream. He commented he thinks the yard is a reasonable size considering the tight restrictions from the 75ft buffer, which has really reduced the buildable area.

Chair Weathersby opened to the board for questions regarding just the material difference issue. No questions were heard. **She polled the board on whether they feel the application for the shed is materially different than the application for the shed in 2017:**

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

Chair Weathersby opened to the applicant to present his plan for a 10x14 shed 10ft from the side boundary.

Mr. Feid stated the PDF he sent to the board earlier in the week was intended to summarize this request. It is pretty straight forward.

Chair Weathersby asked the board if they have any questions regarding the shed.

Referring to the plot plan, Member Patten asked if the back corner of the shed is in buffer or outside of buffer.

Mr. Feid replied outside.

Jaci Grote, RCC, confirmed that two members of the Commission visited the site to review the location of the shed and it is outside the buffer.

Chair Weathersby noted letters were received from;

- Rye Conservation Commission, June 3rd in favor;
- Goyette, 750 Brackett Road, in support;
- Reaney, 691 Brackett Road, in support; and
- Richard Snierston, 711 Brackett Road, in support.

She opened to the public for comments or questions. Hearing none, the public hearing was closed at 9:48 p.m.

The board did not have any questions or concerns.

Chair Weathersby called for a vote on the variance to 2.3.C.2 for a shed 10ft from the side boundary;

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

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

2) The spirit of the ordinance is observed?

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

Patricia Weathersby - Yes

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The purposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the application of Joel and Lauren Feid for property owned and located at 705 Brackett Road for a variance to §190-2.3.C.2 for a shed 10ft from the side boundary.

Seconded by Shawn Crapo.

Roll Call: Gregg Mikolaities – Yes; Burt Dibble – Yes; Rob Patten – Yes; Shawn Crapo – Yes;

Patricia Weathersby – Yes

Motion passed.

5. **Arthur Splaine of 77 Cable Road for property owned and located at 0 Spring Road, Tax Map 8, Lot 30 request a special exception pursuant to §190-3.1.H(2)(f) and §190-3.1.G(2)(6) for a driveway 55.9' from wetlands buffer where 75' is required. Property is in the Single Residence District. Case #18a-2020.**
6. **Arthur Splaine of 77 Cable Road for property owned and located at 0 Spring Road, Tax Map 8, Lot 30 requests variances from §190-3.1.H(2)(a)(g) for a patio 50.5'; an AC unit 62.7'; a generator 62'; a propane tank 65.4' and a house 56.3' from the wetlands buffer where 75' is required. Also requested is a wavier from RBC §35-14.D(1)(c) to allow a septic system in soils where the existing distance is 30-32 inches to a restrictive layer where 36 inches to impervious substratum is required. Property is in the Single Residence District. Case #18b-2020.**

Attorney Tim Phoenix, representing the applicant, spoke to the board. He introduced Arthur Splaine who was present with his friend John Samonas, who is helping him with this property. He also introduced Joe Nichols from Beals and Associates and Steve Riker from Ambit Engineering. He noted a couple of letters of support from neighbors have been submitted to the board; Harris Family, 42 Spring Road and Leonard Musto, 48 Spring Road, which are the closest two properties on the left.

Joe Nichols, Beals and Associates, presented the site plan on the screen for review.

Speaking to Attorney Phoenix, Chair Weathersby asked why it is felt that a special exception is needed for the driveway, as it is in the wetlands buffer and not in the wetlands.

Attorney Phoenix replied the building inspector said this was needed. He also thought that driveways even in the buffer required a special exception.

Chair Weathersby explained that in looking at 3.1.G for driveways, it states in the wetlands and not the buffer. She commented they will come back to this issue.

Attorney Phoenix continued this is a 156,282sf lot, which is well over 3-acres. Most of it is a field that has been disturbed and cleared, including into the wetlands, which was done long before the Splaine Family owned the lot. Originally, this was over 14-acres. About ten years ago, the Splaine's granted approximately 11-acres to the Conservation Commission, so all the areas surrounding the property are now in conservation. While the middle of the lot is upland, it is surrounded on three sides by wetland. It is well over 3-acres for the lot with under .25-acres available to build. The house design was chosen as a result of the narrow and long building envelope, which drives the variances being requested. He noted this is a fairly valuable piece of property. Someone who buys it is going to want to put a decent size home on it consistent with the area. Mr. Splaine has people who are interested in this lot and this is what they would like to see built.

