

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, July 10, 2019

7:00 p.m. – Rye Town Hall

Selectmen Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Charles Hoyt, Rob Patten, and Alternate Gregg Mikolaities

Others Present: Planning/Zoning Administrator Kimberly Reed

I. CALL TO ORDER

Chair Weathersby called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. BUSINESS

- **Approval of June 5, 2019 meeting minutes**

Motion by Shawn Crapo to approve the minutes of June 5, 2019 as amended. Seconded by Burt Dibble. Vote: 5-0 Abstained: Gregg Mikolaities

- **Discussion on venue and time**
(Moved to the end of the meeting)
- **Approve changes to Rules of Procedure voted upon last month**

The changes were approved at the previous meeting. The members signed the revised Rules of Procedure.

III. APPLICATIONS

Note: Charles Hoyt recused himself from the following application. Gregg Mikolaities was seated.

- 1. Peter Fregeau for property owned by Sorrento Inc, and located at 1196 Ocean Blvd., Tax Map 17.3, Lot 35-2, request variances from Section 603.1 to expand the roof line of an existing non-conforming structure and from Section 204.3B for a dormer in the side yard setback where 19' exists, 19' is proposed and 20' is required. Property is in the General Residence, Business Residence, Coastal Overlay and SFHA, Zones VE and AE. Case #25-2019.**

Peter Fregeau, applicant, spoke to the Board regarding the proposal to expand the roofline of an existing non-conforming structure. He noted that there will be an addition of a dormer on one side of the structure. There will be no increase of encroachment into the setback. The project is staying within the existing footprint and height of the house. The reason for the addition of the dormer is to increase the usable space in the top floor of the home.

Chair Weathersby noted that the application says Sorrento.

Mr. Fregeau explained when the application was made it was owned by Sorrento; however, he has since closed on the property and is now the owner.

Chair Weathersby asked if this is part of a condominium.

Mr. Fregeau replied yes. It is part of the Surf Club of Rye, which has two single family homes along with the Surf Club. The condo association has given approval for the project.

Chair Weathersby asked if this will need Planning Board approval.

Planning Administrator Kim Reed noted that it will and Mr. Fregeau has already put in that application.

Vice-Chair Crapo noted that the application does not address a shed; however, there is a shed shown in the packet information.

Mr. Fregeau explained that the shed has since been deleted.

Chair Weathersby asked if the dormer is running the full length of the house.

Mr. Fregeau confirmed. The length is about 38ft.

Chair Weathersby asked if there has been discussion with the neighbor to the north.

Mr. Fregeau confirmed. He commented that the neighbor seemed happy with the fact that the structure was going to stay as it is, with the exception of new windows, roof and siding. The neighbor had a concern that someone would buy the property and tear the house down to build a completely new structure.

Vice-Chair Crapo asked if there are future renovations planned.

Mr. Fregeau replied no; other than some interior work and exterior esthetics, such as replacement of windows and doors. He does not have any other plans structurally for the property.

Chair Weathersby opened to the public for comments or questions. Hearing none, she closed the public hearing at 7:17 p.m.

Member Patten stated the setback exists already and it is not to be encroaching any further. This would not be called a very ambitious project. It is a minor project.

Chair Weathersby commented it is a big dormer but she likes that it is not encroaching further into the setback.

Vice-Chair Crapo stated the proximity of the house to the neighbors does not look like it would affect the views.

Member Patten noted the shed that is shown on the plans is not part of the approval.

The Board agreed.

Chair Weathersby called for a vote on variances to Section 603.1 and 204.3B

1) Granting the variances would not be contrary to the public interest?

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The proposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the application for Peter Fregeau for property owned and located at 1196 Ocean Blvd for variances from Section 603.1 and 204.3 B for a dormer in the side yard setback, to exclude the shed shown on the plans presented. Seconded by Shawn Crapo. All in favor.

Note: Gregg Mikolaities was unseated and Charles Hoyt was reseated.

- 2. John Samonas, Trustee, Samonas Realty Trust of 111 Bow Street, Portsmouth for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, requests an Administrative Appeal per RSA 674:33 from the Building Inspector's April 12, 2019 letter which determined that the proposed replacement septic tanks must adhere to new construction standards per Building Code Section 7.6; soils within 24 inches of the surface require a waiver; and a variance from RZO Section 301.8B (2) for replacement septic tanks and fill within the buffer. **Property is in the General Residence, Coastal Overlay District. Case #23a-2019.****

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He explained when the project started and they first applied in August of 2018, the application asked for septic within 100ft. He was not aware at the time, but the only thing that was within 100ft was one of the leachfields. The Conservation Commission asked that it be brought outside 100ft so when the application came to the Board, the leachfields were outside the 100ft. He noted that he was under the impression that everything met all the requirements. He stood before the Board and said that no septic relief was needed. When he reviewed the plans with the Building Inspector it was determined that the location of the leachfields and the 24" issue

was not on any plan or discussed with the Board. It was decided that coming back to the Board would be the right thing to do to address these issues.

Attorney Phoenix stated 1215 Ocean Blvd is about 2.3 acres. There are now 12 buildings on the property. The big building has the restaurant, office and apartments. There are also 10 cottages, two of which are year round, but most are seasonal. All the buildings are served by very antiquated septic systems. One of the leachfields is actually in the resource. The proposal is to raze everything that is there and build four duplexes and move the septic systems such that the leachfields are all outside the 100ft. The tanks are at least 85ft plus. He noted that the Board has already granted a variance for the fill that is needed on the site. The Board granted a variance for 4,000sf of fill in the buffer. However, the amount of fill and the height of the buildings have been reduced by about 1.5ft.

Chair Weathersby asked Attorney Phoenix to go through the reasons for the administrative appeal.

Attorney Phoenix stated the Building Inspector erred in determining that the proposed replacement systems must adhere to the new construction standards. The reason is because they are replacement systems. The Building Inspector erred that the existing conditions with soil less than 24" is prohibited. There is nowhere on the site where there is 24". If the current systems were replaced today, they would need that same relief. He continued the Building Inspector said that relief was needed for the fill. The Board already granted relief for the fill so the Building Inspector is wrong on that issue. He noted that NH DES requirements do not require 24" to seasonal high water and do not require 100ft from the resource. If the applicant wanted to continue the cottages and replace the system, the likelihood is they wouldn't be placed in the wetland or close proximity. They would be moved out where they are now. These systems, are in fact, replacing these existing systems. He agrees that there will be a partly different use from normal residential to seasonal use. However, the proposal is complying with reducing violation distances. Also, the septic systems that are proposed will have less impact than what is there today.

