

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

**Wednesday, July 1, 2020**

**7:00 p.m. – via ZOOM**

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

***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](http://www.zoom.com) ID #835-8357-3269 Password: 304760

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

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

Roll call attendance of members:

1. Rob Patten
2. Burt Dibble
3. Charles Hoyt
4. Gregg Mikolaities
5. Shawn Crapo
6. Patricia Weathersby

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

**II. BUSINESS**

- **Approval of June 3, 2020 Minutes**

**Motion by Burt Dibble to approve the minutes as amended. Seconded by Shawn Crapo.**

**Roll Call: Rob Patten – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes;**

**Patricia Weathersby – Yes**

**Motion passed**

- **Chris Piela request to be an Alternate to the Board of Adjustment**

**Chris Piela, 25 Mountain View Terrace**, spoke to the board about his interest in becoming an alternate to the Board of Adjustment. He noted that he has lived in Rye for twenty years. When he saw that there was an opening for an alternate, he felt he should put in his name to volunteer. He thinks the Board of Adjustment plays a very important role in the Town in keeping the community spirit together and keeping Rye the way the residents like the town to be.

**Motion by Rob Patten to accept Chris Piela as an alternate to the Board of Adjustment. Seconded by Shawn Crapo.**

**Roll Call: Patricia Weathersby – Yes; Rob Patten – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes**

**Motion passed**

**III. APPLICATIONS**

1. Request for rehearing and reconsideration by the Board of Adjustment of BOA's June 17, 2020 decision that a Special Exception pursuant to §190-3.1. G (2) for a driveway in the wetlands buffer was not required on case 16b2020. Public hearing closed during Board discussion on the request.

Chair Weathersby stated this is a request that she made. This concerns the 80 Sagamore Road, James Broom property, which was heard by the board two weeks ago. The applicant had asked for a number of things that weren't necessary. One of the requests was for a special exception for the driveway in the wetland buffer. At that time, she concluded that the special exception was not needed; Section 3.1.G(2) driveways in the wetlands. The board agreed that it was not needed. Later that evening, Section 3.1.H(2)(f) was brought to the board's attention, which loops back in the driveway requirements in a wetland buffer. Chair Weathersby pointed out that she made a mistake at the last meeting. Therefore, she would like to request that the board rehear her decision that no special exception is needed so that it can

be corrected and the board can consider the applicant's request for the special exception for the driveway for that property. She would appreciate a motion and a second to reconsider the chair's decision that a special exception for a driveway in the wetlands buffer is not required and to address the applicant's request for the same matter.

Vice-Chair Crapo asked if an alternate should sit for him on this vote, as he was recused for the application.

Alternate Member Mikolaities noted that he sat for the application and agrees with the rehearing. (Gregg Mikolaities was seated for the vote.)

**Motion by Burt Dibble to reconsider the chair's decision concerning the special exception for the driveway. Seconded by Rob Patten.**

Chair Weathersby explained that legal error is a reason to rehear an application. Attorney Donovan has confirmed that the Zoning Board can make a request to rehear its own decisions.

**Roll Call Vote: Rob Patten – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes; Patricia Weathersby – Yes; Charles Hoyt – Abstain**  
**Motion to rehear granted.**

**Note: Gregg Mikolaities was unseated and Shawn Crapo was reseated.**

- 2. Pat Burns for property owned and located at 46 Wallis Road, Tax Map 17.3, Lot 9 requests variances from §190-6.3.A for expansion of a non-conforming structure; from §190-2.4.C.2 for conversion of a deck into a 3- season porch 12.3' from the side boundary where 20' is required. Property is in the General Residence District. Case #19-2020.**

**Chip Blodgett, representing the applicant,** spoke to the board. He noted there is a pre-existing 5'x20' deck that runs parallel to the driveway, which is the primary access into the house on the gable end off Wallis Road. The property owner used to go to Florida in the winter, but now intends to live in the house year-round. The porch would act as a buffer to wind, rain, snow and ice, as a primary access to the side door.

Member Dibble asked if there is a plan to heat the space.

Mr. Blodgett replied no.

Chair Weathersby asked if the same deck footings are being used.

Mr. Blodgett confirmed.

Chair Weathersby opened to the public for comments. No comments were heard. She asked Mr. Blodgett if he or the applicant have spoken to the neighbors.

Mr. Blodgett replied that he does not think there is anyone that has any issue.

Chair Weathersby closed the public hearing at 7:27 p.m.

Member Patten stated it is clearly needed. The proposal does not increase the footprint. He thinks this will increase the quality of life for the property owner with no diminution of value to surrounding properties. Overall, it is a small ask and he is in support.

Vice-Chair Crapo noted the property abuts the marsh so there really is no affected abutter. Oftentimes, the board worries about decks becoming enclosed and it creeps and increases the building envelope. With the tightness of the driveway up to the marsh, there is really no chance of that in this case. As it was pointed out, this will give the homeowner some protection from the weather for her entry. The proposal makes sense and he does not see any reason to deny it.

Member Hoyt stated it is a modest ask. It is not going to hinder or harm anyone and will only help the applicant. He is in favor of the project.

Member Dibble commented his only question would be about the runoff from the roof. As the deck is an open deck and the driveway is between there and the marsh, he does not have a concern about roof water running across the driveway into the marsh. He thinks it meets the zoning criteria successfully. He is in favor.

Chair Weathersby stated she is in favor for the reasons that have been stated. She has a slight concern about the wetlands; however, there will be no alteration of the soils in any way. She is in support.