Attorney Phoenix stated that there was a site walk with the Conservation Commission and they had some concerns about the proposal. The Commission wrote a letter dated May 27th stating some of those concerns. In response to some of those concerns, the applicant would like to offer a couple of things. The applicant would like to propose to cut the patio off. The pool would get smaller and be moved a bit farther from the wetlands. (He pointed out the location of the patio and pool on the plan presented before the board.) He continued it is not totally outside the buffer, but it is getting the largest share of the patio and pool inside the building envelope. There was also a concern about the nature of the water and backwashing. The idea is to commit to a chemical free pool with the backwash being controlled and not going out toward the wetland. Mr. Splaine is also willing to commit that the entire driveway will be some kind of permeable surface. Attorney Phoenix noted that not all of the driveway is in the buffer, only part of it is. The septic system is just to the right of the driveway. A decision was made that for environmental purposes it would be better to try to get the septic completely outside the buffer. The entire system, tank and leach field is outside the buffer, which pushed the driveway and the parking area behind the garage into the wetland buffer. The patio is the closest part of the house to the wetlands, which was going to be 50ft and is now going to be about 53ft. The closest point of the house itself is 56.3ft, where 75ft would be required. There is also a request for a waiver to the building code that says there has to be 36 inches to impervious substratum. It was found at 30 and 32 inches, so it is only a difference of 4 to 6 inches. The relief is needed because the building inspector determined it is less restrictive at 30 to 32 inches where 36 is required.

Mr. Nichols noted approximately 687sf of impermeable is being removed by cutting the patio back.

Attorney Phoenix stated that everything has to be raised, due to the septic, which is going to require 747 yards of fill.

Referring to the special exception, Chair Weathersby stated that 3.1.H(2)(f) states "use is permitted by special exception pursuant to the other sections, including driveways may be permitted by special exception in the buffer". She agrees it is probably needed.

Attorney Phoenix stated that he will start with the special exception for a portion of the driveway, which is going to be permeable.

- The request for the proposed use is not injurious or detrimental to the neighborhood. This is going to be permeable so it should be no different than the previous ground that is there.
- The requested use is in harmony with the purpose and intent of the ordinance. The buffers are intended to protect the wetland. This will be permeable and there will be runoff control mechanisms in place to protect the buffer from runoff.
- No alternative route is feasible. There is a narrow entry into the buildable area of this lot. A portion of the driveway was traded to get the entire septic outside the buffer. There is really no other reasonable place to put it that would not need the same kind of relief.
- Essential to the productive use of the land not so zoned. In order to build a house, there has to be a driveway. A driveway is essential to the productive use.
- To the maximum extent possible, construction shall have the least possible detrimental impact on the wetland. This is 60ft at the closest point to the north wetland and 75ft to the south wetland. The driveway was chosen over the septic, so this is the least possible impact on the wetland.
- Economic advantage alone is not sufficient. If relief is not granted, nobody can do anything on the lot. This is a balancing of property rights versus protection of the environment.

Review of variance criteria:

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The test is whether the granting the variances will unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives. Would the variances alter the essential character of the locality? The answer is no. Precautions are being taken to further protect the wetland by cutting the patio down and by making the driveway permeable. The size of the lot is larger than most lots and the size of the house is consistent. The relief requested will fit in and not alter the essential character of the locality. Will granting the variances threaten the public health safety or welfare? The size of the patio is being cut back and the driveway is being made permeable, which improves the public health, safety and welfare. With respect to the Conservation Commission's May 27th letter, the applicant agrees to accept the five recommendations.
- Granting the variances will not diminish surrounding property values. It is a house lot. People know there is going to be a house of decent size on the lot. When this lot was created either the wetland buffers did not exist or were 50ft, so there was much more room. The wetland concerns and buffers have grown over time. It's clear that granting these variances is not going to diminish property values.
- Special conditions exist that distinguish the property from others in the area. This is a large lot that was disturbed into the wetland buffer by people years ago. There is a long, narrow building envelope. Those combined create special conditions.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. The wetland buffer exists to protect the wetland. That has to be balanced against property rights. Mr. Splaine and his team have done a good job of trying to put the house, septic and patio within the building envelope. Runoff will be controlled and addressed by reducing the size of the patio and converting the driveway to permeable surface. There is no reason to deny the development rights to this property.
- 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 concerns about the wetland as expressed by the ordinance and Conservation Commission have been reasonably addressed by the concessions that have been made. There is no benefit to the public and this will not harm the wetland. Denial will substantially harm Mr. Splaine's ability to build this house and sell it.