Attorney Phoenix stated that 7.9.2.3 requires systems to be located on the same lot but there are exceptions. Since a system could be put on a separate lot, that would be a change. If a system could be put on a separate lot, why could it not be moved further away? He noted that existing septic systems within the wetland buffer may be replaced in accordance with State requirements. He reiterated that State requirements do not require 24". He stated he is not sure why there is a requirement for 24". If the proper type of fill that is required was brought in it would be met anyways. The Board has already approved the overall fill to get these above 4ft seasonal high water. He stated new construction standards must be met, unless a valid construction and operating approval exists. He noted that some of the systems have construction and operating approvals and some are older than the building code requirement. He stated that it is their position, in looking at the ordinance as a whole, antiquated systems won't be replaced in kind in that position. If they were, they would likely be lifted up. The goal of the ordinance and to improve conditions means the existing systems are being replaced.

Attorney Phoenix read from RZO Section 603.2 addressing abandonment, discontinuance and destruction. He thinks everyone can agree that the proposed systems are less non-conforming. Also, no one wants the septic systems where they are now. The applicant has proposed an entirely different environmentally superior system with less intensive impact, which is specially invited by the Tourist Accommodation Ordinance. For all those reasons, these are replacement systems and therefore do not need variances.

Vice-Chair Crapo stated that under 7.9.6.3 the use is converting from seasonal to year round use, which applies as well. (He read from Section 7.9.6.3.)

John Samonas, applicant, noted that two of the cottages are year round, as well as the apartments in the main building.

Chair Weathersby noted that new construction standards apply when seasonal structures are converted to year round use. The dwellings are being replaced with a year round use. The other section that may apply is 7.9.6.5 for expansion or change of use. The use is clearly changing from tourist cabins to year round dwellings.

Attorney Phoenix stated there is conflict within the ordinance. On one hand it says if something is going to be replaced make it as best as possible. On the other hand it says the standards must be complied with. He thinks with that ambiguity in the ordinance and building code, his interpretation is the superior one.

Referring to Building Code 7.9.7, Vice-Chair Crapo stated that it says an existing system can be replaced in accordance with the State requirements, or the Building Inspector can waive some of those requirements, unless any of the subsections of 7.9.6 kick-in. It is now arguable whether two or three of those apply.

Chair Weathersby opened to the public for comments on the issue of whether the Building Inspector erred in determining new construction standards should apply.

Frank Drake, 5 South Road, on behalf of Attorney Scott Hogan and Engineer Tobin Farwell (for the abutters), submitted a letter from Attorney Hogan addressing the administrative appeal, as well as the variances to the Board.

Chair Weathersby noted there is a rule that things presented to the Board should be submitted 7 days in advance whenever possible. She asked the Board if they would like to waive that rule.

It was the consensus of the Board to waive the rule and to take a minute to review the letter.

Speaking to Mr. Drake, Chair Weathersby asked if he would like to comment on the letter from Attorney Hogan.

Mr. Drake stated Attorney Hogan's letter speaks for itself. To allow four new buildings to be built with rebuilt old septic systems, where they are located, is one of the convoluted arguments that he heard. The environmental improvements that come along with redeveloping the lot would have to be done by anybody.

Chair Weathersby asked the Building Inspector if he would like to speak to his letter.

Chuck Marsden, Building Inspector, stated that everything the Building Department wrote in their letters is referenced in the town ordinances and building codes. The codes and ordinances were voted in by town's people and are allowed to be more stringent than State codes. Regarding design criteria 7.9.3, he stated that they did not have completed or approved septic plans at the time the letter was written. One of the prohibited conditions is soils with a seasonal high-water table within 24" of the surface, which was referenced in Peter Rowell's letter. He noted that new construction standards talks about the building using an existing septic system with those approvals, not putting in a new septic system and new building. Under 7.9.6.7, if someone does not have a system with operational approval and they want to build a new house, they need a new design to make sure the lot can support the system. If someone wants to build a

new home and use the existing system, they must have proof it is in good working order. In regards to systems being on a different lot, he stated that septic systems shall be located on the same lot as the building which they service for all new construction. The exception to be on a different lot is when it just can't be on the same lot as the house, such as a replacement. He stated if all the cottages and structures are being replaced, and all the existing septic and leachfields are being removed, the lot is empty and ready for redevelopment. There is nothing there to replace.

Mr. Marsden stated the conceptual site plan of July 2018 clearly shows the old septic systems and leachfields towards the back of the lot and the new ones towards the front. All the cottages and existing buildings are gone and there are new townhouses towards the front. Nothing is being replaced. It is all new construction.

Chair Weathersby closed the public hearing at 7:53 p.m. and asked the Board to discuss whether or not the administrative appeal should be granted.

In regards to new construction standards, Chair Weathersby noted there are three errors alleged in the Building Inspectors' letter for April 12th; (1) septic systems must meet the requirements of new construction standards; (2) 24" to seasonal high water table is required; and (3) the tanks were not identified, therefore the fill was not addressed in the relief granted by the Board. Chair Weathersby asked the Board if anyone thinks these are replacement systems. Does the Board feel that the Building Inspector was correct and the systems should meet new construction standards?

Member Hoyt commented he thinks the Building Inspector is correct.

Member Patten agreed.

Vice-Chair Crapo stated he feels enough of 7.9.6 subsections are present. The argument from him is if they were being replaced they don't have to be in the same spot; however, this is jumping over a hurdle going beyond that.

Chair Weathersby agreed. The systems can be replaced in the same location or a different location but this is complete redevelopment of the site.

Member Patten commented the argument was if the cottages were being kept the septic could be replaced, which is not this circumstance. In his opinion, that works against them because they are proposing all new buildings and new septic locations.

Chair Weathersby pointed out that the Building Inspector's letter of August 6, 2018 said "the proposed septic system shall meet the requirements of RBC Section 7.9.6, new construction standards". That determination was made almost a year ago and it was not appealed. She does not think this is a timely appeal on this decision. That would be a second reason to deny the administrative appeal on the new construction standards.

Vice-Chair Crapo asked if they should determine it is an untimely appeal and do not decide on it.

Chair Weathersby commented she thinks they should take it up. To her, it is clear that the new construction standards should apply. She thinks the Board should continue forward to give clarity on the

issue. She stated the reason they think the Building Inspector erred is with the 24" of separation being required. She asked Attorney Phoenix for clarification.

Attorney Phoenix explained the argument is that it does not apply because it is a replacement system. If it is found that the argument is incorrect then the variance comes in.

Chair Weathersby noted the other argument that was felt was an error was requiring relief from 301.8 B(1) and (2). She pointed out that the letter that is being appealed is dated 2018; however, it should be dated 2019.

