

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

Wednesday, August 5, 2020

7:00 p.m. – via ZOOM

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Rob Patten, Charles Hoyt, and Alternates Greg Mikolaities, Patrick Driscoll and Chris Piela

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

I. CALL TO ORDER

Chair Weathersby called the meeting to order at 7:05 p.m. via Zoom teleconferencing.

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 #857-5655 3259 Password: 984321

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. Shawn Crapo
3. Charles Hoyt
4. Burt Dibble
5. Chris Piela
6. Patricia Weathersby
7. Patrick Driscoll
8. Rob Patten

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

Continuances:

Motion by Burt Dibble to continue the applications of Bluestone Properties of Rye, LLC and Seacoast Apart-Hotels, LLC to the September 2, 2020 ZBA Meeting. Seconded by Shawn Crapo.

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

Motion passed

II. BUSINESS

- **Approval of June 17, 2020 and July 1, 2020 Meeting Minutes**

Motion by Rob Patten to approve the meeting minutes of June 17, 2020 as amended.

Seconded by Shawn Crapo.

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

Motion passed

Motion by Burt Dibble to approve the meeting minutes of July 1, 2020 as presented.

Seconded by Charles Hoyt.

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

Motion passed

III. APPLICATIONS

Note: Shawn Crapo and Charles Hoyt were unseated. Patrick Driscoll and Gregg Mikolaities were seated.

Sitting for the following application: Patricia Weathersby, Burt Dibble, Rob Patten, Patrick Driscoll, and Gregg Mikolaities.

- 1. 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 Coastal Overlay Districts. Case #16a-2020.**

Chair Weathersby explained that she made a request for rehearing on behalf of the Board to address this item. The applicant thought that they need a special exception for the driveway and she did not, so it wasn't addressed. Chair Weathersby noted that she was incorrect and they do need the special exception. She asked the members who were sitting if they needed any more information or would like to review the application.

The Board did not have any questions or concerns.

Frank Quinn, representing the applicant, stated the he submitted a brief narrative from Joe Noel, Certified Wetland Scientist, indicating that the special exception is necessary. The location of the driveway off Stoneridge is the most environmentally friendly location for the driveway. Mr. Noel's narrative concludes by saying; "I believe the driveway as proposed will not directly impact wetlands and will be the least detrimental".

Chair Weathersby stated the criteria for putting a driveway in the wetland buffer is that the Board needs to find that due to existing conditions no alternative route is feasible, in addition to meeting the other criteria for a special exception.

Chair Weathersby polled the Board:

- 1) Due to existing conditions, no alternative route is feasible.**

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

- 2) The driveway through the buffer is neither injurious or detrimental to the neighborhood.**

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

- 3) **Is it in harmony with the general purposes and intent of the zoning ordinance and is in accordance with general and specific rules contained within the zoning ordinance?**

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

Motion by Burt Dibble to approve the special exception for James Broom for property located at 80 Sagamore Road. Seconded by Rob Patten.

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

Motion passed

Note: Gregg Mikolaities and Patrick Driscoll were unseated and Shawn Crapo and Charles Hoyt were re-seated.

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

Chair Weathersby noted that the Board had asked for the applicant to come back with more information about the wetlands and the location of the septic system, so the project could be fully understood.

Mike Megna, applicant, explained that at the last meeting there was a question on where the new septic would be located and if it would actually fit on the property. There was also a question on the wetland delineation and how that would affect the proposed addition. He pointed out that he asked Alex Ross to be present to answer any questions the Board may have. A new site plan has been submitted showing the location of the septic. There is also a letter from the soil scientist pertaining to the location of the wetland.

Chair Weathersby commented that she is not seeing the letter in the Board's packet.

Alex Ross, Ross Engineering, confirmed that he emailed the letter but will summarize it for the Board. He continued that they walked the site with soil scientist Marc Jacobs. It was Mr. Jacobs conclusion that there were no wetlands on this parcel. Test pits were also completed, which were witnessed by Dennis Plante. The test pits passed and an acceptable location for the septic was determined.

Vice-Chair Crapo commented there may be no wetlands on the property, but there are wetlands just off the property. He asked if the size of the wetlands are known and if they warrant a buffer.

Mr. Ross replied he is doing work on that. Survey work was completed on the abutting parcel, Lot 82, and some wetlands were found. Those wetlands are only poorly drained wetlands and not very poorly drained. He noted that they will make sure the State setback is met, which is 50'. The size of the wetlands has to also be looked at in regards to the town setback. He is confident the septic will work where it is shown on the plan.

Vice-Chair Crapo explained that the Board was trying to establish if everything that was being proposed could be approved. If the septic is going to be inside a wetland buffer, the Board may not be able to give full approval.

Mr. Ross replied the poorly drained wetland requires a 50' setback. Where the septic is located is well beyond the 50'.

Chair Weathersby noted the Town of Rye requires a 75' setback from wetlands, if these are jurisdictional wetlands. She asked the distance from the wetlands to the proposed septic system.

Mr. Ross replied that this is just a conceptual plan; however, right now, it is just over 80'. The Town's regulation would be met, as well.

Member Hoyt asked if the septic could be moved closer to the house, if needed.

Mr. Ross replied there is a little wiggle room. There is setback requirement to the foundation, so it can shift a little bit. This will be looked at during the final design. He is confident that they have enough room to meet the state and town regulations.

Chair Weathersby summarized that they know more about the septic. The site plan shows the septic and the wetlands off the property. There is testimony that the leachfield edge is 80' or so, more than 75' from the wetlands. She asked the applicant if there is anything he would like to add.

Mr. Megna pointed out that there was discussion in the original presentation of what is actually being done and why, in terms of the other variances being requested. He noted that he did not intend to change the structure. However, when he opened up the walls to do the construction, the framing of the roof was very poor. That required the roof to basically be rebuilt. The footprint is not being changed. Basically, the framing is being upgraded. He pointed out the front is 36.5' from the road. The house will not be any closer to the road, he is just changing how the building is framed.

Chair Weathersby asked the full board members if there was anyone who was not present for this request last month.

No comments were heard. The members did not have further questions for the applicant.

Chair Weathersby opened to the public for comments in regards to the application.

No comments or questions were heard. The public hearing was closed at 7:40 p.m. and discussion was opened to the Board.

Member Hoyt stated that he thinks the project is in keeping with the neighborhood and it is a modest ask. The applicant has done a good job of improving the quality of the home, both in square footage and making it a more useable house. He does not have any problems with the proposal.

Member Patten stated this is a project where there are some special circumstances. Even though there are some questions outstanding about the exactness of the septic, he is comfortable with them moving forward with the permitting process independently. He is in favor.

Member Dibble commented he assumes there is going to be an as-built. The issue about the footage to the wetland is an open question. However, he is comfortable with what the soil scientist has verified. Therefore, he does not have a problem.

Vice-Chair Crapo stated he would feel more comfortable with a condition regarding septic approval and wetland buffer setback, before the building permit is issued, which is probably going to be required anyways.

Note: *Due to technical difficulties, Chair Weathersby was dropped from the video conferencing.*

Vice-Chair Crapo slid into the chair seat to keep the meeting moving forward. He stated that he would favor the condition. He asked the other members to give their thoughts on whether or not they would favor a condition. Possible wording for a condition may be; "Approval subject to state and town septic approval and acceptable demonstration to the building inspector that a wetlands setback variance is not required".

Speaking to Vice-Chair Crapo, Member Patten asked if he is proposing this condition because he is not sure the permitting process for the septic will take care of it. He asked what his concern may be.

Vice-Chair Crapo replied his concern is that the corner of the wetlands, which creeps up to the property sideline, looks fairly close to the septic. It could be encroaching on the 75' buffer. The regulations depend on the size of the wetland and they are still trying to discern that. If it is a tiny wetland, it might not require a setback, so the point is moot. If it is a larger wetland, it might be needed. This is not the final location of the septic. He doesn't see how it can hurt. If they don't satisfy it, they will not get the variances.

Member Patten stated if they needed a variance because it came to 70' and not 75', he would be inclined to be in favor of that. If they have to come back, he does not see that as being an obstacle to moving forward without a condition.