Chair Weathersby called for a vote on variances to 6.3.A and 2.4.C.2;

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**Motion by Burt Dibble to approve the application of Pat Burns for property owned and located at 46 Wallis Road as advertised. Seconded by Shawn Crapo.**

**Roll Call: Rob Patten – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes; Patricia Weathersby – Yes**

**Motion passed**

3. **Shannon Murphy for property owned and located at 17 Central Road, Tax Map 12, Lot 40 requests variances from §190-6.3. A for expansion of a non-conforming structure and §190-2.3.C.3 for dormers 19.2' +/- in the front boundary where 40' is required. Property is in the Single Residence District. Case #20-2020.**

**Shannon Murphy, applicant**, spoke to the board. He explained that he purchased the house in August of last year. The second floor of the house has two bedrooms with no bathroom. The house was built in the 1850's and sits roughly 20' of the front property line. About two-thirds of the house is within the 40' front setback. Anything that is done to the house is going to require a variance. He continued that there is a lot of square footage available on the second floor. There is about 800sf on the second floor with almost 400sf of storage or unusable space which could be recaptured. The dormer plan allows for the recapture of the floor space without changing the height of the house, footprint or encroaching any further into the front setback. It will also remain a cape style home and maintain the appearance of the existing house, other than the appearance of the dormers.

Chair Weathersby asked the height of the house.

Mr. Murphy replied that he believes the existing home is under the height requirement and that is not going to be increased at all.

Chair Weathersby commented she believes in that district the requirement is 35' and the house is not that tall. She asked if the number of bedrooms are being increased.

Mr. Murphy explained they are going to add a bathroom and a bedroom on the second floor.

Chair Weathersby asked if the septic system is being replaced.

Mr. Murphy noted the septic system has already been replaced with a four-bedroom system. The old system was in failure and it made sense to design it for the four bedrooms.

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

Planning Administrator Reed noted that Mr. Murphy's property is directly across the street from the Town Hall. She witnessed the new system being installed.

Chair Weathersby asked if there has been contact with the abutters.

Mr. Murphy confirmed that he has sent his abutters copies of the plans. They had no issues.

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

Member Patten stated he thinks it is a good project and it looks like there is minimal impact. He had no questions.

Vice-Chair Crapo stated this is an old structure that they are improving and modifying. He is glad they are not tearing it down and trying to build something three times its size. He thinks the project makes sense. There is plenty of space on the lot, so they are not overcrowding anything.

Member Hoyt stated it's a good project. They kept it in the spirit of the cape and it is a good design. He thinks it meets the criteria for hardship.

Member Dibble stated that as there are setback issues, he was interested in looking at the impact on the neighbors. It looks to him, that any view scape of the neighbors is obscured by existing large trees. As the others have said, he thinks it looks like a good project.

Chair Weathersby agreed. She likes that they are keeping the house and trying to better utilize the second story. Having 19' as the front setback is adequate there, as it is away from the big curve in the road. She is also in favor of the application.

Chair Weathersby called for a vote on variances to 6.3.A and 2.3.C.(3);

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

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

Patricia Weathersby - Yes

- 6) **There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of those provisions to the property?**

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**Motion by Burt Dibble to approve the application for variances for the property owned and located at 17 Central Road, as advertised. Seconded by Shawn Crapo.**

**Roll Call: Rob Patten – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes; Patricia Weathersby – Yes**

**Motion passed**

4. **Gary & Judith Terhune for property owned and located at 7 East Atlantic Ave, Tax Map 8.4, Lot 167 Appeal the front yard setback calculations per the Building Inspector's June 2, 2020 letter. Property is in the General and Coastal Overlay Districts and SFHA, Zone AO-1. Case #21a-2020.**
5. **Gary & Judith Terhune for property owned and located at 7 East Atlantic Ave, Tax Map 8.4, Lot 167 request variances from §190-6.3.B to demolish an existing non-conforming house and replace it with new; §190- 2.2 F/ §-190-2.4C(3) for a corner lot front setback where 16.2' exists, 16.5' for the deck and 20.7' for the house is proposed and 27.5' is required; and from §190—3.4D for height of house where 15.83' exists, 31.93' is proposed and 30' is required. Property is in the General and Coastal Overlay Districts and SFHA, Zone AO-1. Case #21b-2020.**

**Attorney Tim Phoenix, representing the applicants,** stated there are two matters before the board. One is an appeal to the building inspector's determination on the setback requirements, which has also been requested as a variance. If the board is inclined, he would like to go through the variance requirements



first. If the variance for the setback is granted, he would withdraw without prejudice the administrative appeal.

Chair Weathersby agreed.

Attorney Phoenix explained the lot is 7,695sf and is quite shallow to the east side. The lot is an irregular shape with two front setbacks, as it is a corner lot. The lot has 125' of frontage along East Atlantic and 118' across Kenphil. The southeast lot line is only 60' in length. The depth of the lot is only 79'. There is an existing 1,190sf ranch with an attached garage and screened in porch. The existing building meets none of the setback requirements. The house is 22.9' from Kenphil Ave and 16.2' from East Atlantic Ave. The house is 15.5' from the rear lot line and the stairs are 7' from the side line. The driveway is close to the intersection of East Atlantic and Kenphil. The proposal is to move the house back and the driveway significantly farther away from the intersection than currently exists. The proposal cleans up all the lot line issues, except for the front. The building inspector computed that the average of the two lots on either side is 27.5'. Right now, the whole front of the house is at 16.2' and what is proposed is 16.5', which is a small portion of the deck with 20.7' to a small corner of the house. The rest of the house meets the requirement and all of the rest of the setbacks are met with the proposal. This will allow for the generator and air conditioning pads behind the house to be within the building envelope.