Chair Weathersby polled the Board:

- Has there been an error in an order, requirement, decision or determination of administrative official
 - Shawn Crapo – No
 - Rob Patten – No
 - Charles Hoyt – No
 - Burt Dibble – No
 - Patricia Weathersby – No

Motion by Burt Dibble to deny the Administrative Appeal. Seconded by Charles Hoyt. All in favor.

3. **John Samonas, Samonas Realty Trust of 111 Bow Street, Portsmouth for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, requests a variance from Section 301.8 B(1)(2) & (7) for septic tanks, surface alteration and construction of dwellings within the buffer; Building Code relief from Section 7.9.2.2 for septic within the wetlands buffer; from Section 7.9.4.2 for soils with a seasonal high water table within 24 inches of the surface. Property is in the General Residence, Coastal Overlay District. Case #23b-2019.**

Eric Weinrieb, Altus Engineering, stated that last year when they went through the exercise of saying the septic system would not be within 100ft, it was completely off his radar that they would be talking about all the components, including the septic tanks as well. The leachfields (effluent disposal areas) were the areas in his mind that had the sources of contaminants. He continued that was before they had final design. There is really no change in the parking lot, access or building locations. (He pointed out the areas for the leachfields on the plan before the Board. He also pointed out the location of the septic tanks.) He stated they are asking for relief from the tanks, which are going to be 88, 85 and 90ft from the wetland where the requirement is 100ft. The DES requirement for septic to very poorly drained soils is 75ft so it meets the State setback requirements. He continued the proposed tanks are water tight with sealed covers. There is also an option of telemetric control for notification of any failures. This reduces the potential of neglect and undetected failures. He pointed out the tanks are located as far away from the resource as possible. There are other structures that have been approved through this Board that are closer. The buildings are within the 100ft buffer. He noted that the Building Inspector brought this to their attention. He was surprised but he agrees with the Building Inspector after checking the regulations. He stated the tanks pose no threat to the environment. DES allows tanks to be within 50 and 75ft. For very poorly drained, the town requirement is 100ft. He commented they are asking for only a 15% deviation from the town requirement.

Mr. Weinrieb stated the test pits were done by Joe Noel. The test pit results through the site were between 7 and 16 inches to seasonal high-water table. No matter where the system is placed throughout the site, they would be asking for a waiver for the 24" requirement. He noted that Emily DiFranco, CCI

Consultant, has reviewed the design on behalf of the Planning Board. She felt that the requirement was moot because the 48" of separation. He noted that the property at 243 Central received variances. That site had a seasonal high-water of 29". In that test pit, there was fill, stumps and debris from 29" down to 60". The septic system design required that all the existing fill be removed from the bed bottom 4ft down. The same thing was done here to manufacture the 48" of separation to bed bottom. That site (243 Central) is an AOS system. The septic tank is only 68ft from the wetlands. The leachfield is only 75ft. This is 85ft, 88ft and 90ft so it is a better situation. He noted they have not obtained the State septic system approval because they are at a roadblock with this relief requirement. The DES Wetlands and Shoreland Permits have been received. Also, the Drainage and Alteration of Terrain Permits have been received. He noted that the Farwell Report mentions there is a potential error on computation for doubling the lot size factor based on having municipal water. He explained that had been the excepted practice and it is not an accepted practice now. That does lower the lot loading capacity if there is a subdivision. It allows the lot loading capacity that is on the site now, which is greater than what is being proposed, if it is not subdivided. He noted they are allowed to have 2400 gallons per day of effluent on the property.

Chair Weathersby commented that it was said the tank is water tight and tested. She asked if there are any studies that show how long that seal lasts, how long the concrete lasts or how often parts need to be replaced.

Gary Spaulding, Advanced On-Site Solutions, noted the tank design that is being used is the exact same tank that is being used down the road that was approved by the Building Department for another project. The same concrete, covers and materials are being used. Where the tanks come together, there are two seals (insider and outside). On the outside seam, there is also a 12" wrap that goes around the tank. There is a coating that goes on the tank and adheres to the tank. There is a membrane that goes down the sidewall and another membrane over so there is double protection. In regards to how long they will last, there are tanks that have been in place since the 90's and there have never been any groundwater leaks. He explained that the tanks are programmed based on the State average of 300 gallons per day per unit. If the flow goes above the maximum daily flow the owner will get a text message that there is a high-water use at that facility. By monitoring the pumps per gallons per day, it will help with detecting leaks in the system.

Member Patten asked if it would be able to be monitored if the tank was leaking out into the soil.

Mr. Spaulding explained if they do not have the pump cycle that is anticipated, then it would be known that water is going out. There would also be a drop in the chamber if it is leaking out because the level won't be where it should be.

Member Hoyt asked if the tanks are built to withstand storm surges and ocean flooding.

Mr. Spaulding explained there is an extended base on the tanks that go out 12". With the extended base, even if the tanks were empty, there are weights on top of the tank and on the base to keep it from floating. The flood rated covers are sealed and are flood proof.

Chair Weathersby asked if there is a maintenance contract for pumping.

Mr. Spaulding explained there is a maintenance contract with his company. A copy of the report is sent to the pumping company and the town. The town will be notified if the system is non-compliant or did not receive its yearly inspection. The report says what chambers need to be pumped and those are the ones that would be pumped. Everything is documented with the pumper and the town.

Chair Weathersby commented it could be someone that doesn't have training with the seals and putting the cover back on correctly.

Mr. Spaulding noted the main companies that are pumping on the seacoast work with his company often. If it is someone that is new, his company will meet them onsite and go through the process. If the covers are not put on correctly, there will be an odor that comes out and his company will receive a call. He is not concerned about the pumper not doing his job because his company is there to inspect and can do a follow-up.

Vice-Chair Crapo asked how often the systems are inspected.

Mr. Spaulding replied every two years.

Chair Weathersby asked if there is a way to tell the structural integrity of the concrete itself.

Mr. Spaulding replied only from what can be seen visually from the inside.

Chair Weathersby asked for clarification on how the tank is secured from movement.

Mr. Spaulding explained there is an extended base on the bottom. There is an extra foot that goes around the entire tank. Even if one of the chambers is pumped out, there is still a soil mass on top of the tank. In the final design, the tank manufacturer checks the calculations to make sure the 12" is the correct number for the base.

Chair Weathersby asked if it will still work if the soils become saturated.

Mr. Spaulding confirmed. He explained it is part of the calculations.

Member Hoyt asked for clarification on the elevations for the leachfields.

Mr. Weinrieb noted the tops of the fields vary between 12.8, 12.9 and 12.6. For the bed, there is a 6" loam layer, 2" layer of stone and in the middle of the stone is a 4" pipe for a total of 12" of stone. It is 18" from the finished grade to the bed bottom. That bed bottom is 4' above the seasonal high-water table.