In regards to the requested building code relief for the 30 to 32-inch depth to impervious substratum where 36 inches is required, putting the septic where it is and raising the bed bottom so it is 48 inches above seasonal high water, is a better form of construction. It will manifest injustice because there cannot be a house with no septic.

Chair Weathersby asked the dimensions of the building envelope.

Attorney Phoenix noted at its narrowest point it is about 26ft wide and its widest point is 56ft. the total is about 10,155sf.

Chair Weathersby stated the proposed home is pretty large. She asked for the square footage of the finished space.

Mr. Nichols replied the overhang is 4,997sf. The living space is just under that.

Member Mikolaities asked for an explanation on the perc rate.

Mr. Nichols explained in looking at the ordinance and the actual test pit log, it is still permeable and allowing the water to go through. The building inspector saw the word "firm" and "restrictive", so the building inspector made the determination it is impermeable, which he does not agree. The coarseness of the gravel is firm in place and does have some cohesion, but it does allow water to pass down through. Restrictive is different than impermeable.

Member Mikolaities stated he does not know the last time he has seen a conventional septic system come before this board with all the advancements that are available. He asked if there has been any consideration to spending a little more money on the septic system.

Mr. Nichols replied this septic meets all the design requirements for the State of New Hampshire. He feels it meets the criteria for the Town, as well. Based on the size of the lot, he does not feel it necessary to treat the effluent. With this amount of land and treatment, he feels this is acceptable.

Chair Weathersby stated that it sounds like there is a disagreement with the building inspector's determination of the impermeable layer; yet, that decision was not appealed and acknowledged that was correct. There is now a request for a variance given that condition. She asked how they can now dispute the building inspector's determination.

Attorney Phoenix stated this was his call. He felt that rather than to have an administrative appeal about restrictive and non-restrictive, this is at 89% of the distance needed. The building inspector disagrees and it's a really strict interpretation. Restriction does not mean impassable. He felt this was so close and with the explanation it really didn't matter. The system is being raised anyway. He does not think it is necessary, but Mr. Splaine would consider an advanced type of system.

Vice-Chair Crapo stated that he deals with hydroseeding over septic systems every day. In talking with installers, the sentiment of late is that some of these advanced systems look a lot better on paper than they do in practice. Many of them are being taken out and replaced with the old stone and pipe systems. Some of them are prematurely failing and there are questions whether the systems have the longevity that are claimed.

Chair Weathersby opened for public comments. She noted that letters have been received from;

- Bruce and Diane Kimball, 41 Spring Road, in support;
- Leonard Musto, 48 Spring Road, in support;
- Frank and Andrea Harris, 42 Spring Road, in support; and
- Rye Conservation Commission

Speaking to Attorney Phoenix, **Jaci Grote, RCC**, asked how much is being deducted from the patio.

Attorney Phoenix replied it is approximately 700sf.

Ms. Grote asked if the pool will remain.

Attorney Phoenix explained that Mr. Splaine's understanding is that the buyers will still want a pool, so it will be quite a bit smaller and moved in.

Ms. Grote asked if there is an agreement about the management of the water in the pool.

Attorney Phoenix replied yes. This is one of the stipulations in the Conservation Commission's letter, which Mr. Splaine is in agreement with.

Member Dibble asked if the plan is to construct the pool at the present time.

John Samonas replied it is planned to be built at the same time as the house.

Member Dibble commented that he would have a concern if there was a plan to build it later and it became a different pool than what has been presented. If it is going to be built at the same time as the house, he assumes it will be in accordance with the plans that are before the board.

Attorney Phoenix explained it will be in accordance with the plans as amended. The pool will be a fair amount smaller than what is on the plan.

Member Dibble stated he is not sure if the board wants to confirm what size that is going to be or not. That may need some discussion. He is concerned that the size of the pool is not indicated on the plans. He would feel more comfortable if the pool were not a question mark.

Vice-Chair Crapo stated that the size of the patio would be the maximum. He is not sure what the requirements would be to build it to code but it cannot go beyond the patio lines.