Note: *Chair Weathersby rejoined the meeting via teleconferencing.*

Vice-Chair Crapo updated Chair Weathersby on the condition being proposed.

Chair Weathersby stated she does not feel the condition is necessary. The applicant has demonstrated that they can get a septic in there more than 75' from the buffer. The engineer and soil scientist has looked at this. She reiterated that she does think it is necessary. She continued that she is in favor of the project. It is a reasonable project and she understands why the building needs to be reframed. The additions that are being made will give more relief and makes sense in the use of the house. She commented that it sounds like everyone is in favor of the project generally. She polled the Board on whether or not there should be a condition that the approval is contingent upon state and town approval of the septic system and that no wetlands relief is necessary.

Poll: Charles Hoyt – No; Rob Patten – No; Burt Dibble – No; Patricia Weathersby – No

Chair Weathersby noted the condition will not be added. She called for a vote on variances to §190-6.3.A and §190-2.3.C(2) and (3):

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

Charles Hoyt – 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?

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

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

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

7) The purposed use is a reasonable one?

Charles Hoyt – 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?

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

Motion by Burt Dibble to grant the variances to Maml Enterprises LLC for property owned and located at 378 Wallis Road to Sections 190-6.3.A, 190-2.3.C(2) and 190-2.3.C(3), as advertised. Seconded by Charles Hoyt.

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

Motion passed

- 3. Kevin Roy of KRB Kitchen & Bath Design Center located at 257 Portsmouth Ave, Stratham, NH for Sheryl & Jack Barnes of 12 Elm Lane, Leetsdale, PA for property owned and located at 46 Pollock Drive, Tax map 23.1, Lot 20, requests variances from §190-6.3.A for expansion of a non-conforming structure and from §190-2.4.C(3) for a roof apron 23' from the front property boundary where 30' is required. Property is in the General Residence and Coastal Overlay District. Case #24-2020.**

Kevin Roy, representing the applicants, presented to the Board. He explained that what they are looking to do is both aesthetic and functional. It is basically a 3' roof overhang over the overhead doors on the front of the garage. There are some water issues coming in through the garage doors, which they are hoping to resolve. He noted that he had a drainage plan made that shows the project does not affect the property. This is a double lot that was merged into one. The elevation shows what they are looking to put on the front of the house.

Chair Weathersby noted that the Board has the applicant's written answers to the criteria questions.

Mr. Roy asked if the Board has the plans, as well.

Chair Weathersby replied that they have a full packet. She asked the members if they have any questions about the project.

Vice-Chair Crapo asked if they are renovating other things in the house with the overhang being the only new expansion of the structure.

Mr. Roy explained they received a building permit for the new addition, which has been completed. The addition was within the setback. The overhang portion encroaches within the average of the two neighbors. It is just the overhang that needs relief.

Chair Weathersby opened to the public in regards to the application.

Sandra Dombrowski, 39 Pollock Drive, spoke in support of the application.

Chair Weathersby stated that she spoke with **John Murtagh, (33 Pollock Drive).** He said that she could tell the Board that he is in support of the project.

Member Dibble asked if there was any question about water coming off this roof extension going down the driveway or becoming an issue.

Mr. Roy noted that he had a drainage plan prepared by Berry Surveying and Engineering, as part of the addition approval. The conclusion of the report was that the drainage that was being done for the addition in the original permit could more than handle the roof apron over the garage doors as well.

Member Dibble asked if the driveway will be pervious or impervious.

Mr. Roy replied the existing driveway is impervious. It is an asphalt driveway. He pointed out that the drainage plan includes a stone swale along the side of the driveway.

Chair Weathersby asked if this is something that will be done.

Mr. Roy replied yes. This is something that is part of the original building permit.

The Board had no further questions for the applicant. The public hearing was closed at 8:04 p.m.

The Board had no issues or concerns with the application.

Chair Weathersby called for a vote on the relief request to §190-6.3.A and 190-2.4.C:

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

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

Charles Hoyt – 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?

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

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

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

7) The proposed use is a reasonable one?

Charles Hoyt – 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?

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

Motion by Burt Dibble to approve the application of Kevin Roy on behalf of Sheryl and Jack Barnes, for property owned and located at 46 Pollock Drive, for variances from Section 190-6.3.A and 190-2.4.C(3) as advertised. Seconded by Charles Hoyt.

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

Note: Patricia Weathersby recused herself from the following application. Patrick Driscoll was seated. Vice-Chair Crapo stepped in as acting chair for the application.

Sitting: Shawn Crapo, Burt Dibble, Rob Patten, Charles Hoyt and Patrick Driscoll

- 4. Janvrin Family Trust, Melissa & Kevin Janvrin Trustees of 22 Raymond Drive, Seabrook, NH, for property owned and located at 112 Perkins Road, request a variance from §190-3.1.H(2)(a) for a retaining wall 5.9' from the edge of the wetlands where 75' is required. Property is in the General Residence District and Coastal Overlay District. Case #25-2020.**

Kevin Janvrin, applicant, stated that he came before the Board last year and received permission to build home on this property. He is not looking to build a retaining wall on the west side of the property. He has met with the Conservation Commission and they are in favor. They felt it would help protect the wetlands. He noted that there is a steep embankment in this area. He still has to put in the 24" of crushed stone for the stormwater mitigation, per the plan. He also spoke with the Fire Chief and asked for his input. If there was ever a fire on the east side of the building, access on the west side would be very difficult with getting a ground ladder on that side. The Conservation Commission liked the fact that a wall is also like a true delineation to the wetlands. It would also minimize any runoff into that wetland area. He noted that he has permission from RCC to plant blueberry bushes just on the other side of the wall. He will also be planting a couple of small native trees between the wall and the house on that west side. He explained they will not be gaining any yard, as it was already grassed in area. This is being done to prevent erosion and to allow for emergency access on that side of the house.

Mr. Janvrin reviewed the criteria for granting the variances:

- The retaining wall will help prevent water from running into the wetland, which will help preserve the wetlands. Some homes in the neighborhood have retaining walls.
- The new retaining wall will help preserve the wetland by minimizing water runoff. The lot is not being expanded. The new wall will be built within what was existing yard, within 1' of the silt sock.
- Substantial justice - Access for emergency personnel is hindered by the slope of the property. The wall would also protect the wetlands and act as a true delineation of the wetlands.
- Value of surrounding homes are not diminished – Some homes have retaining walls and it will not affect any of the surrounding homes.
- Special conditions – This is a small lot of 14,885sf. Over the years the wetlands have expanded on the west side of the property, making it difficult to stay out of the wetland buffer.
- The new retaining wall won't disrupt or diminish the abutting properties. A new wall will improve the look of the property, as well as help preserve the wetlands. Due to the width that is available and the need for access for emergency personnel, the retaining wall has to be built within the buffer. It will also improve the stormwater management.
- Reasonable - The length of the wall is being minimized to accomplish the task of erosion and water runoff. It is being built for practical reasons, as discussed. Not having the wall would allow more runoff into the wetland and would be hard to keep the property from eroding over the years. It would make it more challenging for emergency personnel, in case of a fire or rescue situation.

Acting Chair Crapo asked which properties in the neighborhood have retaining walls.

Mr. Janvrin replied there is one across the street and one on the Hollis property. There is also one on the property on the corner of Maple and Perkins.

Acting Chair Crapo asked if there are any up against the wetlands.

Mr. Janvrin explained that the only one up against the wetlands is on Maple.

Acting Chair Crapo commented that during the original application, he remembers the Board being convinced that everything was going to fit fine on the lot. Why is this a new development now? The house is kind of big on that lot and the Board commented that then. This is now being proven by saying that things cannot fit.

Mr. Janvrin replied that during excavation he did not see anything on the west side of the property. There was an existing bank on that side. Had he foreseen the need; he would have included the retaining wall in his original permit.

Acting Chair Crapo asked if engineering work was done with the original plan. That is why he is wondering why the proposal did not include a structure like this if it is really needed. He believes the initial presentation confirmed there were some wetland consultations and there were

different engineering drawings on how the house could fit. The house needed setback relief from the wetlands to begin with. He is trying to find the disconnect between needing this wall now and why it wouldn't have been needed to satisfy a house in this location in the first place.