Member Hoyt asked what is going to happen to the leachfields when the property is inundated with water.

Mr. Weinrieb explained it is a sealed soil (loam). The fields remain sealed and the tanks have sealed covers. The water is going to wash across the surface and not penetrate.

Chair Weathersby stated she has a concern that the tanks will remain water tight. She asked what kind of inspection program would be recommended to make sure these remain water tight.

Mr. Spaulding stated an annual inspection could be required. During the inspection, they would look for staining, especially around the access. He commented that the pump alarm (high-water use alert) is the most accurate way to detect there is an issue. If it is suspected that there is a problem with the tank, it would be pumped down so they can search for the leak. He noted that the tanks are designed for H2O loads and are heavy duty tanks. The tanks are over designed for structural integrity and weight.

Speaking to Mr. Weinrieb, Chair Weathersby asked if there is any other location for the tanks where they would not be in the buffer.

Mr. Weinrieb explained the 100ft buffer meanders through the whole site. The design objective was to move everything as close to the right-of-way as possible. The leachfields cannot be moved any closer to the right-of-way because there cannot be grade beyond the property line for fill extension. That forces the leachfield to the front. In his mind, it is much more important to make sure the leachfields are as far away from the resource as possible. The septic tank could be right next to the leachfield but all that treatment area would be lost. The tanks are kept back 5ft from each leachfield.

Referring to the flood concerns, Mr. Samonas stated the garage floors will be raised to elevation 10. The crown of the road is at elevation 9 at this point. The current elevation of the property is 7. He noted that approval was received to raise it 4ft. That has since been reduced to eliminate the amount of fill being brought on the site by 45%. If there is a flood, and the water touches the concrete of the garage floor of the new buildings, that means Ocean Blvd is a foot or more underwater. He noted that the Advanced On-Site Systems were found to be the most air-tight. If there is water, it is going to be a region wide issue. These systems are most likely to be safe, as compared to other systems in the area.

Mr. Weinrieb stated the greatest risk of contamination on this site really isn't from the leachfields or the septic tanks. There will be more pollutants from pet waste in the 100ft buffer.

Speaking to Mr. Spaulding, Attorney Phoenix asked how many AOS Systems are in Rye.

Mr. Spaulding replied there are 98 AOS Systems in Rye. There are another 41 AOS Systems that have been approved and are ready to install. There are 22 installed along Ocean Blvd and another 9 additional that are ready to go in at some point. The systems first started being designed in 1992-1994. The first one in Rye was probably installed in 1998-1999.

Attorney Phoenix asked if there has ever been a leaking tank in Rye.

Mr. Spaulding replied no.

Attorney Phoenix stated that Mr. Samonas has no issue with having a condition of approval for the systems to be inspected every year and/or that there be some person or entity to be responsible to make sure all this happens. He asked the Board to consider the fact that the 4,000 yards of fill was already approved, which is not needed now. The Board approved the location and size of the leachfields and the location and size of the homes. There has to be septic tanks in order to make this work. The location of 85 to 90ft is still a pretty good distance. He also asks the Board to compare it to what is there today. In regards to the 24" requirement, nowhere on the site is there a location that could meet that. If that is denied, there will be no project and eventually there will be no cabins. He would argue that is the town taking property because the owner has the right to have septic systems on a property that was developed in the 1920's and grew over time. To do those septic systems, they have to get them 4ft above seasonal high-water and if it is less than 24" now, fill has to be added. In regards to the distance, they are 85 to 90% of the requirement and given the nature of system and the maintenance and monitoring, this is as good as its going to get.

Attorney Phoenix noted that he will address the Building Code relief first 7.9.4.2. He stated that before the Board granted the October 3, 2018 variances, extensive testimony was given about the current grade of the property, the steps necessary to comply with the floodplain ordinance and the fill required to raise the grade to accommodate the proposed septic systems. Nothing is changing about that. The Board approved the amount of fill on the property. What the Board didn't know is that fill includes the distance of where it is and 24". This is creating a circumstance where the purpose of the 24" will be met. The system gets 4ft of separation from seasonal high-water and each bed bottom is at elevation 11 or higher for flood purposes. Given the nature of the site, the property owner's rights to use that site, and the fact

that antiquated cabins and existing septic systems are being replaced, it is being made as good as reasonably possible. This Board found that to be true, last year, with respect to the building height, building location, wetland location and the intended fill. The applicant is proposing better construction than what is there now. Since nothing can be done on the site without having the building code relief from the 24" it would definitely do manifest injustice and be contrary to the spirit and the purpose of the building code to tell John Samonas that he can't do this on the site.

Attorney Phoenix reviewed the variances requirements for the tank locations, which needs to be 100ft per the zoning ordinance and 75ft per the building code (more restrictive applies).

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. Malachy Glen case says "will granting the variances unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives; mere conflict is not enough". One of the purposes of the ordinance is to lessen congestion in the street. The septic tank and 24" doesn't really effect congestion in the streets. There is not going to be congestion in the streets as a result of the tanks.
Another purpose is to secure safety from fire, panic and other dangers. As much as possible is being done with the tanks.
This promotes the health and general welfare. Adding something into the ground is not going to effect adequate light and air. Overcrowding is not effected. Undue congestion of population is not effected. This facilitates adequate provision of solid waste. In regards to assure proper use of natural resources, the area is going to be cleaned up and the tanks are as protected as they can reasonably be.
The variance is required because the property is burdened by wetlands, wetland buffers and is located in a food zone, along with insufficient estimated seasonal high-water.
The slight encroachment of sealed septic tanks in the buffer is direct relief related to the approved location of the buildings, leachfields and other improvements on the lot. For all of these reasons, approving the fill in the setback does not to a marked degree conflict with the ordinance.
Will granting the variance alter the essential character of the locality? Replacing older septic tanks in the ground is not going to alter the essential character of the locality. Neither will the septic tanks threaten the public health, safety or welfare. Septic tanks are required to connect to the leachfields to use the houses.
- Granting the variances will not diminish surrounding property values. The tanks are in the ground and will be better the most of the surrounding homes in the area. Those homes were built years ago and the septic systems were installed with older technology.
- There is a hardship on this site as a result of its size, location, amount of wetlands and the distance of the effect of the 100ft setback on the property. It is clear that special conditions exist. It is located in a flood zone, which adds to special conditions.
- There is no fair and substantial relationship between the public purposes of the ordinance and its application in this instance. Wetland and tidal buffers exist to protect wetlands. The applicant is doing the best he can, as the Board found last year when they granted the variances that were necessary to build the homes. There is no reason to require the systems to be 100ft under these circumstances.
- For all the reasons stated, the proposed use is reasonable.
- Substantial justice will be done by granting the variances. If there is no benefit to the public that would outweigh the hardship to the applicant this factor is satisfied. Any loss to the applicant, not outweighed by any gain to the public is an injustice. State-of-the-art septic systems are being installed, which are DES compliant and will be provided the 4ft of separation and be above the flood zone. The fill will be monitored. There is no harm to the public by granting the variance. However, if the variance is denied this project, and arguably no project, could go forward on this site.