Attorney Phoenix stated the primary variance that is being requested is a height variance. There is a 30' requirement, which is 28' and an additional 2' for flood compliance. There is an existing ground elevation of 6. The property is in the AO-1 Zone, which means the base elevation is 1' more at 7'. In Rye, the first-floor elevation has to be at 9' with the 2' of freeboard. The preliminary maps show the property going into AE-13, which means the base elevation is 13' and adding Rye requirements the first floor has to be at 15'. The first floor has to be 6' over the current requirements under Rye's Flood Ordinance and 9' over the existing elevation. The house has been designed for the future by raising the first floor up to elevation 15. (He reviewed the elevation plans on the screen for the board.) He pointed out that the first floor has been raised and there are two floors above that. Of the 30' height requirement, approximately 9' is taken up by the preliminary flood compliance. This only leaves roughly 20' of height for two stories. He noted that the roof pitch of the proposed home is quite shallow and the height is just under 32' where 30' is allowed. He pointed out it is not a big mass that is 32'. It is just the top gable that goes up 2' and runs down the length of the house. The effect of the request for the additional 2' is pretty minor. He does not think anyone would really notice it from the street. Also, it would be a service to the area, the owner and environment to have future flood compliance, yet need only the 2'. There is also a request for destruction. When something is torn down it has to be built in the same location or the non-conformity improved. All the non-conformity has been improved with the exception of the height. He pointed out this is a modest proposal that is harmful to no one.

Attorney Phoenix addressed the criteria for granting the variances.

- The new home will fit in better with the neighborhood, as many of the smaller cottages in the area have been replaced with year-round homes. the setback variance is better than what is there today. The height variance is a very small request. A very small portion of the building exceeds the height limit. Granting those variances will not change the essential character of the locality. Compliance with future flood elevation requirements helps the public health, safety and welfare. To get the home closer to 30', would require the roof to be lowered to be nearly flat. Esthetically, that would not look very nice. Granting that variance would not alter the character of the locality and does not threaten the public health safety or welfare.

- Granting the variances will not diminish surrounding property values. The existing home does not comply with any setbacks. It also does not comply with any current or future flood requirements. The dwelling coverage is being reduced from 12.27% to 11.55%. Overall coverage is being reduced from 29.08% to 26.55%. A stormwater treatment plan has been prepared. Also, the driveway has been moved back. This tasteful home with these minor variance requests will not diminish property values.
- Special conditions exist that distinguish the property from others in the area. This is an irregularly shaped lot with a home that is not compliant with any of the setbacks and a driveway close to the intersection. The condition of the lot size and location of the two front setbacks means that it has special conditions. The flood requirements are also a special condition.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Height requirements and yard setbacks are both intended to prevent overbulking and overcrowding and to provide adequate air, space, light, sight lines and stormwater treatment. With everything, except height, that is all an improvement here, so there is no reason to apply the strict requirements of the ordinance for the front setback. The height requirement is very modest; really affecting no one and provides future flood compliance, as well as present flood compliance.
- The proposed use is reasonable, as it is a single-family home.
- 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. Granting a very small front setback variance, given the existing conditions, is very reasonable and does not harm the public. Likewise, permitting the applicants to comply with future flood requirements hurts no one, but could potentially harm them if they are required to comply with current requirements and those are increased later.

Chair Weathersby opened to the board for questions.

Member Patten stated he is curious about the storm drainage. He asked if the slab of the garage is pitched to allow for drainage or if there are other ports within the foundation wall to allow for drainage.

It was noted by a member of the design team that the slab would be pitched to the garage doors. There is an intent to have ports on the other end of the structure, as well.

Member Patten stated that it looks like the ground floor, where the garage is located, is fully surrounded by concrete. In the drawings, it looks like it continues up beyond the height of the first living floor. He asked if the foundation is going to end at the 15' elevation.

It was explained by the design team that the intent is to do the first two floors out of insulated concrete forms (ICF), which is a concrete pour with foam insulation on both sides. The lower level is a one-sided form so it does not have the foam insulation on the inside, so it will drain more quickly. The main living area will be ICF and the top floor will be more conventional stick frame.

Chair Weathersby asked if the structure that is being proposed is FEMA compliant.

It was confirmed that the proposed home will be built to FEMA compliance.

Speaking to Planning Administrator Reed, Chair Weathersby asked the status of the preliminary FEMA Maps.

Planning Administrator Reed explained the maps are on hold. It looks like the maps will not be adopted until 2021 or 2022. She noted that the building department has a rigorous floodplain application. The building department will question every aspect of this application with regards to FEMA compliance.

Chair Weathersby asked if the property is connected to town sewer.

It was confirmed the property is connected to town water and sewer.

Chair Weathersby stated that she wonders if an alternative house at the same base elevation with one story, but a bit larger, was explored.

A member of the design team explained that the option was explored but it really became an ungainly house trying to fit all that living space on one floor. It ended up being a gigantic footprint and there was a huge amount of unused space in the ground level. The way the house is designed right now, it is an efficient use of space. The ground level is used as a garage and entry. The footprint would have to be doubled to get that kind of living space on one level.

Attorney Phoenix pointed out that the ceiling on the first floor are 8' and 7.5' on the second floor in order to keep everything down.

A member of the design team stated that thinner floor systems are being done as well. Everything that could be done to minimize the third-floor height was done and to bring the roof pitch as low as possible.

Chair Weathersby asked the finished square footage of the living area.

It was noted that the square footage is just over 2,200.

Member Hoyt stated he respects the fact that there was an attempt to keep the floors down. He understands why they are going to the height that is proposed. He asked if there are gutters planned to help with the runoff.

**Erik Saari, Altus Engineering**, stated that right now there is a plan to do drip strips all the way around. There is an option to add gutters at a later date.

Member Hoyt commented it is a tight design. He is glad it does not ramble on the lot and it was put into the smallest footprint as possible. Seeing there are no neighbors in opposition and no letters have been received, he would be inclined to be in favor of this application.

Referring to Sheet D-1, Member Dibble asked about the "dandy bag" that is shown in the catch basin.

Mr. Saari stated this is proposed for two catch basins. One is right inside the proposed driveway and the other is at the corner of Kenphil and East Atlantic. These have become the standard during construction for sediment control. Those are put in right before construction and when its complete they are taken out.

Member Dibble asked if this is something that is going to need maintenance going forward.

Mr. Saari replied it is temporary.

Member Dibble asked if there is any history of water ponding on this property.