Mr. Janvrin replied he believes that was just an oversight. He received variances to build the house 15' off the wetlands and it is actually 18.6' off the wetlands.

Planning Administrator Reed read from the Notice of Decision, dated October 2, 2019:

- Variance received from 603.2 to tear down an existing house and replace it with new.
- Section 204.3B for a generator 12' and an a/c unit 15.5' from the east side boundary.
- Section 204.3A for a pervious patio 23.4' from the rear boundary.
- Section 301.8 B(1) and (7) for a house 15' from the wetlands.

Acting Chair Crapo asked if the house is in the Coastal Overlay.

Planning Administrator Reed replied it is not.

Member Dibble asked if it was said that there was a stump dump that was on the back corner that was not visible at the time, which change the terrain and the territory.

Mr. Janvrin confirmed.

Member Dibble stated that it looks to him like there is a seasonal brook that drains under the roadway, which starts up between the two lots above. It seems to end right in the backyard of the house.

Acting Chair Crapo stated that pretty much the whole neighborhood across the street and up towards town hall drains through and ends up in Eel Pond, which pretty much starts in the back of this house.

Member Dibble commented that by virtue of putting in the knee wall, it levels the property above the wall and below the wall. It adds an opportunity for water infiltration, which otherwise would be sliding down a sloping grade directly into the wetlands. It appears the wall is a benefit. The Conservation Commission did not say anything that would contradict that view.

Acting Chair Crapo stated he has in mind a stipulation that no vehicles park on the plateau created by the retaining wall. The original parking was planned for out in front or in the garage. He asked Mr. Janvrin if he would be agreeable to that kind of a stipulation.

Mr. Janvrin agreed.

Acting Chair Crapo commented that emergency vehicles would be a different situation. He is just trying to avoid having extra gas and runoff from the vehicles running into the wetland sensitive area.

Mr. Janvrin reiterated that the Conservation Commission liked the idea of a few dwarf trees on that side. The stormwater mitigation is 24" off that. It is only going to allow 3' or 4' between the wall. There will absolutely be no parking on that side.

Referring to a picture in the packets, Member Hoyt asked if that is the size and style of block that is proposed to be used for the retaining wall.

Mr. Janvrin confirmed.

Member Hoyt asked the size of the terra wall blocks.

Mr. Janvrin explained they come in different sizes. They come in either 1' or 2' height and 2' or 4' long.

Member Hoyt asked if it is an engineered wall, so it can be guaranteed there will be no failure to the wall.

Mr. Janvrin commented they are going up by two courses. It is going up about 3.5'.

Member Hoyt commented that the blocks are relatively large.

Mr. Janvrin replied they are 18' long and either 12" or 24" tall and they are interlocking.

Member Hoyt asked if there will be a crushed stone base going down about 18".

Mr. Janvrin confirmed.

Hearing no further questions from the Board, Acting Chair Crapo opened to the public.

Acting Chair Crapo read a comment received through chat from **Roberta Murray**; **"We are opposed to this variance. We are direct abutters. The house has been permitted to be built too close to the wetlands. We are experiencing water table levels higher, especially during a drought."** Acting Chair Crapo noted that the Board has received her letter also.

Mr. Janvrin stated he wants to preserve the woods. This will help preserve those woods. He certainly does not want to encroach on anything.

Planning Administrator Reed noted that Roberta Murray's last chat message stated; **"Buffers are in place for a reason"**.

Hearing no further comments from the public, the public hearing was closed at 8:29 p.m.

Referring to the Section 190-3.1.H(2)(a) and (g), Acting Chair Crapo asked if this gives them the relief to do the digging for the footing for the wall. He asked other board members if they would like to speak, while Kim Reed is researching the codes.

Member Hoyt stated the direction of his questioning was towards the crushed stone base that is needed for such a large retaining wall being in the wetlands. Digging down that far into the wetland soil, which is probably poorly drained soil or very poorly drained soil, water will come. He questions a wall so close to the wetlands. That would be his only concern about this application. He thinks the ability to put in the wall would benefit the property and he does not have a problem with that. It is being built in the wetlands, or very close to it, which is his concern.

Speaking to Member Hoyt, Member Patten asked if this is a concern about the viability of the construction long term for that property. Is this an isolated concern of the construction integrity of that wall?

Member Hoyt confirmed.

Acting Chair Crapo commented he understands what Member Hoyt is getting at. Those walls are not light. The surcharge is what the wall holds back; the land behind it. All of that is going to put a lot of pressure on what is already a soggy base. The wetlands have to be disturbed quite a bit to go down to get a firm enough base, so the wall can stand the test of time. It is not a typical retaining wall. The walls across the street that are referred to are up on high ground and are not in the wetland. The other property mentioned on Maple was the subject of years of litigation and failed attempts to build a stone wall properly. Finally, a builder came in and worked with the building department, and with the wetland restrictions, to get a building on the property. That property set a lot of wetland precedent and changes to the zoning in this town.

Member Hoyt commented he is not so much against the project. He does not have to much opposition in theory to the wall. He just knows how a proper wall needs to be built. There needs to be a crushed stone base that goes down about 18" to 2'. There will also need to be stone rubble on the back of the wall in order to give it structural abilities, so the pressure of the soil don't push the rock wall over.

Member Dibble stated there was testimony that the wall was engineered.

Member Hoyt pointed out that he did not see a cross section or engineering approvals.

Acting Chair Crapo stated that walls of certain heights, in certain locations, have to be signed-off, approved and designed by engineers. At 3.5' tall, he does not know if this qualifies as such, other than having the building inspector give approval of the plans. If it was a commercial

property there would be a ton of drawings with cross sections. For a residential wall, he is not certain what the building inspector would approve.

Member Hoyt commented that he designs walls that are 3' tall and they have to follow stringent specifications. He just did not see them in this application. He would not want this wall to start failing in three or four years. The wetlands would have to be disturbed again for it to be fixed.

Acting Chair Crapo stated these blocks are typically more significant than decorative retaining walls or some that are put around driveways that are only 12" deep. These blocks are holding the whole weight of the house and settlement occurs. It's a very big house on a tiny lot next to the wetlands. It is now being said the house isn't viable without this retaining wall. Yet, a few months ago, it was viable without the retaining wall. That is what he is wrestling with. The disapproval of this leaves them where? With an unsafe house or just a sloping yard? He noted that Section 2A is the surface alteration by the addition of fill, excavation and dredging. That covers putting the base in, as well as the structure.

The public hearing was opened for Member Dibble to ask the applicant a question.

Member Dibble asked the applicant who did the engineering on the project and whether it is a stamped certified plan.

Mr. Janvrin replied that Edwards Surveying worked with Stone Terra Wall Systems. They said the two courses would be fine. It is not holding the house back. The house is on firm ground and the wall is being built on uplands, not wetlands. Stone Terra did the engineering on the two courses.

Acting Chair Crapo asked what the peril would be to the property if the variance is not received for the wall.

Mr. Janvrin stated that for emergency purposes, if there was ever a fire on the west side, it would be very difficult for the fire fighters to gain access on that side. He thinks this is a peril. He continued that he thinks over the years the property will continue to erode. He commented that he would not be opposed if the Board wanted a different type of wall system. If the Board would rather see smaller blocks, they make retaining wall blocks that are a little smaller that are 18" wide and a foot deep. When speaking with the engineers, he feels the Terra System is most appropriate for the project. The system that is being proposed is the least intrusive. (He explained how the wall would be built.)

Acting Chair Crapo asked if the intention is to use the 2' tall blocks for two courses. Typically, a portion of the first course has to be buried in construction. He pointed out that the Board does not have a cut sheet showing any of that engineering work. Usually a wall like this will have a degree of slant and/or setback to it, so from a physic standpoint, it is not straight up vertical and subject to falling over.

Mr. Janvrin stated that he builds walls for a living. A lot of times, there will be a canter to the wall and it will lean backwards. That is generally for larger walls. With this wall, there will be a slight canter back towards the house.

Acting Chair Crapo clarified this does not have geofabric.

Mr. Janvrin replied it does not have geofabric. He commented that if he went with a smaller retaining wall block, he would go with the geofabric.