Attorney Phoenix noted the deck that is shown is elevated. Typically, there is 4ft around the pool. He commented that they were hoping the board would look at the pool as part of the patio. All of that area is going to be impermeable, whether it is cement with water in it or cement surface, the effect is the same.

Mr. Samonas explained that the pool that is shown on the plan is 18x28. They would stipulate that the pool, as built, will not be larger than 18x28.

Vice-Chair Crapo stated that he believes on the Musto application, which is next door, there was some sort of condition or wording on the backflow and it follow best practices.

Ms. Grote stated when there are pools near or in the wetland buffer, the Commission always makes that recommendation. She is sure there is standard language used.

Attorney Phoenix pointed out that the Conservation Commission's letter says "there shall be no flushing of water from the pool towards or into the wetland". He reiterated that Mr. Splaine is agreeable to this.

Chair Weathersby asked if there are any members of the public who would like to speak to the application. No comments were heard.

Attorney Phoenix asked Member Mikolaities if his concern about the septic system has been addressed.

Member Mikolaities stated he agrees with Shawn that old fashioned pipe and stone is good. On one hand, there is a State approved septic system. On the other, there is technology that sometimes helps out. He is indifferent right now. That is a sticking point with him. He commented he is a little old fashioned and would go with a traditional system any time possible, but this is a unique lot. He is not happy with the soils explanation. This is not a little two-bedroom cottage. He is concerned about the wetlands and property surrounding this house.

Attorney Phoenix stated the numbers are arbitrary. Even if it is considered most restrictive, this is 90% and its being lifted up anyway. If it would help, there could be an AOS chamber system, so there would still be the pre-treatment, but it could still go into a stone and pipe.

Mr. Nichols stated he has done septic for 25 years in the seacoast area. With a large lot like this, and meeting all the setback requirements, he does not see the need for an AOS system. The systems require electricity and if it goes down there are issues. The systems require pumps and have a lot of mechanical issues. The stone and pipe systems seem to last longer and are less likely to fail. When there is a failure, that can create issues. The less failures over the years, the better. This is a gravely sandy loam. He feels a traditional system will last a lot longer than an AOS System.

Referring to the home plan, Chair Weathersby stated the first floor has a living area of 2,998sf. The second-floor plan 869sf. The foundation plan, the living area is 1,601sf. When those are added up, it is a much bigger number than 4,997sf.

Mr. Nichol explained the 4,997sf is the actual edge of the drip edge itself, not the actual living space.

Chair Weathersby clarified the foundation print is basically 4,997sf. The actual square footage of living space is a little under 5,500sf, plus the garage of 1,000sf or so. She noted the square footage is 5,469sf of finished living space.

The public hearing was closed at 9:51 p.m.

Member Mikolaities stated he is all set with the proposal. It is a good size lot and they have picked a building footprint that goes in it. He is not going to dwell on the septic system. He is fine with the reduction that was discussed also.

Member Patten stated it is a big house and a big lot. Driving through the neighborhood, it is in character with the other homes around it. He thinks they have done as good a job as they can with fitting it into the space that is allowed. It surprising how little the building envelope is, given the size of the lot. He is okay with the way it has been presented.

Member Dibble commented that the pool that is sticking out is in the wetland buffer but not in the wetland. In looking at the configuration of the wetlands, he is not so anxious about that. He agrees the house is big. However, it is sitting at the end of a cul-de-sac and is set back from the roadway, so there is not going to be a

visibility problem. It seems to be in accordance with the other buildings in the neighborhood. He thinks the case has been made that this septic system is going to work.

Vice-Chair Crapo stated it is going to fit in back there. This stretch of land was just fields and logging roads for years. The neighborhood has come a long way. This is one of the last pieces. This is in keeping with the neighborhood. In regards to the concerns on the septic, he is not sure what those soils are; however, he is hearing less favorable things on the newer septic. He is not really concerned about the septic if they have done their work and gotten State approval.

Chair Weathersby stated she has more concerns than others. There is a building envelope of 10,000sf that a house could fit into and not be in the buffer. The fact is the footprint of this house is 5,000sf. They could change the shape and have a house that would fit right in. She feels some attempt was made, but not enough, to fit within the building envelope and keep it completely out of the buffer. The house could be a little smaller or the configuration could be changed. She continued that she was on the Planning Board when this lot was separated from the piece to the right. At that time, it was represented and confirmed by town counsel, that a house could fit on here without relief. She commented it is not a bad proposal, but she feels more effort could be made to fit the house outside the wetland buffer, except for the driveway. With that said, she appreciates that the patio is being pulled back. She appreciates the effort to make the driveway permeable. She struggles a bit but feels a different configuration could be done to keep the house out of the buffer.