Vice-Chair Crapo pointed out that the whole area gets water when there are heavy rains.

Member Dibble asked if the water ponding will be any threat to the structure.

Mr. Saari replied no. A foot of fill is being added under the building itself. The entire first and second floor are made out of concrete.

In regards to the height, Member Dibble stated the properties to the east and west are pretty tall properties. He would concur that this has been kept pretty tight. It doesn't look like it is going to be a standout to the neighbors.

Chair Weathersby opened to the public for comments.

**Patricia Brotchie, 67 Old Beach Road**, spoke in support as an abutter of the property on the southeast side. She wants to make it clear that there are no expectations of an ocean view over her property.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:14 p.m.

Member Patten stated the structure is a great improvement over what is there presently. He thinks they have positioned it well on the lot. The biggest ask is the 2' height difference. It is not out of character with other structures, so he would be inclined to support the application.

Vice-Chair Crapo stated he feels similar. The structure near this on Old Beach Road has a second floor and is about the height of what this is supposed to be. It does get very wet in this area. Height wise, the ask is being conservative. The existing change to the zoning allows for the couple of foot raise. They are asking to go a foot and a fraction from what is allowed. It does not seem like they are trying to push the limits on height given the proposed FEMA Maps, which drives it up another 3' or 4'. He thinks they have tried to be as reasonable as possible and forward thinking, knowing that changes are coming. He thinks the proposal is reasonable. Height wise it is not going to really affect the neighborhood or anyone else's views because the surrounding structures are of similar height or taller.

Member Hoyt stated he is favor of the project. It is very tastefully done and is in keeping in character with the neighborhood. He will be voting in favor.

Member Dibble commented he reflects those sentiments. He thinks it is a good project and he will be approving it.

Chair Weathersby stated she appreciates the effort the applicants have made to make this more conforming in a number of ways; reducing the dwelling and overall lot coverage, improving the setbacks, the construction methods that have been used, the lower ceiling heights, the height between floors and pitch of the roof. The only thing she struggles with is the height; however, she completely understands it. For this property, in this location and with the efforts that have been done, this is a good project. She can get behind a height variance in this situation. To make them go to a one level home would have its own

issues of dwelling lot coverage and a less attractive home. She likes that this home has been kept tight to the lot. She can get behind this project.

Vice-Chair Crapo pointed out that the board has seen other applications where the garage under was an amenity that was driving the height. In this case, the ordinance is driving the height no matter what, not the garage. The floor has to be a certain height and it gives room underneath for the garage. It is different than some of the other applications where he has been opposed to the height increase.

Chair Weathersby agreed. She called for a vote on variances to 6.3.B, 2.2.F and 2.4.C(3);

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**3) Substantial justice is done?**

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**6) There is no fair and substantial relationship between the general purposes of the ordinance provisions and the specific application of those provisions to the property?**

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Rob Patten – Yes  
Shawn Crapo – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**Motion by Burt Dibble to grant the variance application for Gary and Judith Terhune for property owned and located at 7 East Atlantic Avenue, as advertised. Seconded by Charles Hoyt.**

**Roll Call: Rob Patten – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes;**

**Patricia Weathersby – Yes**

**Motion passed.**

Attorney Phoenix respectfully requested to withdraw the administrative appeal for his clients, Case #21a-2020, without prejudice.

- 6. Maml Enterprises LLC for property owned and located at 378 Wallis Road, Tax Map 18, Lot 83 requests variances from Section §190-6.3. A for expansion of a non-conforming structure; from §190-2.3.C (3) for home expansion with a front setback of 36.3' where 40' is required; and from §190-2.3.C (2) for a home expansion with a side setback of 13.8' where 20' is required. Property is in the Single Residence District. Case #22-2020.**

**Mike Megna, applicant,** spoke to the board. He explained the house, as it sits now, is approximately 1,200sf. When the property was purchased, the intent was to add some living space. The proposal is to add a garage to the left side with living space above. The garage would be located within the setback requirements. He has discussed this with the building inspector and obtained a demo permit for non-structure demo, which means basically sheetrock. When this was completed, the existing framing of the second-floor roof of the structure, especially where the front dormers are located, is really poor and is not conforming to any type of code. He continued that he spoke with the building inspector about taking the roof right off. In addition, the house is very small and very short. The first floor is 7.2' and the second floor is only 6.10', so it is not conforming to code. He spoke with the building inspector about taking the whole second floor off and reframe it with the property height and roof framing. He noted that he is not

imposing on any side or front requirements. They are existing. The building will not be going out any further to the right or to the street. The intent is to put a garage in the back left corner of the lot, which would be 20.7' where 20' is required, so it is within the setback. He noted there are some septic system issues. There is not a septic design on file with the Town. A new septic design is being done. He summarized that he is looking to add some square footage to a 1,200sf home. It will be about 2,100 to 2,200 when it is done. He is also proposing to take care of the framing of the roof.

Vice-Chair Crapo asked if there is a septic plan.

Mr. Megna explained it has been applied for and Alex Ross is preparing the plan. He noted that he has to at least have a shelf plan, but the intention is to put in a new septic.

Vice-Chair Crapo stated the septic plan lets the board know that the area that is being asked for expansion isn't part of the area that is needed for the septic.

Mr. Megna stated that according to Alex Ross it would go in the same location as it is now. Mr. Ross does not feel there is any reason it could not go in that location. It would just be an updated system.

Chair Weathersby clarified the changes that are being made on the ground are to the deck, mudroom and garage. None of those need setback relief. The relief is simply for the existing structure that vertical height is being added to.

Mr. Megna confirmed. He stated that because he is taking the framing down, he would like to get a full second floor with a 7.6'. He pointed out that the existing roof is also a flat roof. The existing property height is about 23' and approximately 3' is being added to make it 26'.

Speaking to Vice-Chair Crapo, Chair Weathersby stated that in looking at the boundary survey of existing conditions, there is pretty good space where the existing septic is located.