Acting Chair Crapo stated the concern is 5.9' from the edge of the wetlands, there will be a fairly significant structure that will be holding back a fair amount of water runoff, pressure and surcharge. The concern is whether it will fail into the wetlands. Over the years, the wetlands will continue to grow. He wants to be sure they are not going to be putting in something needing maintenance or replacement prematurely.

Hearing no further questions, the public hearing was reclosed at 8:44 p.m.

Speaking to Member Hoyt, Member Dibble stated that he talked about some larger riprap behind the wall. If there is significant riprap behind the wall and three-quarter stone underneath, does it relieve the water pressure behind it?

Member Hoyt replied it does. He commented it is not riprap. It is more like larger stone to give it structural stability from the back. It disperses the pressure of the earth it is holding back. Member Hoyt stated that in listening to the applicant, he feels better about what he is building. He answered the questions and took care of the concern.

Member Patten stated there are unforeseen circumstances that can come up when a house is under construction. In some cases, he thinks that can happen intentionally. However, he does not see this as being that kind of circumstance. It appears this is something that came up as a concern later in the game. So, he does not have a problem with them coming back to the Board. Member Patten continued he is not 100% sure about the engineering of the wall. However, if anyone had the greatest concern it would be the homeowner. They are certainly investing a fair amount of money to build this. He thinks it would be their greatest concern that this is built in a way so they do not have to go back in, never mind disturbing the soil again in that sensitive area. To reconstruct the wall, after it has been built, would be very expensive. Without any more knowledge of how it is engineered, he would defer to the people building it and trust they will build it in a way that is strong. Overall, he thinks it improves the separation between the yard and the wetlands. It looks like it is going to allow plenty of drainage. If there is a safety concern for the fire department to come into the property without this, that is as good a reason as any to be in favor.

Acting Chair Crapo reopened the public hearing to ask the applicant a question.

Referring to the proposed retaining wall survey and design, Acting Chair Crapo stated it shows that it goes off on an angle in the rear. He asked if it is just going to start at the front of the house on the Perkins Road side. Will it have some sort of curve or be straight? He asked how the grade up to both ends will be adjusted.

Mr. Janvrin explained it starts in the front with one block. As the grade drops off, it drops down to the second block. At the other end, it steps up to one block and the grade carries off. It starts with one block and as the grade gets deeper, it goes to two courses and then it steps back up on the other end. He commented it will be tapered at both ends.

The public hearing was reclosed at 8:49 p.m.

Member Driscoll stated it is an interesting case and he is trying to tie it back to the criteria. He understands what the abutter says. In looking at the lot and the information as to how during a drought it is adding to higher water table levels, it seems there might be some other factors that might be contributing to that. He looks at multiplying that. If all the neighbors put in walls would it change the look or diminish the surrounding properties? He pointed out that nothing there was really conclusive. In looking at unnecessary hardship, would not building this retaining wall create an unnecessary hardship? That is what he is battling with when listening to the applicant's points. Member Driscoll stated he puts a decent amount of weight on what the Conservation Commission says about something like this. The fact that they are not opposed to it is an interesting point. He thought they would have a little more take on the construction of the wall. He continued that a lot of good points have been made on both sides. He thinks that everyone is right that the building of the wall and upkeep is the most invasive part of the application.

Member Hoyt stated this is so close to the wetlands. Wetlands grow, wax and wane. He does not know what direction they are taking in this neighborhood. His only reservation would be that it is so close to the wetlands. That is one point he is having trouble with; the proximity to the wetlands, what kind of negative affect does it have and does it outweigh the hardship?

Acting Chair Crapo asked the board members if they feel they have enough information to feel comfortable with moving forward to a vote this evening.

Member Hoyt commented he is comfortable, given the fact the applicant is familiar with building stone walls and it is his property. He is sure the building inspector will be looking at the footings and the back fill.

Acting Chair Crapo replied not typically. There is not a multiphase inspection process on a wall like this.

Member Dibble asked if there could be a condition that the construction of the wall requires inspections of the excavation of the fill, footings and the placement of the stone by the building inspector.

Member Hoyt commented at least photographs by the applicant that can be submitted.

Acting Chair Crapo stated the Board can put any condition on that they see fit. There can not be unreasonable or illegal conditions, but he does not see this as being egregious or beyond the scope. He continued that from the rear of the property looking towards the neighbor across the street, that side of the property has a slight slope. That doesn't look like such a slope that it needs a retaining wall to come up 3' and level off. For erosion purposes and safety, he does not see it being as necessary. He sees it as a way to expand the use of unusable yard by leveling it off and leaving more of a landscaped area. He is having trouble seeing the structural need of it or it would have been a part of the original engineering request to hold back the foundation forces. The Board can put conditions on it, but he can't get to the necessity.

Member Dibble stated he thinks there is evidence that there is potential for erosion along this territory. Something to stabilize it may be a good thing. The Conservation Commission is in favor of that view. Based on what Member Hoyt said, if the ground is level there, its properly back filled and foundationed over porous stone, its going to favor the wetland and not hurt it. The water that comes off the house is not going to run down the slope into the wetland. It is going to percolate into the ground. From that point of view, it's a plus. He personally thinks, as Member Patten said, sometimes when doing a construction project, things come up.

Unfortunately, there was a stump dump in the back and that changed the fabric of the project a bit. Really down in there is a brook. Changing the slope down to the brook is an important conservation matter. It gives a flatter territory at the bottom to put in some blueberry bushes and other plantings that will stabilize that territory, so that in time of running water, it doesn't erode it so badly. Even though it is very close and is going to be a significant disturbance of the wetland, when the project is all done, if it is properly supervised by the building inspector, on balance, he would have to favor it.

Member Driscoll stated he is starting to struggle with the other side of it. He understands Member Dibble's point about the benefit it would have; however, he then looks at whether this is a good solution to project the wetlands in general. Should people be building retaining walls within 5' of the wetlands to "protect the wetland"? He is struggling with that.

Member Patten commented that he thinks in general, the RCC would rather see a separation, a delineation. Imagine that property in the future with grass up above the wetland being subject to potential fertilization and clippings, versus the downhill side of that wall. He thinks the RCC would say they favor that separation, rather than letting the lawn migrate towards a wetland.

Acting Chair Crapo stated that along with what Member Driscoll said, he is reading the Conservation Commission's letter; "The owners proposed plantings between the home and the wall. RCC members suggested Dwarf Furlows, but other small native trees would be acceptable. The owners planned to plant blueberry bushes and other native plants outside the retaining wall and wrapping around the backyard." He continued that there was testimony that the wall was going to be about foot from the silt sock. The silt sock is not going to be the absolute extent. More of the brush is going to need to be cleared to plant the blueberry bushes. There is going to be more digging and planting for this proposal. He is having trouble supporting it. There is only

less than 6' between this wall and the actual wetland, so there is 6' of buffer and planting is right up against. He thinks this is pushing the limits.

Acting Chair Crapo commented the wall facilitates using this area, more than it facilitates protecting the area.

Hearing no further comments, Acting Chair Crapo called for a vote on variances to §190-3.1.H(2)(a) and (g):

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

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - No
Shawn Crapo - No

2) The spirit of the ordinance is observed?

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - No
Shawn Crapo - No

3) Substantial justice is done?

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - No
Shawn Crapo - No

4) The values of surrounding properties are not diminished?

Rob Patten – Yes
Patrick Driscoll – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Shawn Crapo - No

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

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - Yes
Shawn Crapo - Yes

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

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - No
Shawn Crapo - No

7) The purposed use is a reasonable one?

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - No
Shawn Crapo - No

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

Rob Patten – Yes
Patrick Driscoll – No
Burt Dibble – Yes
Charles Hoyt - No
Shawn Crapo - No

Motion by Patrick Driscoll to deny the application of Janvrin Family Trust for property owned and located at 112 Perkins Road, requesting a variance from Section 190-3.1.H(2)(a) and (g) for a retaining wall 5.9' from the edge of the wetlands where 75' is required, for failure to meet the required hardship criteria. Seconded by Shawn Crapo.

Roll Call: Rob Patten – No; Patrick Driscoll – Yes; Burt Dibble – No; Charles Hoyt – Yes; Shawn Crapo – Yes

Motion carried by a 3 to 2 vote in favor of denial.