Referring to the comment at the Planning Board that this could be done without buffer relief, Vice-Chair Crapo asked if this was with the current size buffers.

Chair Weathersby noted it was in 2010. There was a question about the building footprint. She read from the Planning Board minutes of 2010; "Attorney Donovan clarified that he scaled it off and there is enough room to put a dwelling on the lot outside the wetland buffer". She asked Administrative Reed if she remembers the size of the buffers at that time.

Planning/Zoning Administrator Reed stated that back in 2010, buffers were done by soil type. They were changed to be more consistent with DES so they are all 75ft, unless it is within the Berry's Brook Watershed and its 100ft. So, there is no one of knowing, unless the soils are known.

Vice-Chair Crapo stated he agrees with the analysis on the configuration; however, he would rather look at a house with this juxtapose layout than a box. Boxing out a rectangle is not going to look architecturally as pleasant, as compared to something sprawled out.

Chair Weathersby reviewed possible conditions:

- **Patio to be reduced by approximately 687sf, which is approximately 53ft from the wetlands buffer; (formal plan will be submitted);**
- **Driveway to be installed and maintained such that it remains pervious; and**
- **Adherence to the Rye Conservation Commission recommendations;**
 - **20ft deep vegetative buffer of native plants along the wetland boundary behind the patio and pool;**
 - **20ft vegetative buffer established along the southeast side of the property along the wetland boundary to protect the wetland in the same manner;**
 - **Planting plan be prepared and approved by the RCC before plantings;**

- **Slope created by the fill be planted with a conservation mix and mowed only seasonally and not be lawn;**
- **No flushing of water from the pool towards or into the wetlands.**

Chair Weathersby explained the board will vote first on the request for the special exception for the driveway in the wetlands buffer. The conditions for that special exception will be that the driveway be pervious and properly maintained. The variances that deal with the overall project will have all the conditions.

Chair Weathersby called for a vote on the special exception for the driveway;

- **Has it been shown that due the existing conditions, no alternative route is feasible without going through the buffer?**
 - Gregg Mikolaities – Yes
 - Rob Patten – Yes
 - Burt Dibble - Yes
 - Shawn Crapo - Yes
 - Patricia Weathersby - Yes
- **Is granting a special exception for the driveway going through the buffer neither injurious or detrimental to the neighborhood?**
 - Gregg Mikolaities – Yes
 - Rob Patten – Yes
 - Burt Dibble - Yes
 - Shawn Crapo - Yes
 - Patricia Weathersby – Yes
- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**
 - Gregg Mikolaities – Yes
 - Rob Patten – Yes
 - Burt Dibble - Yes
 - Shawn Crapo - Yes
 - Patricia Weathersby - Yes

Referring to the zoning ordinance covering the special exception for the driveway, Vice-Chair Crapo commented that to be complete, they probably need a finding on A, B and C.

Chair Weathersby agreed.

- **Is this driveway essential to productive use of land not so zone?**
 - Gregg Mikolaities – Yes
 - Rob Patten – Yes
 - Burt Dibble - Yes
 - Shawn Crapo - Yes
 - Patricia Weathersby - Yes

- **Has it been shown by a certified wetland scientist that to the maximum extent practicable, construction of this driveway shall have the least possible detrimental impact on the wetland?**

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

- **Has it been shown by a certified wetland scientist that no alternative feasible route or area exists which does not cross or alter a wetland?**

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

Motion by Shawn Crapo to grant the Special Exception request with the condition that the driveway will be installed and maintain such that it remains pervious. Seconded by Burt Dibble.

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

Motion passed.

Chair Weathersby called for a vote on the variances to 3.1H(2)(a) and (g):

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

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

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

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

- 3) **Substantial justice is done?**

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The purposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the application of Arthur Splaine Revocable Trust for property at 0 Spring Road for variances to 3.1.H2(a) and (g) with the conditions that the patio be reduced by approximately 687sf, approximately 53ft from the wetlands, the driveway be installed and maintained such that it remain impervious and the recommendations of the Rye Conservation Commission regarding plantings and pool filter backwashing be observed. Seconded by Shawn Crapo.