Vice-Chair Crapo commented that he was just saying process wise. He would hate to find out the tank needs to go where the deck is proposed.

Chair Weathersby pointed out the deck does not need any relief.

Vice-Chair Crapo noted that if the septic needs to go in that location then there is an issue with a deck over a septic.

Member Dibble pointed out that the number of bedrooms is increasing to four.

Mr. Megna explained the house is an existing three-bedroom home and will remain three bedrooms.

Chair Weathersby noted there are some wetlands at the far end of the property. She asked if anyone has looked at the wetlands to delineate buffers.

Mr. Megna explained that Mr. Ross is bringing in a soil scientist to look at the wetlands. Mr. Ross does not feel that they are on the property. Mr. Ross is very familiar with that area. The wetlands are right on the edge of the property.

Vice-Chair Crapo pointed out that whether they are on the property or not, there may be setback issues, depending on the size.

Mr. Megna commented that from the corner of the wetlands to his new structure is approximately 85' to 90'.

Chair Weathersby stated it would be nice to have the wetlands delineated so they could know where the buffer ended. With that said, the board is not really approving the deck, mudroom or garage. The board is addressing the setback for the expansion of the house. She commented it would be nice to have the whole thing done. She pointed out this could be continued if the board feels strongly.

Vice-Chair Crapo commented it is the second unknown. He is in favor of continuing. It may be that the wetland is so small there is no buffer setback; however, it could also prove that there is a setback needed, which could affect the septic. With those two unknowns, it seems to be premature.

Speaking to Mr. Megna, Member Hoyt asked for further clarification on the conversation with Alex Ross in regards to the wetlands boundary.

Mr. Megna explained that Mr. Ross did not feel it was going to affect what is proposed. He has been in this area and does not feel the size of the wetland is an issue. Mr. Ross based this on the fact that he has done a lot of work in this area of the past year.

Member Dibble asked Mr. Megna if there is any particular hardship if this is continued for a month.

Mr. Megna replied he would like to get the work done sooner rather than later; however, there is no real hardship. He stated that the issue is not the addition. The issue is the house itself. The building department will not let him get started until this is resolved. He would like to apply for a demo permit to get started on the second floor of the house.

Town Administrator Reed noted that the building inspector will not let the applicant do anything until the relief is granted. He will not even let him do a portion of the project.

Chair Weathersby stated that she would be more comfortable seeing the full picture. However, she is struggling with the fact that the relief that is being requested has nothing to do with the bedrooms, as they are not changing; the deck and garage do not need any relief.

Vice-Chair Crapo pointed out that relief is needed because it is an expansion of a non-conforming structure.

Chair Weathersby noted this is for vertical expansion.

Member Patten asked if they are mainly concerned about the possibility of needing a future variance for the septic. He shares Shawn's concern. He would rather see the whole picture and a septic plan. Is the risk that there will be a septic that won't fit within the property outside the buffer zone and a variance will be needed?



Vice-Chair Crapo explained the spirit behind why the board typically requires a septic plan before going forward is in case the only place a replacement septic can go is in the same geographical area where the building expansion is being proposed.

Member Patten asked if this would mainly be the applicant's risk. What happens if the board approves this, the applicant starts to move forward and then they can't obtain a septic design outside the building envelope?

Chair Weathersby explained the risk is the applicant will receive a building permit for his project, which includes the garage. The applicant may find out later that the septic won't fit or that it is in the wetland buffer or the garage is in the wetland buffer. She thinks the board would have more comfort in voting on this project if there was more information. She agrees with Shawn that a continuance to the August meeting is a good idea, so there is some idea of the wetland's delineation and more information on the septic.

Member Patten agreed. The board would not be essentially creating a hardship for a septic that may not fit in the future.

Vice-Chair Crapo noted it also protects the applicant. It seems there are too many moving pieces to move forward.

**Motion by Shawn Crapo to continue the application to the August meeting for more information about the size and location of the wetlands and information on a definite location for the replacement system for the septic. Seconded by Patricia Weathersby.**

**Roll Call: Rob Patten – Yes; Shawn Crapo – Yes; Charles Hoyt – Yes; Burt Dibble – Yes;**

**Patricia Weathersby – Yes**

**Motion passed.**

**Note: Charles Hoyt recused himself for the following applications and Gregg Mikolaities was seated.**

- 7. Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Blvd, Tax Map 23.1, Lot 28 requests a special exception from §190-5.1.C for two signs where one is allowed. Property is in the Business, Coastal Overlay Districts. Case # 23a-2020.**
- 8. Seacoast Apart-Hotels LLC for property owned and located at 741 Ocean Blvd, Tax Map 23.1, Lot 28 requests a variance from §190-5.1. A (2) for two 2-sided signs totaling 55 sq. ft where 16 sq. ft. is permitted. Property is in the Business, Coastal Overlay Districts. Case # 23b-2020.**

Chair Weathersby stated this applicant was before the board a month ago. The board denied his request for the signs. Before jurisdiction can be accepted on this application, the board needs to decide whether or not this application is materially different than the last application. She opened to Mr. Palardy concerning that issue.

**Doug Palardy, applicant,** stated that he believes the number of changes that have been made since his first submission would constitute enough for a new presentation. One of the biggest concerns with the last presentation was over light emission. He has all the lumens and calculations to show that the light that would be emanating from the sign is substantially less than what currently exists. In addition, there

have been modifications made that would reduce the light as well. There is no light on the bottom and the round logo is not lit. He thinks that was the biggest portion with not being able to describe the lumens and wattage that was coming from the LED. It seemed the size was not a big component in the denial, even though the size was reduced again in this application. While visually, looking at the sign in the application it looks similar, it has changed in size and the lighting component, which was the biggest question mark, has been altered significantly.

Vice-Chair Crapo noted that it was said the center logo would not be lit but the information for the proposal says it will not be internally illuminated.