Member Hoyt asked if they could speak to the stormwater management.

Mr. Weinrieb explained there will be about an 18,000sf reduction of impervious on this site. By that alone, there is a reduction in runoff. The stormwater management plan has been reviewed by the Alteration of Terrain Bureau and DES has granted an approval. It has been reviewed by Sebago Tech for the Planning Board. In all cases, which is supported by Sebago Tech, the runoff will be reduced. He continued there is absolutely a reduction in stormwater runoff. The flooding is coming from the ocean. It is not coming from runoff. It is coming from ocean surge. The flooding is not coming from the rain.

Chair Weathersby noted that the Board does not have an opinion from the Rye Conservation Commission; however, they do have a copy of their site walk minutes dated June 26, 2019. The commission is concerned about tidal and storm surge.

Vice-Chair Crapo pointed out that a past RCC letter says that there are numerous invasive plants in the wetland and the buffer which are recommended to be removed during project construction and the implementation of a planting plan. He remembers that there was discussion about not disturbing things and leave them in place, rather than going in with an excavator to rip things out in the marsh.

Chair Weathersby stated the approval from October 3, 2018, when the Board granted variances for this project, shows there were a number of conditions. One of the conditions was the eradication of invasive plants on the site. She noted that there were recommendations for the tanks from the commission in October and those were incorporated. She continued there is also a letter that was received from Jeanne and Charlie Katsonis, Eliot, ME, dated June 18, 2019, who are former owners of the property. (She read the letter into the record which expressed concerns of water and flooding on the site.)

Vice-Chair Crapo stated that he heard there was some discussion about the access and whether the Fire Department would end up approving that or if there was going to be a need for another driveway off Ocean Blvd. He asked if that situation has been resolved and how it would affect the proposal.

Attorney Phoenix explained the Planning Board would like to see a second driveway. The applicant is considering the request. The department head reviews have been sent to the Board and no one has said there is a need for it. If a driveway is put in and it does not change the location of the tanks, there will be no effect. If the tanks will be required to be set back, then the project will have to come back to the ZBA.

Chair Weathersby opened to the public.

Frank Drake, South Road, asked the grade elevation of the proposed tanks.

Mr. Weinrieb replied the bottom of the tank is at elevation 1. The water elevation is typically at elevation 6.

Mr. Drake stated the Planning Board met last night and they did discuss the access. There was an informal polling of the Board and they want another access. They also discussed the density. This would tie into the septic systems and the locations. There was another informal poll and the Board felt that the plan needs rework. They wanted six dwelling units not eight with three buildings not four. These are substantial issues. All the design requirements are driven by the applicant's preferred design choice. That design has not been approved. Variances have been approved attached to a certain design. This is adding "more fire" to a tortured piece of property with an arguably over developed proposal. The land use (environmental) regulations they need relief from are driven by the intense use of the land. There is no hardship for his particular layout for the septic systems. It is a preferred optional choice.

JoAnn Price, 19 Parkridge Ave, stated this is a difficult piece of land that has a lot of requirements. The town has zoning ordinance, land regulations, building code and environmental requirements all of which have been put in place with purposes in mind. When a development requires so many variances, waivers and special use permits, it is a clue that perhaps it is the wrong development for the area. If this were to be fewer than four buildings, things might work out better. At the moment, things are trying to be pushed beyond what the people have voted in for the zoning ordinance, land regulations and building code. All of these things are intended to make any development that goes in reasonable. From her point of view, this is not reasonable and they are asking for far too much.

Judy Scott, 1237 Ocean Blvd, stated the buffer zone should not be played around with. It is an important part of the wetlands. FEMA says that variances should be given very rarely in the floodplain. The buffer should not be disrupted. No matter how good the septic are, they should not be in the buffer.

Mr. Drake stated when the Planning Board was discussing the access, one thing that was notable in their analysis was the extreme narrowness of the driveway. The length of the driveway is well over 100ft and at the end it is 9 to 12ft wide. The driveway opening is 22ft at the opening onto Wallis Road and tapers down rather quickly. The Planning Board felt that 20ft was a standard reasonable drive and should be a minimum. That would be further pressure on the land.

Mr. Weinrieb stated the width of the driveway has no bearing on the location of the septic system. The first part of the driveway is 22ft and it does neck down to 18ft and at the very end to 14ft. He noted there is plenty of room to widen the driveway all the way in without impacting anything. It is a nonissue when it comes to the relation of the septic systems, the seasonal high-water table and location. In regards to flooding, this project has been vetted by DES. They require floodplain computations which proved to them there is no adverse impact to the entire Parson's Creek Watershed. That was also reviewed by Emily DiFranco, CCI, who supported that the site design computations are correct. This project does not impact flooding in this watershed.

Mr. Samonas stated during the planning stages of this project, a lot of research was done to come up with the best possible plan for the site. In regards to the proposed driveway location, the ordinance says to use the lesser travelled road, so this was done. He continued a big part of the project was reading Judy Scott's letter applauding Mr. Riley's development of tearing down seven units and building three condominiums. She even applauded the new septic systems. In the event variances are required, this competent Board grants them.

Chair Weathersby reminded everyone that if the Planning Board does not approve the project, all the variances evaporate. A condition of approval was Planning Board approval. If this project, as presented, is not approve the variances go away. She closed the public hearing at 9:20 p.m.

The Board recessed at 9:21 p.m.
Meeting reconvened at 9:29 p.m.

Motion by Patricia Weathersby to continue the application of Patrick Merrill for Carbajal Family Trust to the next scheduled meeting. Seconded by Burt Dibble. All in favor.

Chair Weathersby reopened the public hearing for Member Hoyt to ask a question.

Member Hoyt stated it pertains to the lot loading. He asked how to interpret the lot loading calculations.

Mr. Weinrieb explained a 2x factor was used because municipal water is available. Some reviewers in the past have allowed that because there is not a well onsite and the entire lot can be utilized. In more recent past, that has not been acceptable practice. What Mr. Farwell has said is instead of 3800 gallons per day lot loading it is half that. Mr. Weinrieb stated that is only if a subdivision is being created. If a subdivision is not being created, the flow that is being proposed is acceptable. This is according to State Septic Regulations.

Chair Weathersby reclosed the public hearing at 9:32 p.m.