Planning/Zoning Administrator Reed noted that she also heard earlier with regards to the pool it would be chemical free.

Vice-Chair Crapo suggested following the recommendations of the Conservation Commission. It could become a slippery slope. Some people consider salt a chemical.

Chair Weathersby asked Attorney Phoenix what was meant when they said they would agree to not use chemicals in the pool.

Attorney Phoenix commented he is not sure that “chemical free” is the right wording. What was mentioned is that they did not want a saltwater pool. He is not sure what would be put in a pool if it does not have salt or chlorine.

Mr. Samonas stated the Conservation Commission did not want a saltwater pool in this location, so that was agreed to.

Chair Weathersby stated they are going to leave that alone and the Conservation Commission has the right to appeal the decision if they do not agree. They will go with Member Dibble’s motion.

Vice-Chair Crapo commented they referenced the Commission’s recommendations. The gist of that conversation was that they did not want the backwashing going right into the buffer or wetlands. In trying to adhere to that, the applicant needs to find a way that the pool water, when needing to be backflushed, is going to be properly dealt with and not negatively effect the wetlands. He does not think they need to get specific about whether it is chemical free or some sort of special treatment. The gist is that there will be steps taken to not affect the surrounding lands with the pool water.

Vote on Motion:

Roll Call: Gregg Mikolaities – Yes; Rob Patten – Yes; Burt Dibble – Yes; Shawn Crapo – Yes;

Patricia Weathersby – No

Motion passed.

Chair Weathersby called for a vote on the request for a building code waiver to 14.D(1)(c):

- **Would enforcement of that section do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

Gregg Mikolaities – Yes

Rob Patten – Yes

Burt Dibble - Yes

Shawn Crapo - Yes

Patricia Weathersby – Yes

Motion by Burt Dibble to grant the Building Code waiver as requested. Seconded by Shawn Crapo.

Roll Call: Gregg Mikolaities – Yes; Rob Patten – Yes; Burt Dibble – Yes; Shawn Crapo – Yes;

Patricia Weathersby – Yes

Motion passed.

Adjournment

Motion by Shawn Crapo to adjourn at 11:28 p.m. Seconded by Burt Dibble.

Roll Call: Gregg Mikolaities – Yes; Rob Patten – Yes; Burt Dibble – Yes; Shawn Crapo – Yes;

Patricia Weathersby – Yes

Motion passed.

Respectfully Submitted, Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Arthur H. Splaine Revocable Trust, Arthur H. Splaine, Trustee

Property: 0 Spring Road
Property is in the Single Residence District

Application case: Case # 18-2020

Date of decision: June 17, 2020

Decision: The Board voted 5-0 to grant a special exception pursuant to Rye Zoning Ordinance sections 190-3.1.H (2)(f) and 190-3.1 G(2)(6) for a pervious driveway 55.9' from wetlands and in the wetlands buffer.

The Board voted 4-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-3.1H(2)(a)(g) for a patio 53' from the wetlands;
- §190-3.1H(2)(a)(g) for an AC unit 62.7' from the wetlands;
- §190-3.1H(2)(a)(g) for a generator 62' from the wetlands;
- §190-3.1H(2)(a)(g) for a propane tank 65.4' from the wetlands; and
- §190-3.1H(2)(a)(g) for a house 56.3' from the wetlands.

The Board voted 5-0 to grant relief from Rye Building Code section 35-14.D.(1)(c) to allow a septic system with a of 30-32 inches to a restrictive layer.

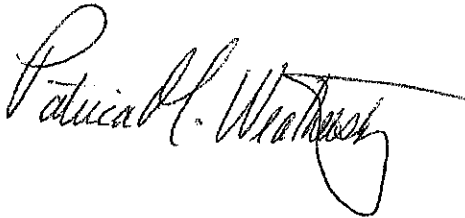
Each variance, special exception and building code relief was granted upon continued compliance with the following conditions:

1. A 20-foot-deep vegetative buffer of native plants be established and maintained along the wetland boundary behind the patio and pool to aid in absorbing and infiltrating potential contaminants before they reach the wetland.
2. A 20-foot-deep vegetative buffer of native plants be established and maintained along the southeast side of the property along the wetland boundary to protect the wetland in the same manner.
3. A planting plan be prepared and approved by the RCC before any plantings occur.
4. The slope created by fill be planted and maintained with a conservation mix, be mowed only seasonally and not be lawn. This

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.

will help protect the wetlands on either side of the property by eliminating fertilizer and by inhibiting runoff down the slope.