Note: Patrick Driscoll was unseated and Patricia Weathersby was reseated. Shawn Crapo stepped down as acting chair.

Sitting: Patricia Weathersby, Shawn Crapo, Burt Dibble, Rob Patten and Charles Hoyt

5. **Christopher Rinko of 10 Cooper Lane, Apt 207, Bedford, NH, for property owned and located at 218 Locke Road, Tax Map 12, Lot 5,** requests variances from §190-6.3.B to demolish an existing structure and replace it with new; from §190-2.3.C(2) for house 9.9' from the left side boundary and 13.05' from the right side boundary where 20' is required and requests a waiver from building code §35-14.C(2) for 2' of separation from the seasonal high-water table and bottom of the effluent disposal area for septic system where 4' is required. **Property is in the Single Residence District. Case #26-2020.**

Attorney Tim Phoenix, representing the applicant, along with Attorney Monica Kieser, presented to the Board. Attorney Phoenix noted that the notice states the property is in the Coastal Overlay District and it is not. It is in the Wetland Conservation District. This would not have affected anything, except for the height; however, the proposal relief from height is not needed. (The existing conditions plan, along with the proposed conditions plan, were presented on the screen for review.) Attorney Phoenix explained this is a 26,835sf lot with only 85.3' of frontage. The lot is a little narrower in the back at 79'. There is a small house located on the lot towards the front, along the right setback line. There is also a shed that is a little over 4' from the property line. On the left side, just behind where the house is located, there is a detached garage that is 9.9' from the property line. The property is subject to a 40' front setback and there is a jurisdictional wetland in the rear. Between the house and the wetland, the sanitary facilities are handled by a cesspool. The plan is to raze all of the structures, including the paved driveway. (He reviewed the proposed conditions plan and pointed out the location for the proposed home.) He noted that the septic system is in front of the house. Most of it is within the building envelope. The driveway is going to be changed to a permeable driveway. There will be no septic system in the back and the rear setback will still be met. He noted that there will be a single width garage to the left and the shed will be removed.

Attorney Phoenix explained that on the right side 20' is needed. The shed is at 4.4' and the house is proposed at 13.05'. It is approximately 10' further away from the lot line. It is his understanding that the northerly neighbor, Michelle LaCount, is aware of the project and has no objects. The other neighbor has some concerns about runoff. As part of the septic plans in the Board's packets, it shows how the stormwater is going to run. He is not aware of any objections from the neighbor, as this is being dealt with. He continued that on the left side, the existing garage is 9.9' and the proposal is to hold that 9.9', so there will be no change within the distance; although, there is more building within the area. Relief is also needed from 190-6.3B, which is to abandon or destroy a non-conforming structure. The structure can be built where they are or be made more non-conforming. In some respects, this is more conforming. He noted that building code relief is also needed. There is a 4' separation requirement in Rye. The water table is between 26" and 36". The 2' separation that is required by the State is met; however, the 4' required by the Town is not. The reason this is believed to be approvable is because the

system will be a state-of-the-art system with 21st century technology. He pointed out there is a retaining wall running along the driveway on the left. That would have to get significantly larger if the system was raised. It would also become somewhat of a mounded system and it would change the slope to a 2 to 1 slope, which is now proposed to be 4 to 1. If the slope was changed, it would be very steep, hard to mow and subject to erosion.

Chair Weathersby stated that one of her concerns is the side setback relief. She wonders why the house needs to be so large. She saw on the plan that the square footage of the footprint is 2,295sf and it is a two-story house. She asked the finished square footage.

Attorney Phoenix replied that it is 2,980sf. The property owners have children and want to live in the home permanently. Given the lot, they are proposing what they want to build. They are trying to address that issue by holding the line, even though it is a larger building. Attorney Phoenix stated he had asked about turning the building ninety degrees. That would push the building back towards the wetland and would take away backyard. The applicant's have also tried to address these concerns by only having a one car garage. He noted that a 3,000sf home in Rye for a family is not that unusual. He pointed out the lot is only 85' wide and 40' of that is taking away in the setbacks, which only leaves about a 45' width. He knows there is no objection from the northerly abutter. He believes there is no objection from the southerly abutter.

Jennifer Ramsay, architect, explained it looks like a large home by virtue of size of the lot and the narrowness. It has a single car garage with a tasteful and small mudroom. The house has an open concept for the first floor, so there is really not a lot of extra space in the home.

Vice-Chair Crapo asked why the house could not have been more road to rear where there is room from the rear setback buffer. In the backyard, in the middle, there is a cut-out for a patio. It looks like there is room to slide the design towards the rear.

Robbie Woodburn, landscape architect, stated it is a balance between front and back and side to side. In the front, there is the setback and the space for the new septic, which is currently a cesspool. There is also a walkway to the front of the house. In the back, there is a transition down 6' in grade. To move the house back, it would leave about 20' to the setback. This was massaged to not go any greater than what was there, in terms of the intrusions into the setbacks. This was balanced to get the septic into the front and to have a little bit of grace room between the changes in the grade at the back of the house and the 75' setback from the wetland.

Member Hoyt stated he loves the look and feel of the house; however, he is with Chair Weathersby. This is a lot that is long and narrow, from side to side, and deep, with a house that is just the opposite. The envelope is really being pushed, as far as the side yard setback is concerned. He noted that he does not have any problem with the other variances. This is a lot of footprint to work with in that building envelope. The house has been turned counter intuitive, as far as fitting the house on the site and the side yard setback. He needs to be convinced there is a hardship.

Attorney Phoenix noted that the applicant's mother-in-law is going to be living with them, so there is a need for another room in the house. If the house was turned side to side it would need to be completely different because no one is going to have their backyard 20' from the neighbor.

Ms. Woodburn explained they also need to get drainage from the street side of the house to the back of the house and not get it onto other properties. From the face of the garage, the low point is towards the end of the driveway and there is a swale that goes around the building. In addition to the front walk, septic tank, and leachfield, there is also a swale that is fairly wide for all the drainage to go around the corner of the house. The intention was to have a home with a lot of curb appeal. It is a constrained lot and it is not that wide of a house.

Ms. Ramsay stated if the garage was in the back of the house, it would make for a much longer driveway and create other lot coverage issues.

Chair Weathersby commented the driveway is pervious. In regards to the location of the septic, she asked if that was the only location that perked. Why can't the septic go further forward?

Pete Landry, engineer, explained that one of the other considerations is the existing municipal water line that runs along Locke Road. They need to maintain a 25' separation. That is the reason it can't be slid closer to Locke Road. The septic is in the location with the most suitable test pits for the lot. In putting the septic in the back, it would be putting it closer to the wetlands and the soil is not as suitable. The lot is saying the septic needs to be in the front. With the septic, septic tank and minimum setback to the foundation, where it is located now is about as close to Locke Road as it can get. It may be able to be slid forward a bit, but it would be encroaching on the municipal water line.

Chair Weathersby asked if the septic was about 35' back from the boundary.

Mr. Landry confirmed.

Chair Weathersby asked if the septic was moved forward or to the rear of the lot, would that change the request for the building code waiver for 2' of separation from the seasonal high-water table?

Mr. Landry replied no. He pointed out that there is also a 35' setback from a catch basin. On the north side of the driveway, right on the lot line there is an existing catch basin. That is the setback that is primarily keeping the septic where it is proposed now.

Vice-Chair Crapo asked where the catch basin drains.

Mr. Landry replied out along the road.

Vice-Chair Crapo asked if this was a town catch basin.

Mr. Landry confirmed. He explained the catch basin catches water off Locke Road and travels subsurface along the road. It does not outflow onto this property.

Chair Weathersby stated there seems to be a heavy reliance on pervious pavers so a variance is not needed for coverage. She noted that if this was to go forward, the Board would probably put in a condition that those need to be installed and maintained so they are forever pervious. She asked if there would be any objection to that condition.