Chair Weathersby stated if this is approved they should consider the following conditions:

- High-water system alert;
- annual inspection of the tanks and seals for structural integrity and water tightness;
- The town gets the results of the annual inspections; and
- Planning Board approval of project as presented.

Member Dibble commented it goes without saying that it has to get Planning Board approval.

Vice-Chair Crapo explained that what can be up in the air is if it is based on these exact set of plans, or if everything changes, it will throw this out.

Member Dibble replied that he is not sure how that relates to the septic tanks. He assumes if the project receives approval it would be based on how the Planning Board sees them.

Chair Weathersby commented if part of the approval involves moving the septic tank, unless it is moved to a better location, then this would go away.

Member Hoyt stated this Board approved this project unanimously 5 to 0. To all of a sudden tell them they can't put their septic tank in would be an injustice to the applicant. The time to air the grievances and make serious decisions would have been a year ago.

Vice-Chair Crapo explained they are saying that in the even the Planning Board process causes enough of a change that the variances are impacted, it would potentially invalidate the variances.

Chair Weathersby commented the applicant would have to come back to the ZBA. She commented that a year ago there was a lot of input on the project and it was well vetted.

Member Dibble commented that he does not remember the septic tank intrusion into the buffer as being a big topic when this was before the Board last year.

Chair Weathersby replied it was not and is why the applicant is back tonight. She explained that it was represented to the Board that the septic systems were entirely out of the wetland buffer. It turned out, the leachfields are out of the wetland buffer but the sealed tanks are over the border.

Member Hoyt stated he researched this system and knows it well. He thinks the system is state-of-the-art but there are a whole lot of other things that play in his mind about the whole project. However, it would be an injustice to turn him down for these tanks.

Chair Weathersby stated the Board struggled with this project and had a lot of discussion about the water. In the end, the Board decided that the project was a good project for the site. She is asking, do those tanks, in those locations, give her enough concern to basically deny the project? She continued that one of the reasons she voted for the project last fall is because of the representation that the septic systems were completely out of the wetland buffer and away from the back where the stormwater comes up. She was discouraged to find out that what had been represented to the Board was not the case. With that said, this is a sealed tank and septage is not leaking from it. Also, it is pretty far from where the water issues are. Septic systems have been approved a lot closer in difficult properties. If it can be sure that the tanks are not leaking, she does not feel as though she can deny the variance.

Vice-Chair Crapo stated he does not think they have any more assurance on this property, from any other property the Board has looked at, that they're not going to leak; however, there hasn't been any evidence of failed systems. He continued it comes down to roughly 15ft. It is still a significant distance away. Most potential pollution is going to come from the field, versus the tank, and that is outside the buffer.

Chair Weathersby stated this project is different in her mind because she has never seen a project where the base of the septic tank is at elevation 1, which is below the water table. She takes comfort in the fact that tanks will be sealed. The Board can also put restrictions in place to make sure the seal is watertight.

Member Patten stated he struggled with this one the first time around. In looking at what the Board is looking at just this evening, he thinks it is reasonable to approve the tanks where they are proposing them. Part of the whole reason he voted in favor of the last variance is because he looked at it as a choice of what exists versus what is being done. All of the leachbeds will be way out of the creek. The benefit far exceeds any downsides.

Member Dibble stated the existing buildings were there before the building code. The town has had different considerations of how that should be and things do need to be made better. In regards to the tanks, he is a believer in the technology. He would have to think the 15ft would not make any difference. If one of the tanks was to fail, and it was right on the buffer border, it would contaminant the marsh. Because this project was approved in the past, it feels like it would be a hardship on the applicant to not approve it if you believe in the technology.

There was discussion on possible conditions. The Board agreed to the following conditions:

1. High-water use alert system installed and maintained;
1. Annual inspection of the tanks and seals for structural integrity and water tightness, with a notice to the town of those results;
2. Planning Board approval of project without plan modifications affecting the variances; and
3. All State permits be applied for and approved.

Chair Weathersby called for a vote on variances to Section 301.8 B (1)(2) & (7):

1) Granting the variances would not be contrary to the public interest?

Shawn Crapo – Yes

Rob Patten – Yes

Charles Hoyt – Yes

Burt Dibble – Yes

Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The proposed use is a reasonable one?

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

Patricia Weathersby - Yes

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

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

Chair Weathersby called for a motion on building code relief from Section 7.9.4.2 (it was agreed that relief was not needed from 7.9.2.2).

• Would enforcement of 7.9.4.2 due manifest injustice and be contrary to the spirit and purpose of the Building Code and public interest?

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

Motion by Burt Dibble to approve the application of John Samonas, Trustee, John Samonas Realty Trust for property owned and located at 1215 Ocean Blvd for variances to Section 301.8 B(1)(2) and (7), for septic tank placement, and for Building Code relief from 7.9.4.2 for the septic system soils as presented with the following conditions;

- 1. High-water use alert system installed and maintained;**
- 2. Annual inspection of the tanks and seals for structural integrity and water tightness, with a notice to the town of those results;**
- 3. Planning Board approval of project without plan modifications affecting these variances; and**
- 4. All State permits be applied for and approved.**

Seconded by Rob Patten. All in favor.

- 4. Brenda P. Murray of 5415 Dorset Ave, Chevy Chase, MD for property owned and located at 59 W. Atlantic Ave, Tax Map 8.4, Lot 22, requests variances from Section 301.8 B(1) & (7) for a dwelling where 107' exists and 86' is proposed and a shed where 70' exists and 62' is proposed and 100' is required from a vernal pool; Section 204.3 C for a building in the front yard setback where 6' encroachment into right-of-way exists, 1.36' is proposed and 30' (average of adjacent lots) is required; from Section 500.3 for parking within the side and rear setback; for Section 603.2 for destruction of existing building and replacement of a new structure. **Property is in the General Residence, Coastal Overlay District. Case #27-2019.****

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He explained the lot is a 5,600sf lot, 112ft deep so it is long and shallow. There is a one-story cottage dwelling with an 853sf footprint. The existing building encroaches about 6.5ft into the right-of-way. The total impermeable coverage is about 1129sf. The existing parking is in the front setback next to the house. The proposal is to remove the existing home and build another home. The lot is burdened by a small non-jurisdictional wetland, which can have building up to it but not into it. There is also a proposal to move the existing shed back. The

Conservation Commission conducted a site walk a couple of week ago and did not have any problem with the project. When this was submitted originally, he was not aware there was a vernal pool offsite within 100ft. Mark West (West Environmental) went out to confirm the vernal pool and mark out the distance from the existing home and proposed. (He pointed out the location of the right-of-way on the plan.) He noted there is about 30ft from the lot line to West Atlantic Avenue. While the home is pretty close to the front lot line, visually it is quite a distance from the travelled portion of the road. The depth of the lot renders it virtually impossible to build a house that does not require some kind of front and back setback relief.