Mr. Palardy explained that before the entire circle was going to be lit with a transparent plastic which would shine through. Now it is just a solid surface logo with lighting behind it. It is like a halo with an LED strip around it, where before the entire logo would be lit up. He thinks there is a difference between an internal lamination and a ridge illumination. The material used behind the logo circle is the same material that is used for the vacancy sign. It is the same LED stripping. He further explained that the circle with the logo is a raised solid surface. Before it was going to be raised and a see-through surface with the entire thing internally illuminated. Now, it has light behind it that would create a halo effect but it would not push out of the logo itself. It would create a ring around the logo.

Chair Weathersby asked how someone would be able to read the sign at night if it is just the ring that is lit up.

Mr. Palardy explained the lettering that is on the circle will be made of a reflective material. The logo portion will be seen. It will just not be emanating as much light as before. The biggest concern was light from this coming out and shining on neighbors. Basically, twenty-five percent that currently shines on the Pebble Cove sign is what this would now emanate. A quarter of the light is now being forced upon it.

Vice-Chair Crapo asked if this is being calculated by wattage.

Mr. Palardy replied wattage of the type of bulb to lumens. Currently, there are 2,000 lumens coming out of a 100-watt halogen bulb that is pushing up against this. The bulbs that are on the arrow are 90 lumens each. The LED stripping that would be on the vacancy sign and the halo is 460 lumens. He explained there are currently 2,000 lumens on each side that is coming out of the ground and shooting up at the sign. This is creating light pollution and is much stronger shining on what is there than what would be actually coming out of the sign. Whether it is 40 bulbs or not, the light is really the pressure that is coming out of it that would be reaching the neighbor's property. The light that would be coming out of this would no way near touch abutting property. Light will be seen no matter what. It is the brightness and what is projecting out of it. In his mind, this was the biggest question before that was a challenge to answer.

Chair Weathersby stated that was her biggest objection. She knows that others had serious concerns about the size of the sign. The board is going to continue to talk about the new sign proposal versus the one from last month. She would like to clarify some numbers on the measurements for the new sign. In one place it is saying 5.88' wide by 8.96' tall, which is 52.68sf. In another place it is saying 48.875sf. She asked which one is correct.

Mr. Palardy replied it is the smaller size. Because of the curvature of the sign, it gets smaller. It is not a full rectangle. He noted that he reduced the size which brought it down to the size of the Hoyt sign down

the street. He felt this was a precedent. Since this was discussed, he brought it down to be closer to how that sign exists.

Referring to the office sign, Vice-Chair Crapo stated that from the information he cannot even tell what is going to be on that sign now. He does not see there is much difference here.

Chair Weathersby stated she is struggling on whether this is different or not. She reviewed a chart she prepared of before and after for verification:

<u>1<sup>st</sup> sign</u>	<u>New Sign</u>	<u>Difference</u>
78" wide	69" wide	9" smaller in width
116' high	102" high	14" shorter in height
56 s.f.	49 s.f.	7 s.f. difference
14" depth	14" depth	Same
Illumination is different and the differences have been described.		

Mr. Palardy confirmed the numbers. He noted the entire marque at the bottom will not be internally lit. It was going to be lit in the last proposal; however, it is not going to be lit now.

Chair Weathersby noted the hours have also been changed.

Mr. Palardy explained that from 11 p.m. to 7 a.m. the sign will be dark.

Chair Weathersby asked if there are any other changes for the big sign.

Mr. Palardy replied the lighting behind the logo.

Referring to the small sign, Chair Weathersby clarified it is 3x4 before and now is 2x3; from 12sf to 6sf.

Mr. Palardy confirmed.

Chair Weathersby asked if there are any other changes.

Mr. Palardy pointed out that the brick base has also been removed to make it less bulky.

Chair Weathersby opened it up to Attorney Durbin in regards to whether the new application before the board is materially different than the first application.

**Attorney Derek Durbin, representing the abutters directly across the street,** stated everything is laid out in his letter. He was not aware of some of the illumination details that. The letter indicated that the illumination was the same as previously proposed. However, he received some materials just before the meeting from the applicant that he was able to review with his client. Clearly, that aspect has change, so that part of the letter is inaccurate. He believes there is a difference in agreement on how the height of the sign is viewed. The prior measurement was measured from the grade up; whereas, this one is measured from the letter board at the bottom up. He does not have much else to add.

Chair Weathersby opened it to the public in regards to the materially difference issue only.

**Judy Smith, 733 Ocean Blvd,** stated that she looked at the design and is supportive of the new design.

Referring to 190-5.1.D, Member Mikolaities stated illumination is allowed for a sign that conforms 16sf in the Business District. Speaking to Mr. Palardy, Member Mikolaities commented he does not understand all the dimensions. He asked how much square footage will be illuminated.

Mr. Palardy asked if only 16sf can be illuminated in the Business District. He thought 16sf was what was allowed in the Business District period.

Member Mikolaities clarified that a sign of 16sf is allowed and it can be lit with no moving, fluttering, blinking or flashing lights.

Referring to the circle in the sign, Mr. Palardy explained it would be tough to know the square footage that is being illuminated. His thought is that if the sign is approved for what the size is, it would be able to be lit.

Chair Weathersby pointed out that in looking at the proposed sign, the circle is half of it, which will be illuminated. It is clearly more than 16sf. She also pointed out that the arrow is illuminated and there are LED's for the vacancy/no vacancy sign. There will not be illumination on the marquee sign at the bottom.

Mr. Palardy confirmed.

Vice-Chair Crapo asked if they can consider this separately. The request is still a request for two signs. He does not see that as being materially different. Whether the marquee sign is different or not, is probably a separate vote.

Chair Weathersby stated it is these two signs versus those two signs. In her opinion, the board's vote last month did not foreclose an opportunity to never again have two signs on the property. The board voted and those two signs were not allowed. If the board feels these two signs are appropriate and meet the criteria, the board could vote to approve these signs, if they are materially different. She pointed out that the first hurdle is the issue of material difference.