Attorney Phoenix replied not at all. He pointed out that the existing coverage is 8.5% and the overall, as proposed, is 13.05%, where 15% is required. He reviewed the variance requirements;

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The test is whether granting the variances will unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives. The purpose of the ordinance is to promote the health, safety, welfare of the community. The variance is required because the lot loses half its width to side yard setback. A good portion of the front is lost for the front setback. The septic system is wanted in the front, not close to the wetland and there is the wetland buffer. All of those things make a relatively small building envelope. The nature of the use is permitted. A residential family home in a residential zone. The wetland requirements are being complied with, along with front yard setback and all coverage requirements. It does not violate basic zoning objectives. An antiquated home, garage and shed that are violating the setbacks, and a cesspool in the back near the wetland buffer, is certainly not good for the public health, safety or welfare. All the changes help the public health, safety and welfare. The house will be fully to code. As for the central character of the locality, these are valuable lots. Many people are taking down smaller homes and building regular size family housing. A home that is 3,000sf for young families, with a mother-in-law living with them, is not particularly large. It seems large because the lot is narrow. The neighbors are not complaining about the proposal, so they must feel it fits in with the character of the locality. The proposal looks a lot better than existing conditions and it will be a beautiful place.
- Granting the variances will not diminish surrounding property values. This will be replacing a very old home, old garage, old shed, and cesspool with a new to code home, compliant with coverage, height, front and rear yard and wetland buffer setbacks. It equals more volume in home. In terms of setbacks, it equals or improves setbacks on either side. This property will increase in value and thus will not decrease the value of surrounding properties.
- Special conditions exist that distinguish the property from others in the area. This is a decent size lot but it is very narrow. There are wetlands in the back, and water lines and catch basins in the front that drives where a septic can go. Those factors create special conditions. The size and location of the lot and the application of those setbacks create special conditions.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. Side setbacks are for separation from neighbors, air, light, sight distances and stormwater treatment. The stormwater is being treated. The

overall situation is going to be much better than existing conditions with a cesspool. The house is set back off the road, so there is no problem with sight. The stormwater treatment has plenty of room to run towards the back and the wetland. The neighbors are not complaining about the proposal. There is no real case to hold them to the setbacks because it is not harming anyone.

- The proposed use is reasonable. It's a single-family home in a residential zone.
- Substantial justice will be done by granting the variance. This is the home the applicants want to build. The reasons for the design of the home and reason for the location of the septic have been explained. When there are all these factors, the overall situation is being improved and neighbors who are apparently comfortable with it, there is no harm to the general public for granting the setback variances. Overall, it's a harm to the applicants if they can't build the home they would love to build.
- For the building code section for 24" where 48" is required, the State requirements are met. The applicants do not want a taller retaining wall or a steep slope. This septic system design is equally as good or better than a design that meets the 4' of separation, particularly using a state-of-the-art septic. It is certainly better than a cesspool close to the wetland.

Attorney Phoenix concluded his variance criteria presentation.

Chris Rinko, applicant, stated that he understands and respects the questions with regard to the design. He noted that it is not their intent to design a large house. They tried to design within what they had. This design is going to allow someone who is challenged walking to have access. There were also other considerations. With respect to the permeable pavers, the intent was to soften the look of the house and make it look more rustic. It is his absolute intent to maintain the pavers.

Attorney Phoenix pointed out that there is a row of arborvitaes that run along the side of the house to provide screening. There are also some larger trees and smaller growth along the side line that help to provide screening for the neighbors.

Chair Weathersby opened to the Board for questions.

Member Dibble asked how many bedrooms are in the existing dwelling.

Mr. Rinko replied that he is not sure what would be considered a bedroom. Safely, there are two bedrooms and a bath.

Vice-Chair Crapo stated that people have raised their families in these smaller houses. There are three or four right in a row and that is the homogeny of the neighborhood. Now, it sounds more like a hardship of family size versus some architectural structure to need this size or layout.

Attorney Phoenix explained that some of the design criteria had to do with their family. Going through the requirements for a variance, the biggest one seems to be hardship. The first is what is the purpose of the ordinance and the second, is there any need to apply it? In this area, the traditional smaller homes are coming down and larger houses are being built for 21st century

living standards. If the neighbors are okay with it, and there is enough separation for sight lines and stormwater treatment, he thinks it makes sense.

Member Dibble commented he did not hear any testimony that the neighbors are okay with it.

Attorney Phoenix explained that Michelle LaCount is aware of the plans and has no objection. The southerly neighbor did not want stormwater going onto her property, as a result of this project, and that has been shown that it is not. It is his interpretation that if that is the case, the neighbor would have no objection.

Mr. Rinko noted that once there was a design, he had reached out to the neighbors to let them know the intent. In advance of this meeting, he also reached out again to all abutters with a personal note and more information. He commented that he is not on site often but tries to make himself accessible. The neighbor to the north has asked for the fence to be removed, which he has started to do.

Member Dibble stated the Board often have letters from neighbors. In a situation like this, where there are side line encroachments on both sides and a larger appearance of bulk from across the street, letters from neighbors would be much more comforting. He continued that this is a very old neighborhood. Looking up and down the road, it has not changed a whole lot. Where it has changed, the change has been modest. This proposal looks much less modest than what one sees up and down the roadway.

Attorney Phoenix explained that sometimes they have letters from neighbors and sometimes they don't. He thinks the Board can accept the representation of the property owner. The reason the neighbors get notices is if there are any questions or concerns, they can raise them either by coming to the hearing or writing a letter against it. He does not think it is necessarily fair to the applicants to determine that the neighbors object because they did not write a letter for support. In regards to the age of the neighborhood, it is an older neighborhood but the same thing will be happening over time. All along the beach, as the property values go up, they take the smaller homes down and build larger ones. As there are no neighbor objections, he does not think it is fair to say "no" just because it is an older neighborhood.

Member Dibble asked about the mother-in-law space.

Mr. Rinko explained there is a first-floor bedroom, which eliminates the need to use the stairs.

Vice-Chair Crapo asked if the intention is to get an approval for an accessory dwelling unit (ADU).

Attorney Phoenix replied there has never been any discussion about an ADU.

Vice-Chair Crapo pointed out that the presentation was that it is a single-family home and will remain a single-family home. It sounds like it might be creeping towards a single-family home with an ADU.

Speaking to Mr. Rinko, Attorney Phoenix asked if there is any intention of making that a little apartment for anyone with full living quarters.

Mr. Rinko replied no.

Speaking to Mr. Rinko, Member Hoyt asked if all the neighbors were approached and shown the full design set of drawings.

Mr. Rinko replied he did not. He thought it would be part of this process and they would be sent official materials. He continued that they reached out to the neighbors at Christmas with a personal note stating their intentions. They also reached out to the neighbors once they were on the BOA agenda. He noted that they have also made themselves visible at the property.

Chair Weatherby stated she agrees with Attorney Phoenix's position that it can't be held against the property owner if they don't have letters of support. The abutters have all gotten notices and have had an opportunity to chime in if they would like. Referring to the swale on the left side of the property, she asked where it starts and what the slope is.

Ms. Woodburn replied it is between a 1.5% to 2% slope.

Chair Weathersby commented she is most concerned with the left side setback of 10'. If the setback was larger, could it be better designed so the water is not rushing down the property line?

Ms. Woodburn explained that the water wouldn't be rushing down the property line. Any water that doesn't go into the swale would pitch towards the wall and the wall's underdrain. There is a perforated drain on the uphill side of the wall that will catch any drainage that goes towards the wall and daylight it out in the backyard. She does not expect there to be a lot of drainage; however, there is the underdrain to be sure it doesn't end up on the neighboring property.

Chair Weathersby clarified that she is hearing that if there was another 6' or not, it would not affect the drainage plan. It would not make any difference.

Ms. Woodburn confirmed.

Vice-Chair Crapo asked the height of the retaining wall. He asked if the lawn is going to be to the top of the wall. He commented that it looks like the wall gets pretty close to the existing row of shrubs on the neighbor's property. In constructing the wall, how is it going to be certain the roots of those shrubs are not undermined?

Ms. Woodburn explained the wall is going to be holding fill. The maximum height of the wall is 3' tall. Most of it is 2.5' or 2' tall. It will probably be either stone or a segmental block and that will be coordinated with the neighbor.

Vice-Chair Crapo clarified this is right on the property line.

Ms. Woodburn replied inside the property line; yes.