Attorney Phoenix reviewed the relief being requested and the proposal on the plan before the Board. He went on to review the criteria for granting the variances.

- The variances will not alter the essential character of the locality. The proposal fits in with the locality and makes the situation better in all respects.
- It does not threaten the public health, safety or welfare. The home will be to code, entirely on the lot with parking as far away from the resources as possible and the shed will be moved if possible.
- Getting the house out of the right-of-way and making it brand new, moving the parking and possibly moving the shed is in no way going to diminish surrounding property values.
- The hardship is self-explanatory. The lot is 5,600sf and only 50ft deep. A house and parking cannot be put on this lot without some sort of variances.
- Is there a fair and substantial relationship between the purposes of the ordinance and its application? The setbacks are for adequate air, light and space, which is being improved. The proposal is better on an overall basis. The footprint is smaller. The front setback is better, moving the shed is better and moving the driveway is better.
- The proposed use is reasonable.
- Substantial justice is done if there is no benefit to the public outweighing the hardship to the applicant. The public is not harmed by this proposal. They are helped both environmentally and by moving the structure. It will be a new house, to code, completely on the lot.

Member Dibble asked if the home will be occupied year round or seasonally.

Attorney Phoenix replied year round.

In regards to the parking, Chair Weathersby asked why they are asking for front setback relief.

Attorney Phoenix explained he asked for it as a precautionary measure. (He pointed out the front setback line on the plan.)

Chair Weathersby asked if the home is on town sewer and water.

Henry Boyd, Millennium Engineering, confirmed.

Chair Weathersby asked if the basement is just a crawl space.

Mr. Boyd confirmed.

Chair Weathersby noted that the front setback requirement is 30ft. She pointed out that the Board has received a letter from the Rye Conservation Commission. She opened to the public for comments. Hearing no comments, she closed the public hearing at 10:13 p.m.

Member Patten stated the lot is tiny. He commented there will be some disruption for the crawl space. He asked if they could be required to do silt socks.

Member Dibble commented they will do that during construction. He continued the house is being moved further away from the non-jurisdictional wetlands, as well as the vernal pool.

Vice-Chair Crapo clarified that the house is moving further from the wetland and closer to the vernal pool. In regards to the shed, he does not see an issue with the location on the west side. He thinks that having the shed on the east side would be more injurious to the neighbors.

Chair Weathersby asked about moving the shed to the east side.

Mr. Boyd stated it would be very tight in that location for the shed. He also agrees that it would be more injurious to the neighbors. The Conservation Commission wanted to be sure the vernal pool was protected and they didn't want things draining that way.

Chair Weathersby commented she wished it was further; however, it is sufficient separation from the neighbor. She likes that the house is small and to build anything they would need relief. In her mind, it is in keeping with the neighborhood.

There was some discussion on the location for the shed. The Board agreed they are fine with the shed location.

Chair Weathersby suggested a condition of approval:

1. The owner to only remove trees necessary for the location of the new house.

Member Patten noted that the lot coverage says it does not include the bulkhead and steps; at 15%. When it includes the shed it goes to 16%.

Chair Weathersby clarified the coverage requirement for the dwelling is no more than 15% and 30% overall. The bulkhead and steps are part of the dwelling. She asked Attorney Phoenix if he feels dwelling coverage relief is needed.

Attorney Phoenix explained that it was felt that the bulkhead and steps are more akin to a porch and a garage than they are to a dwelling.

Building Inspector Marsden agreed.

Chair Weathersby called for a vote on variances to Section 301.8 B (1) & (7), 204.3 C, 603.2, and 500.3:

1) Granting the variances would not be contrary to the public interest?

Shawn Crapo – Yes

Rob Patten – Yes

Charles Hoyt – Yes

Burt Dibble – Yes

Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The proposed use is a reasonable one?

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

Patricia Weathersby - Yes

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

Shawn Crapo – Yes

Rob Patten – Yes

Charles Hoyt – Yes

Burt Dibble – Yes

Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Brenda P. Murray for property owned and located at 59 West Atlantic Avenue for variances from Section 301.8 B (1) and (7), for a dwelling where 107' exists and 86' is proposed and a shed where 70' exists and 62' is proposed and 100' is required from a vernal pool; Section 204.3 C for a building in the front yard setback where 6' encroachment into right-of-way exists, 1.36' is proposed and 30' is required; from Section 500.3 for parking within the side and rear setback; for Section 603.2 for destruction of existing building and replacement of a new structure; with the condition that there be no removal of any trees other than what might impede construction of the dwelling. Seconded by Charles Hoyt. All in favor.

Motion by Burt Dibble to continue the application of Mary Murphy Westover for 9 Perkins Road. Seconded by Shawn Crapo. All in favor.

- 5. Chris Rickey for property owned and located at 8 Alder Ave, Tax Map 8.1, Lot 61, requests a variance for a shed 4' in the side yard setback where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #29-2019.**

Chris Rickey, applicant, spoke to the Board regarding his request for variances to install a shed 4' in the side yard setback where 20' is required. He noted that there are photos in the Board's packets showing the location, which is hidden from the road. He has also spoke with his abutters and they are okay with the location. He will be building the shed himself. (He submitted a copy of the shed drawings to the Board.)

Member Patten asked if the shed will be used for storage.

Mr. Rickey replied that he is going to put his office in there because he works from home.

Chair Weathersby commented it is really not a shed. It is an accessory building.

Mr. Rickey explained when he filed for his permit he was told it was a shed. He noted there will be no plumbing but there will be power eventually with electric baseboard heat. The height will be around 11 ft.

Irene Sarson, 11 Oak Ave, asked for clarification on the location of the shed.

Mr. Rickey explained it is going in the opposite location of her property. (He showed her the location of the proposed location of the shed.)

Mrs. Sarson commented that she has no issues.

Building Inspector Marsden stated the description did not talk about finishing and heating the shed. That might make a difference on the elements of the use. He would need to research it in the Building Codes but that might change the aspect a bit on how it can be used. He noted there is a 600sf limit and there is a definition for sheds. An occupiable space has to be on a foundation.

Chair Weathersby stated it does not sound like what the building code will require will affect the variances. She asked the applicant if Mr. Alder (abutter) knew it was going to be used as an office.

Mr. Rickey confirmed.

Chair Weathersby asked why it has to be 4ft from the side yard setback.

Mr. Rickey explained he would have to take down some major trees to put it anywhere else in the backyard, unless it was to go right in the middle of the backyard. There is absolutely no other use for the side yard space now.

Chair Weathersby closed the public hearing at 10:49 p.m.

Member Hoyt stated he has no problem with the location of the shed and its intended use.