Referring to the proposed sign mockup, Member Dibble pointed out that on the right side is the spine of the sign. He is trying to figure out the need for any lights along that territory. Presumably, the reason to light the sign is to draw attention to approaching traffic. It does not need any lights on the spine of the sign and that might reflect on the property across the street negatively. He asked the reasons for the lights.

Mr. Palardy explained this was done on the original sign that was there in the 1950's. He commented he is open to eliminating those lights if that was a concern.

In regards to the lumens, Member Dibble stated the last measurement that was going to be used was 3' off the ground at the edge of the property. He is not clear in his mind how many lumens are going to be leaving the edge of the property.

Mr. Palardy replied none would be leaving the property. Basically, the lightbulbs that are on there are equivalent to a 6-watt lightbulb. The LED stripping is equivalent to a 30-watt lightbulb. Being that the sign is centered on the property there is no physical way this new light would be casting upon the neighbor's property.

Chair Weathersby closed to the public at 9:23 p.m. She opened to the board to discuss whether or not the second proposal is materially different and has taken the concerns of the first proposal into account.

Member Patten stated he can only speak on what he has heard at this meeting. It sounds like there are a lot of changes and those are being made in the spirit of trying to accommodate the objections that were heard at the first meeting. He noted that he was not present for the first meeting.

Member Mikolaities stated he is struggling with this. He commented that he is hung up on the legal term "materially different".

Chair Weathersby explained it has to be materially different in nature and degree from the other application. Fundamental issues have been identified and those are to be addressed in the second application. It's a case by case fact finding mission. She commented it is hard that it is a sign and not a building project where certain things can be tweaked; such as, the size and location. Each board member has to decide whether the second proposal is materially different in nature and degree from its predecessor.

Member Mikolaities stated he was trying to understand the illumination part. He is struggling with how much illumination there was before versus now.

Speaking to Mr. Palardy, Chair Weathersby asked if the entire big sign was illuminated with the last proposal.

Mr. Palardy confirmed. He explained the circle and the marquee portion were all internally illuminated before.

Chair Weathersby clarified that now the circle is just a halo (illuminated ring) and the marquee is not illuminated.

Mr. Palardy confirmed.

Vice-Chair Crapo commented that before some of the calculations included the brick base, which was basically a pedestal for the sign. He does not consider the base a part of the sign. The base is being removed now and is being taken out of some of the calculations. He does not think the brick part matters, whether it is there or not, as it is not really signage. Referring to the drawing, he pointed out that the colored stripes were not lit in the last one. It is tough to determine if this is materially different.

Referring to the big sign, Member Dibble stated he believes the lighting is less and the size is smaller. The question is whether it is different than what was previously proposed. He thinks what has been proposed here by the tape measure is different.

Chair Weathersby stated she thinks the small sign is materially different. It is half the size. She has no issue with the small sign being materially different; however, it is wrapped up into the same application. The big sign is a good size sign and is only 7s.f. smaller than the first one. She does not really think the size is materially different. She thinks the illumination is materially different. Fairly large sections are no longer being illuminated. Also, the hours of illumination have changed and there has been more clarification on the illumination. She is trying to decide whether the changes in the illumination are

enough to find this to be materially different. She thinks that with the changes in the illumination, with the tiny reduction in the size of the sign and the half reduction in size of the smaller sign, it pushes her into the fifty-one percent camp that the application is materially different.

Vice-Chair Crapo pointed out that the sign only came down a few square feet. It is still double from what is allowed. They are allowed 16s.f. and this is 6x9. He commented that it could be shortened, and still have all the same components, and be a smaller sign without taking away the utility of it. He does not think it is materially different by shaving it just 15%.

Member Mikolaities stated he is struggling with the material difference. He wishes there was some information on how much of the sign is illuminated, percentage wise, versus what it was before. He agrees with Vice-Chair Crapo that going from 68s.f. to 55s.f. is not going to push him over the line. He heard the neighbors and the board. Lighting was a big issue. Member Mikolaities commented he does not have enough information on the lighting in front of him. He does not know how this lighting compares to the first sign. He reiterated that he does not have enough information to say this is materially different. His vote right now would be it is not materially different.

Vice-Chair Crapo stated it needs to be smaller for him to consider it materially different; more than a 10 to 15% reduction in size.

Speaking to Member Patten, Chair Weathersby commented that he read the minutes from the last meeting and heard about the differences. She asked if he would be voting or abstaining.

Member Patten stated that he initially did not have much of a struggle seeing the difference; however, he might not have a full picture of what was reviewed previously. He may just abstain.

Member Dibble asked how many members are needed to vote.

Chair Weathersby explained if four members are voting, there needs to be three people in the affirmative to move forward.

**Motion by Patricia Weathersby that the application before the board on the two signs is materially different and the board should accept jurisdiction.**

**Failed for lack of a second.**

**Motion by Shawn Crapo that the application is not materially different and the board should not accept jurisdiction. Seconded by Gregg Mikolaities.**

**Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Burt Dibble – No; Rob Patten – Abstain; Patricia Weathersby – No**

**Vote stands: 2 to 2 - tie**

Vice-Chair Crapo explained there has to be an affirmative vote that it is materially different in order to move forward. If the application does not achieve a positive vote on material difference then it cannot move forward.

Chair Weathersby noted there is a lack of a majority who are willing to find that this is a materially different application. The board will not be accepting jurisdiction over the special exception or variance request that Seacoast Apart-Hotels has submitted.

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

- **Star Island**

Planning Administrator Reed noted that Star Island is going to be submitting an application for a variance. The Star Island Management Team had questioned the public notice sign that is posted on properties going before the BOA and asked if the sign requirement could be waived. They also asked if a site review could be scheduled with the board members and how many would be attending.

The board discussed whether or not the posting of the sign should be waived.