5. There shall be no flushing of water from the pool toward or into the wetland.
6. The patio be reduced by approximately 670 sq. ft to be 53' from the wetlands per the marked plan presented to the Board of Adjustment on June 17, 2020. An updated plan shall be provided to the building office.
7. The entire driveway is to be installed and maintained to be and remain pervious.



Patricia Weathersby, Chair

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BOARD OF ADJUSTMENT -Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: James Broom

Property: 80 Sagamore Rd, Tax Map 22, lot 31
Property is in the Single Residence, Business & Coastal Overlay Districts

Application case: Case # 16-2020

Date of decision: June 17, 2020

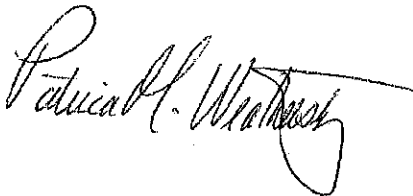
Decision: The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:

- §190-2.3C (3) for a house with a front setback of 29.2';
- §190-3.1 H(2) a for 9,413 s.f. of surface alteration within the wetlands buffer;
- §190-6.3 for demolition of existing structure and replacing it with new; and
- §190-3.1H(2)(a) and 190-3.1H(2)(g) for a retaining wall 10.8' from the wetlands.

The Board voted 5-0 to grant relief from Rye Building Code section 35-35-14.C (1) for a septic system 4.12' above the restrictive layer.

Each variance was granted upon continued compliance with the following conditions:

1. The area within the wetland buffer between the retaining wall and the wetland be seeded with conservation mix seed and/or native plantings. Only lime should be used for soil amendment during seeding. This is to be noted on the plans.
2. This vegetated buffer will be maintained with native plantings, not a maintained lawn area, once the building is occupied;
3. Landowner shall discourage the spread of phragmites into the wetland and buffer areas of the property.
4. The two mature trees near Sagamore Road be maintained.
5. Refuse in the wetland buffer be carefully removed without disturbing wetland and wetland buffer areas.
6. Rip-rap is to be placed at the outlet of the basement drainage pipe within the wetland buffer to prevent erosion. This shall be noted on the plans.
7. Invasive species when found shall be eradicated in a timely manner.



Patricia Weathersby, Chair

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**BOARD OF ADJUSTMENT
-Rye, New Hampshire-**

NOTICE OF DECISION

Applicant/Owner: William & Nanci Perocchi, Trustees
Perocchi Family Trust of Pebble Beach, CA

Property: 21 Carbee Drive, Tax Map 8.4, Lot 104

Application case: Case # 15-2020

Date of decision: June 17, 2020

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

- §190-6.3B for demolition and rebuild;
- §190-2.3C (3) for a house with a front setback of 18.7';
- §190-3.4E for dwelling coverage (19.5%) and impervious lot coverage (25.7%) in the coastal overlay district;
- §190-2.3C(5) for impervious dwelling coverage of 19.5%; and
- §190-5.1.C for parking in the front setback.

Each variance was granted upon continued compliance with the following conditions:

1. The circular end of Carbee Drive is repaved by removing the existing asphalt and replacing it with pervious pavement;
2. The inner circle of Carbee Drive's cul-de-sac is planted to a garden of native groundcover, trees and shrubs;
3. The paved driveway is replaced with pervious pavers;
4. The edge of the seawall is planted to a vegetative buffer of salt-tolerant native plants to a depth of between 2ft and 5ft;
5. Carbee Drive and the "house lot"-Tax Map 8.4, Lot 104- remain owned by the same entity or are merged;
6. All pervious areas are installed and maintained so as to be and remain pervious; and
7. The guest area of the home not become a separate dwelling or an ADU but rather the entire home remains a single-family dwelling.



APPROVED

Patricia Weathersby, Chair

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BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Joel and Lauren Feid

Property:

705 Brackett Road
Property is in the Single Residence District

Application case:

Case # 17-2020

Date of decision:

June 17, 2020

Decision:

The Board accepted jurisdiction over the variance request, finding the it materially different than the applicant's 2017 request.

The Board voted 5-0 to grant a variance from Rye Zoning Ordinance §190-2.3. C.2 for a shed 10' from the side boundary.



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.