Chair Weathersby called for a vote on variances to Section 204.3 B:

1) Granting the variance would not be contrary to the public interest?

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

2) The spirit of the ordinance is observed?

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

3) Substantial justice is done?

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

4) The values of surrounding properties are not diminished?

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

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

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

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

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

7) The proposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to grant the application of Chris Rickey for property owned and located at 8 Alder Avenue for a variance to Section 204.3 B for a shed with a side setback of 4'. Seconded by Charles Hoyt. All in favor.

6. **Mary Murphy Westover, Mt. Vernon Street, Boston, MA for property owned and located at 9 Perkins Road, Tax Map 5.2, Lot 123, requests variances from Section 603 for improvements to an existing non-conforming structure; from Section 204.3 A for eave 3.8' from the rear setback where 25' is required and from Section 204.3 B for an AC 16.8' from the side setback where 20' is required. Property is in the General Residence and Coastal Overlay District. Case #30-2019.**

- Continued to the August meeting.

7. **Patrick Merrill for Carbajal Family Rev Trust, Lori Carbajal, Trustee for property located at 18 Tower Ave, Tax Map 8.1, Lot 66, requests variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3 A for a patio in the rear setback where 18' exists, 5' is proposed and 30' is required and from Section 204.3 B for a patio where 23' exists, 8' is proposed and 20' is required. Property is in the General and Coastal Overlay Districts. Case #31-2019.**

- Continued to the August meeting.

IV. Other Business

The Board discussed the possibility of moving the monthly meetings to the Library and changing the start time of the meeting. It was agreed to keep the meetings at the town hall with the 7:00 p.m. start time.

The Board agreed to address Rules of Procedure at the next meeting.

ADJOURNMENT

Motion by Charles Hoyt to adjourn at 11:01 p.m. Seconded by Rob Patten. All in favor.

**All corresponding files and documents may be viewed at the Building Department, Rye Town Hall.*

**Respectfully Submitted,
Dyana F. Ledger**

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner: Chris Rickey

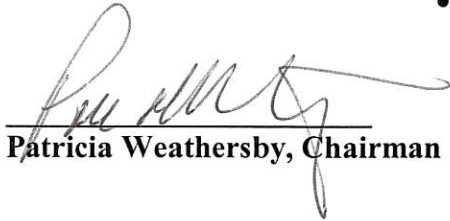
Property: 8 Alder Ave, tax Map 8.1, Lot 61
Property is in the General Residence, Coastal Overlay District

Application case: Case #29-2019

Date of decision: July 10, 2019

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

- Section 204.3 B for a shed 4' from the side boundary.



Patricia Weathersby, Chairman

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

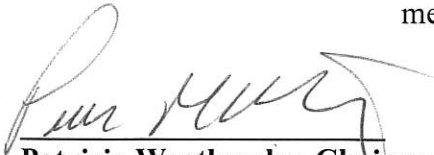
Applicant/ Owner: Mary Murphy Westover
Of Mt. Vernon Street, Boston MA

Property: 9 Perkins Road, Tax Map 5.2, Lot 123
Property is in the General Residence, Coastal Overlay District

Application case: Case #30-2019

Date of decision: July 10, 2019

Decision: The Board voted 5-0 to continue the application to the August 7, 2019 meeting.


Patricia Weathersby, Chairman

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: Patrick Merrill


Owner: Lori Carbajal, Trustee

Property: 18 Tower Ave, Tax Map 8.1, Lot 66
Property is in the General Residence, Coastal Overlay District

Application case: Case #31-2019

Date of decision: July 10, 2019

Decision: The Board voted 5-0 to continue the application to the August 7, 2019 meeting.



Patricia Weathersby, Chairman

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: Brenda P. Murray of 5415 Dorset Ave, Chevy Chase, MD

Property: 59 W. Atlantic Ave, Tax Map 8.4, Lot 22
Property is in the General Residence, Coastal Overlay District

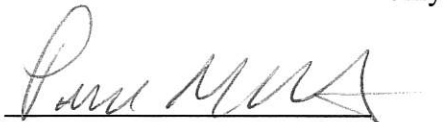
Application case: Case #27-2019

Date of decision: July 10, 2019

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

- Section 301.8 B (1) & (7) for a dwelling 86' and a shed 62' from a vernal pool;
- Section 204.3 C for a building 1.36' from the front boundary;
- Section 500.3 for parking within the rear and side setbacks; and
- Section 603.2 for tear down and replacement of a non-conforming structure.

The variances were granted with the condition that the owner removes only those trees that impede the construction of the new house.



Patricia Weathersby, Chairman

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: John Samonas, Trustee, Samonas Realty Trust
Of 111 Bow Street, Portsmouth

Property: 1215 Ocean Blvd, Tax Map 17.3, Lot 6
Property is in the Business, General Residence, Coastal Overlay and
SFHA, Zone AO.

Application case: Case #23a-2019

Date of decision: July 10, 2019

Decision: The Board voted 5-0 to deny the Administrative Appeal from the Building
Inspector's April 12, 2019 letter which determined that the proposed
septic systems must adhere to new construction standards per Building
Code section 7.6; septic systems within 24 inches of the existing surface
require a Building Code waiver, and variances are required from RZO
section 301.8 (B) for the septic tanks and fill within the wetland buffer.



Patricia Weathersby, Chairman

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:

John Samonas, Trustee, Samonas Realty Trust
Of 111 Bow Street, Portsmouth

Property:

1215 Ocean Blvd, Tax Map 17.3, Lot 6
Property is in the Business, General Residence, Coastal Overlay and
SFHA, Zone AO.

Application case:

Case #23b-2019

Date of decision:

July 10, 2019

Decision:

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

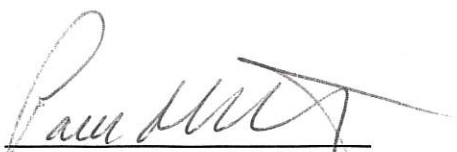
- Section 301.8B (1), (2) and (7) for septic tanks, surface alteration
and construction of septic systems within 100' of wetlands.

The Board voted 5-0 to grant a waiver from the following section of the
Building Code

- Section 7.9.4.2 for septic systems with soils with a seasonal high-
water table within 24 inches of the existing surface.

The variance and building relief were each granted upon the continued
compliance with each of the following conditions:

1. A highwater alert system to be installed, be operational and properly
maintained;
2. Annual inspections of septic tanks and seals for structural integrity and
water tightness. Reports of such inspections to be provided to the
Building Inspector;
3. All necessary state approvals be obtained for the septic systems; and
4. Planning Board approval of the proposed project without
modifications affecting these variances.


Patricia Weathersby, Chairman

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.