Vice-Chair Crapo pointed out that the plan looks like it is right on the property line, in which case, the zoning requires that the neighbors sign off or that it be a foot in and that would change the grading.

Ms. Woodburn stated that right now it is right next to the property line. If they have to get the neighbor to sign off, they will. If they cannot get a signoff, they will move it in 1'. There is plenty of room to do that.

Vice-Chair Crapo asked if that will change the grading.

Ms. Woodburn replied no.

Vice-Chair Crapo asked how moving the wall would not change the pitch and curvature of the swale.

Ms. Woodburn pointed out that there is no swale on that side. She explained that right off the edge of the garage there is a contour of 102. The existing grade on the other side of the wall is 98.8. Going up 3' from that would bring it to 101.8. It is not really very steep in this area. She pointed out the finished floor of the garage is 102.75.

Chair Weathersby opened to the public. No comments were heard.

Vice-Chair Crapo stated he is wondering whether a variance request for the retaining wall is needed, since it is 3' tall and therefore a structure. It is going to be either at the property line or 1' back. He wonders if this will change the notice to let abutters know there is going to be something built right at the property line, versus the notice now that leads them to believe everything is 9.9' away.

Chair Weathersby pointed out that stonewalls are exempt. Under the definition of structure and things that need variances, fences and stonewalls are exempt.

Vice-Chair Crapo commented this is a retaining wall, not a fence, and it is not just a stonewall.

Planning Administrator Reed pointed out that there was a case for a property on Brackett Road, which was an administrative appeal and involved a stonewall. The applicant did not apply for the stonewall and was denied the administrative appeal. The Board talked about the stonewall

being different than a fence because of the footings, the stones and the way it changes water flow.

Vice-Chair Crapo stated that his definition of fences and stonewalls, a stonewall is clear on both sides, not retaining earth. In this case, the neighbor's property is at one grade and the retaining wall jumps up 3' and the subject property begins. This is not just a stonewall or a fence dividing two properties. It's a significant grading structure.

Referring to the case on Brackett Road, Chair Weathersby commented that the Board came to that conclusion with regard to wetland issues, where the exemption is for dimensional requirement.

Vice-Chair Crapo commented that on that case a permit was issued for a fence. It was clearly not a fence.

Attorney Phoenix stated that Building Inspector Peter Rowell wrote the denial letter and he apparently didn't see a need for it. The relief that Mr. Rowell said was needed was requested and that was after submitting plans for his review for the building permit. Attorney Phoenix commented this is a stonewall. The zoning ordinance says that stonewalls are exempt. He does not think it is fair to the applicant because this is a retaining wall, since there is no specific definition of what is meant by a stonewall. The wall is stone and it's a retaining wall.

Chair Weathersby stated she agrees with Vice-Chair Crapo that retaining walls are different than a stonewall, which typically marks the boundary or is an old fashioned farm wall. It makes sense that a wall that is so different in elevation from one side to the other, where it serves a different function, is a different animal. It probably needs setback relief, even though it was not called out in the building inspector's letter.

Vice-Chair Crapo stated it is his concern is that the neighbors may or may not realize that at the edge of their property, the earth is going to raise up 3' with a wall. He is worried that this project is going to get done and the neighbors are going to say they did not envision that.

Chair Weathersby commented that she feels the retaining wall needs relief. If someone on the Board feels differently, they can still discuss it. She commented that the Board can go forward and give feedback on the plan, the Board could approve it contingent upon getting relief for the retaining wall, or the Board can just give the applicant their thoughts. She continued that she thinks the application should be re-noticed for the retaining wall to be specifically called out. If she was next door and a wall was going in with a 3' difference, she would want a better understanding. Chair Weathersby stated she would like the case to be continued and the application amended and re-noticed. Maybe that would be a withdrawal without prejudice.

Attorney Phoenix stated that it is not the applicant's fault that the ordinance does not distinguish and just says "walls". If the Town wants to differentiate, the ordinance should be amended so it is clear. Until then, this applicant should be given the benefit of the doubt. He continued that

whether the wall gets built is contingent on whether the house gets built. He would prefer to go forward with what is before the Board. The applicant needs to be able to build the house in order to worry about the wall.

Vice-Chair Crapo commented he does not think they can go forward because the whole grade depends on the wall. He knows they cannot fault the applicant for no abutter letters; however, he would feel more comfortable having some representation that the neighbors understand the significance of the wall.

Member Dibble stated the spirit of the ordinance, in his mind, is that a stonewall is entirely a fence. It is not foundation for the purpose of controlling grade and architecture. He has a notion that this wall is a separate thing in the spirit of the ordinance.

Chair Weathersby commented that she thinks the Board agrees and that is how this is going to move forward; relief for the retaining wall is required. She would feel better dealing with the whole proposal at once. She thinks it would be helpful if the Board could give the applicant some guidance as to how they feel about the house and the other requests; particularly the left and right setbacks and separation issue for the septic. She thinks there is some hesitancy by some members about approving the house as presented. She continued that her personal feeling is that she is troubled by the 9.9' left side setback. When a new house is developed, even with one a lot of 85' of frontage, going 10' to a property line is not necessary. The house is almost 3,000sf and they are asking for that much relief, which bothers her. She thinks better could be done. She understands the constraints of the lot and appreciates what they are trying to do for their family; however, she thinks it is a big ask to be a little more than an arm's length from the structure to the property line.

Member Hoyt asked if the house can be built without the retaining wall on the left-hand side.

Ms. Woodburn explained there will be runoff that hits the ground on the left side of the driveway and pitches towards the neighbor's property. That was the main reason for having the wall. The intent was to have the wall to allow for a flattish area between the driveway and the property line for access to the backyard.

Mr. Landry pointed out that they are not talking about a lot of water in that corner. The intent of the grading is to direct the water around to the north in the swale that was designed.

Member Dibble asked the square footage of the current house.

Attorney Monica Kieser pointed out it is 864sf on the tax card. If the attic were finished, it would provide another 200+ square feet. The garage adds another 445sf.

Member Dibble stated that one of his concerns came at the beginning when Member Hoyt wondered why the house was not oriented front to back on the property because the parcel is narrow. Added to that is the issue there is three times more floor space. It strains the capabilities

of this lot to absorb the project. Asking for side line setbacks on both sides, to nearly triple the size of the dwelling, strains the ability of the lot to absorb it.

Member Patten stated he does not particularly have a problem with the size of the house and he likes the design. He is okay with the septic relief. However, he really struggles with the side setbacks. The idea that the size home wanted cannot be achieved on that piece of property without that specific design does not resonate with him. He does not see why there wasn't more effort. There is more than 40' in the center of the property. He thinks a house that is bigger could fit on this lot within the setbacks and it wouldn't be architecturally unpleasing. As far as the stonewall, there should be an idea of what the Board is going to say about the house design first before the stonewall question is tackled.

Vice-Chair Crapo commented that he thinks the lot can hold a 3,000sf house, but perhaps, in a different design. Something could be designed that would give more separation and still address drainage concerns without having to be so steep in the back that it eliminates the use of the patio. He understands that the lot slopes off and it is challenging. He still thinks everything can be achieved with a different design. In looking at the retaining wall issue, he definitely thinks they need to continue to address this.

Member Hoyt stated that Attorney Phoenix convinced him that the house had to be the way it had to be for their needs and because of the constraints of the lot; however, the retaining wall just opened up another can of worms. Does the neighbor to the south actually know there is a 3' retaining wall right on the property line? He does not feel comfortable about that.

Speaking to Attorney Phoenix, Chair Weathersby commented that she thinks this gives some idea of how the Board would vote on this tonight. She has decided that the application is incomplete and an additional variance needs to be applied for. She suggested that the application be withdrawn without prejudice. The applicant can come back with an amended application.

Attorney Phoenix commented that he appreciates the Board's willingness to give some feedback, so they can proceed with some knowledge. He would prefer to continue the application. If the applicant decides to move forward as is, he will be sure to add the other variance request before the meeting deadline. If there is a design by the family to look at different designs, he can withdraw the application at that time.

Chair Weathersby noted that the application has to be amended and re-noticed. Continuing this application does not get them there.