After discussion, there was a majority of the board who agreed that no sign is necessary for the Star Island application. They also agreed that Planning Administrator Reed should coordinate a site walk the week of July 27<sup>th</sup> and invite the Conservation Commission.

- **Leave from the Board – Member Patten**

Member Patten announced that he will be leaving in October on a sailing excursion with his family for eight or nine months. He asked the board how they would like to handle his absence as a full board member. Upon his return, he would like to continue with the board, even if it is in an alternate position.

Chair Weathersby noted that she would like to speak with Attorney Donovan about the extended leave from the board. She also noted that Gregg Mikolaities has agreed to step in to fill the open position over those nine months. She will report back to Member Patten and the board once she speaks with Attorney Donovan.

- **Corner lot discussion**

Vice-Chair Crapo stated that if the board had gotten into the administrative appeal, they would have addressed whether a corner lot takes the average depths of places around a corner or whether it would be two averages of one on one street and one on the other. He thinks the building department may potentially need guidance on this moving forward from the board or Attorney Donovan. He does not agree it is the average of two places around the corner.

Chair Weathersby pointed out that Attorney Phoenix was trying to use the property across the street from East Atlantic as adjacent property, instead of taking the one on Kenphil and the one on Old Beach (the lots that touched the back yard), which is how the building inspector did it.

Vice-Chair Crapo stated he thought it should be the two lots along East Atlantic for one average, even though one of them was on the other side of Kenphil.

Member Dibble commented this is how across the road gets into it. It seems like this is a significant piece of zoning minutia and would require planning board consideration. It comes before the BOA so infrequently that the board would do well to develop a little more history about it. He commented that he is somewhat of a fan of enjoying the judgement of the building department.

Vice-Chair Crapo noted it was already said the properties on either side. There is frontage on East Atlantic and one on Kenphil. He thinks the setback on East Atlantic should be the setback of the average of the two properties on either side of this regardless if Kenphil breaks that up.

Chair Weathersby read “the average of the depths of the front yards on lots next thereto on either side”. The lots have to be next to it on either side of the property. In this case, the lot on the corner of Old Beach and East Atlantic would be used. The question is whether the one on Kenphil is used or the one across the street on East Atlantic. She commented that better clarification from the planning board is probably needed. To her, it is the properties that abut the back yard; the one on Kenphil/East Atlantic and the one on East Atlantic/Old Beach. She thinks that is the correct determination.

Vice-Chair Crapo commented he thinks it should be the lots on Ocean Blvd/East Atlantic and Old Beach/East Atlantic for that side front setback.

Member Dibble this would make sense because for this house it has a front door and it is pretty clear which street the front of the house sits on. The setback is trying to be determined for the fronted street. The fact that the property has two fronts is distracting.

Chair Weathersby agreed to get further clarification.

## **ADJOURNMENT**

**Motion by Burt Dibble to adjourn at 10:08 p.m. Seconded by Patricia Weathersby.**

**Roll Call: Rob Patten – Yes; Burt Dibble – Yes; Charles Hoyt – Yes; Shawn Crapo – Yes  
Patricia Weathersby – Yes**

Respectfully Submitted,  
Dyana F. Ledger



# BOARD OF ADJUSTMENT -Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** Gary & Judith Terhune

**Property:** 7 East Atlantic Ave, Tax Map 12, Lot 40  
Property is in the General and Coastal Overlay Districts and SFHA, Zone AO-1

**Application case:** Case #21a-2020 and 21b-2020

**Date of decision:** July 1, 2020

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

- §190-6.3B to demolish an existing non-conforming home and replace it with new;
- §190-2.2F/§-190-2.4C (3) for a house with a front yard setback of 16.5' (deck) and 20.7' (house); and
- §190-3.4 D for house height of 31.93'.

The Applicants withdrew their request for an Administrative Appeal regarding front setback calculations.



Patricia Weathersby, Chair

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

# BOARD OF ADJUSTMENT -Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** Shannon Murphy

**Property:** 17 Central Road, Tax Map 12, Lot 40  
Property is in the Single Residence District

**Application case:** Case # 20-2020

**Date of decision:** July 1, 2020

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

- §190-6.3A for expansion of a non-conforming structure; and
- §190--2.3. C.3 for dormers 19.2 +/- from the front 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.

# BOARD OF ADJUSTMENT -Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:**

Pat Burns

**Property:**

46 Wallis Road, Tax Map 17.3, Lot 9  
Property is in the General Residence District

**Application case:**

Case # 19-2020

**Date of decision:**

July 1, 2020

**Decision:**

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

- §190-6.3A for expansion of a non-conforming structure; and
- §190-2.4, C.2 for conversion of a deck into a 3-season porch 12.3' 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.

# BOARD OF ADJUSTMENT -Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** M.A.M. L Enterprises, LLC

**Property:** 378 Wallis Road, Tax Map 18, Lot 83  
Property is in the Single Residence District

**Application case:** Case # 22-2020

**Date of decision:** July 1, 2020

**Decision:** The Board voted 5-0 to continue the Application to the August 5, 2020 meeting in order to obtain more information about the location of the proposed septic system and of any wetlands or wetlands buffer on the property.



**Patricia Weathersby, Chair**

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

# BOARD OF ADJUSTMENT -Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** 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:** July 1, 2020

**Decision:** The Board voted 4-0-1 to reconsider its June 17, 2020 decision that a Special Exception pursuant to §190-3.1. G (2) for a driveway in the wetlands buffer was not required and, upon reconsideration, to hear the applicant's request for such special exception at its next meeting.



Patricia Weathersby, Chair

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

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** Seacoast Apart-Hotels, LLC

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

**Application case:** Case # 23a-2020 and 23b-2020

**Date of decision:** July 1, 2020

**Decision:** The Board 2-2-1 that the applications were for a use that was not materially different in nature and degree from Case # 12-2020 denied by the Board on June 3, 2020 and therefore the Board could not accept jurisdiction over the new applications.



**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.