Planning Administrator Reed explained that if the house is not going to change and the one variance is being added, he would have to pay for a new notice. If the house is going to be changed substantially, he should withdraw.

Speaking to Chair Weathersby, Acting-Chair Crapo asked if her concern was that the abutters would not be re-noticed.

Chair Weathersby confirmed. She commented that she is fine with the process as Mrs. Reed has outlined. The application can be continued with a new notice and new publication for the agenda.

Motion by Shawn Crapo to continue the application of Christopher Rinko for property at 218 Locke Road, to the September 2, 2020 meeting, so it can be amended and re-noticed. Seconded by Burt Dibble.

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

Motion passed

Continuances:

Motion by Patricia Weathersby to continue the applications for Star Island Corporation; Mary Getty for 35 Big Rock Road; and Gregg and Anne Mikolaities for 1 Willow Lane to the next scheduled meeting. Seconded by Burt Dibble.

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

Motion passed

The Board discussed the possibility of holding a second meeting for the month of August. It was agreed to hold a meeting on Wednesday, August 26, 2020.

- 6. Underwood Engineers, Inc. for Star Island Corporation for property owned and located at Caretakers Building 2 Star Island, Tax Map 28, Lot 3, requests a waiver from Building Code §35-14.C.1 to allow the bottom of the proposed effluent disposal system to be less than 6' above the top of any bedrock or impermeable substratum. Property is located in the Single Residence and Historical District. Case #27-2020.**

**Continued to the August 26, 2020 meeting.*

- 7. Mary E. Getty, Trustee of the Mary E. Getty Revocable Trust of 691 Exeter Road, Hampton, NH, for property owned and located at 35 Big Rock Road, Tax Map 5.2, Lot 72, requests variances from §190-2.4.C(1) for a shed 10.5' from the rear boundary where 30' is required and from §190-2.4.C(2) for a shed 10' from the side boundary where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #28-2020.**

**Application Continued*

8. **Gregg & Ann Mikolaities for property owned and located at 1 Willow Lane, Tax Map 17.4, Lot 24**, request variances from §190-6.3.A for expansion of a non-conforming structure (house); from §190-2.4.C(2) for a generator pad 17' from the side boundary where 30' is required; and from §190-3.4.E for dwelling coverage of 31% where 15% is allowed; and for lot coverage of 42% where 30% is allowed. **Property is in the General Residence, Coastal Overlay District. Case #29-2020.**

**Application Continued*

9. **Bluestone Properties of Rye, LLC for property owned and located at 33 Sagamore Road, Tax Map 24, Lot 6**, requests a Special Exception pursuant to §190-7.1 and 190-3.1.G(2) to allow for a driveway access 22.2' and 26.2' from wetlands/perennial stream. **Property is in the Business District. Case #30a-2020.**

**Application Continued*

10. **Bluestone Properties of Rye, LLC for property owned and located at 33 Sagamore Road, Tax Map 24, Lot 6**, request variances from §190-3.1.H(2)(a), (e), (g) for a building 67.4', pavement 22.2', and disturbance 13.6' from the wetland where 75' is required and for pavement 26.2' and disturbance 17.1' from a perennial stream where 100' is required and the removal of 1 dead tree and 5 live trees >4.5" in diameter greater than 4' from the ground; and from §190-2.10.C(3) for a building 23.7' from the Elwyn Road front boundary, parking spaces 22.2' from the Elwyn Road front boundary and parking spaces 21.2' from the Sagamore Road front boundary where 30' is required; and from §190-2.10.C(8) for a building height of 40.25' where 35' is required; from §190-5.0.A for 54 parking spaces sized 9'x18' is required; and from §190-5.0.C for 9 parking spaces 22.2' from the Elwyn Road front boundary and 11 spaces 21.2' from the Sagamore Road front boundary where 30' is required. **Property is in the Business District. Case #30b-2020.**

**Application Continued*

11. **Seacoast Apart-Hotels, LLC for property owned and located at 741 Ocean Blvd, Tax Map 23.1, Lot 28**, requests a Special Exception pursuant to §190-7.1 and §190-5.1.C for two signs where one is allowed. **Property is in the Business, Coastal Overlay Districts. Case #31a-2020. Request a continuance to the September 2, 2020 meeting.**

**Application Continued*

12. **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 49s.f. where 16s.f. is permitted. **Property is in the Business, Coastal Overlay Districts. Case #31b-2020. Request a continuance to the September 2, 2020 meeting.**

**Application Continued*

Adjournment

Motion by Burt Dibble to adjourn at 10:55 p.m. Seconded by Shawn Crapo.

Roll Call: Charles Hoyt – 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:

Janvrin Family Trust, Melissa & Kevin Janvrin Trustees
of 22 Raymond Drive, Seabrook NH

Property:

112 Perkins Road, Tax Map 5.2, Lot 177
Property is in the General Residence, Coastal Overlay District

Application case:

Case # 25-2020

Date of decision:

August 5, 2020

Decision:

The Board voted 3 to 2 to deny the application's request for a retaining wall for the failure to meet the hardship criteria.


Shawn Crapo, Vice-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 # 16a-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to grant the special exception for a driveway in the wetlands buffer.



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: Bluestone Properties of Rye, LLC

Property: 33 Sagamore Road, Tax Map 24.1, Lot 6
Property is in the Business District

Application case: Cases # 30a and 30b-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to continue the application to the August 26, 2020 meeting.


Patricia Weathersby, Chair

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Gregg & Ann Mikolaities

Property: 1 Willow Lane, Tax Map 17.4, Lot 24
Property is in the General Residence and Coastal Overlay Districts

Application case: Case # 29-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to continue the application to the August 26, 2020 meeting.



Patricia Weathersby, Chair

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Mary E. Getty, Trustee of the Mary E. Getty Revocable Trust
691 Exeter Road, Hampton NH

Property: 35 Big Rock Road, Tax Map 5.2, Lot 72
Property is in the General Residence and Coastal Overlay Districts

Application case: Case # 28-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to continue the application to the August 26, 2020 meeting.


Patricia Weathersby, Chair

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Underwood Engineers, Inc. for Star Island Corporation

Property: 2 Star Island, Care takers Buildings, Tax Map 28, Lot 3
Property is in the Single Residence and Historical District

Application case: Case # 27-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to continue the application to the August 26, 2020 meeting.



Patricia Weathersby, Chair

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Christopher Rinko of 10 Cooper Lane, Apt 207 Bedford, NH

Property: 218 Locke Road, Tax Map 12, Lot 5
Property is in the Single Residence and Historical District

Application case: Case # 26-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to continue the application to the September 2, 2020 meeting to give time for the applicant to revise the application to include the retaining wall and re-notice the abutters.



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: Cases # 31a and 31b-2020

Date of decision: August 5, 2020

Decision: The Board voted 5-0 to continue the application to the September 2, 2020 meeting.



Patricia Weathersby, Chair

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

BOARD OF ADJUSTMENT -Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Kevin Roy of KRB Kitchen & Bath Design Center of 257 Portsmouth Ave,
Stratham, NH

Owner: Sheryl & Jack Barns of 12 Elm Lane, Leedsdale, PA

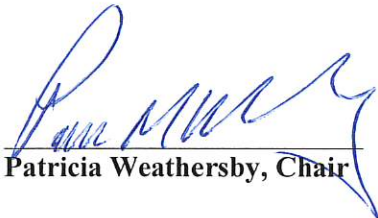
Property: 46 Pollock Drive, Tax Map 23.1 Lot 20
Property is in the General Residence and Coastal Overlay District

Application case: Case # 24-2020

Date of decision: August 5, 2020

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

- §190-6.3.A for expansion of a non-conforming structure; and
- §190-2.4.C(3) for a roof apron 23' 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:

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

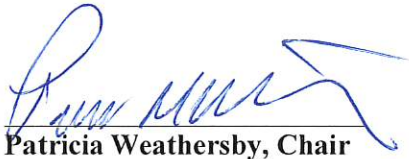
Date of decision:

August 5, 2020

Decision:

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

- §190-6.3.A for expansion of a non-conforming structure;
- §190-2.3.C(3) for a house 36.3' from the front boundary; and
- §190-2.3C (2) for a house 13.8' 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.