

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

**Wednesday, June 5 2019
7:00 p.m. – Rye Town Hall**

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Charles Hoyt, Rob Patten and Frank Drake

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

Motion by Shawn Crapo to continue applications 2, 3 and 6 as requested. Seconded by Rob Patten. All in favor.

- **Approval of May 1, 2019 meeting minutes**

Motion by Shawn Crapo to approve the minutes of May 1, 2019 as presented. Seconded by Frank Drake. All in favor.

- **Discussion on timely submittals of materials and possible rule change**
(To be discussed at end of meeting.)

III. REHEARING REQUEST

- Request by the Law Office of Scott E. Hogan for rehearing of the ZBA decision of April 3, 2019, granting variance requests of Lisa Lombardi for property located at 1248 Ocean Blvd, Tax Map 17.3, Lot 148. *Public hearing closed during Board discussion on the request.*

Chair Weathersby stated that the board received the request, dated May 3rd, from Attorney Hogan on behalf of six abutters at four different addresses. The board has also received the response from Ms. Lombard through Attorney Phoenix. She explained that the standard to grant a rehearing request is if the board made a legal error; the board's decision was unreasonable; or there has been new information that has come to light that was not available at the time of the hearing that might change the outcome. Attorney Hogan has listed a number of reasons that he thinks the board should rehear the case. He alleges there were some errors.

1) The board did not have time to review and comment on the changing aspects of the proposal.

Chair Weathersby noted it was four or five days prior to the meeting that a new set of plans were submitted, which moved the house by 5ft. Attorney Hogan is saying that everyone should have had more time to review those.

Vice-Chair Crapo stated that in this case the submittals were not so drastic of a change that it required a whole new analysis. The nature of public hearings is that the legal notice goes out to the abutters. An abutter can show up at the hearing with a volume of disputing evidence that the board would only receive that night. The evidence is not really submitted ahead of time.

Member Drake stated an abutter cannot be held to the same standard as the petitioner.

Vice-Chair Crapo explained the board receives information at the last minute that has to be digested. At the meeting, the board can decide if it is too much information to make a decision and whether the board should hold off on the vote.

Chair Weathersby noted the board had the new plans. There was some clear frustration that the plan came in so late.

Member Hoyt stated he was studying the former material and was on the verge of saying that he needed more time. However, he felt he was able to deliberate effectively.

Chair Weathersby commented that at any time a board member feels as though they need more information or more time, they should ask for a continuance; however, the members did not do that.

Member Hoyt noted that the nature of the ZBA is that sometimes information comes in the night of or two days before.

Chair Weathersby stated that as far as this application, the board had it several days ahead of time. In regards to the change, the house itself was all the same. It was just moved 5ft. The only dimensional change was the Ocean Blvd setback, which went from 60ft to around 55ft. It was still a very large setback so it did not require new relief.

Vice-Chair Crapo stated that some of the discussion was on the access way. Some of the structure was in that but in ways it was a separate civil issue. That may have a bearing on the case through some later decision. That was what was mentioned as being some of the stuff that was unclear. Some of that is not zoning specific.

Chair Weathersby commented that the board did not know about the right-of-way until it was brought to their attention at the meeting by an abutter. However, she feels the board dealt with it.

- 2) *There was additional zoning relief identified at the hearing that might be required. If required, should be heard and acted upon together, not at a separate proceeding.*

Chair Weathersby stated she agrees that the board should try to deal with everything all at once. Although that is ideal, it is not required. The board has missed a couple of variances in the past where the applicant had to come back to the board. She does not think this is a reason to rehear. In fact, it was determined later that the relief was not needed so the applicant will not be coming back.

- 3) *The board should require the submission of a stormwater management plan before taking any action so everyone can review and give comment. Requiring that post approval eliminates that opportunity.*

Member Patten commented that a stormwater management plan will be required by the building inspector.

Chair Weathersby noted the stormwater management plan was a condition of approval. There was a lot of discussion about stormwater on the property; the driveway cut, and porous nature of the sand. There was a lot of testimony about how this will improve conditions on the site. She continued the board does not often require a stormwater management plan, unless it is very complicated or if there are lot coverage issues.

Member Drake commented he understands that the pervious pavers kept them “under the wire” for lot coverage.

Vice-Chair Crapo confirmed.

Member Drake continued the impact of the pervious pavers is to mitigate runoff. There are still significant alterations on terrain and the pavers have to be maintained. He asked if it is the custom to allow plans without stormwater management plans in very dense areas.

Chair Weathersby explained if the applicant is requesting a variance for lot coverage, the board would require a stormwater management plan to be sure the lot can handle the water. If they are under the maximum percentage, it would not be required at the board level; however, there is often a condition that the stormwater management plan will be reviewed and approved by the building inspector.

Vice-Chair Crapo pointed out that the building department will sometimes say they need it upfront or indicate that it will be needed after seeing the ZBA. The applicant can apply for relief, if the relief is granted, they will need a stormwater management plan in order to receive the building permit.

Member Drake asked how the board can make the judgement that the runoff onto the abutter’s property is not going to be increased without a stormwater management plan.

Chair Weathersby explained there was a lot of testimony, by licensed engineers, that the water situation was going to be improved. They submitted what was almost a stormwater management plan and discussed it. She felt that she had a pretty good understanding of the water situation.

Vice-Chair Crapo commented that in this situation it is mostly a sand dune versus loam, gravel or clay. It is very porous soil.

Member Patten stated that in looking at number 4, one of his thoughts is that if it is insufficient, given the conditions here, then why would it be sufficient for the board to grant the variance with permeable pavers in any other situation? This case is not that different. If the board was to say that they were wrong here because the permeable pavers were insufficient, then that blows every other argument out of the water in the past and in the future. He does not think number 4 holds much weight. Also, it says “it should be a requirement” and it is a requirement of the approval.

Chair Weathersby pointed out the condition was that the permeable pavers be maintained and installed in such a way that they remain pervious. For the applicant to submit a maintenance plan to the board as part of the application, is what he is saying. Having a maintenance agreement is not what the board usually does.

Member Patten stated that in the future the board may want to think about what is required of that and whether the pavers really are effective. He thinks most contractors would say they are effective for about a year. If it is found that they are not working over time, the policing of this is not going to happen.

Chair Weathersby noted that the board can have a discussion on requirements at a later time.

4) The condition for the pavers was insufficient.

Chair Weathersby stated that it sounds like they are saying the board should have had an appropriate maintenance agreement.

Vice-Chair Crapo stated the town has a definition of "pervious". The board said "to remain pervious". Five or six years from now, the building inspector can go out and enforce the definition of "pervious". If it is found to not be pervious, then they have violated that. That is why he did not see the need for a delineated plan.

5) No legal basis to support that the variance requirements have been met. Issues with massing, and non-conforming structure. The hardship was self-created. Other alternatives exist.

Member Drake stated the thing that caught his eye in reading through the material, was that the heated living space went from approximately 1400 to 2100sf. That is a 50% increase in the bulk of the building. To him, that is large, especially in an area as tight as Wallis Sands.

Member Patten noted that they took the enclosed porch area and converted it so they did not increase the bulk of the structure by 50%. This was discussed at the hearing. It was true that they increased the heated space but it was by enclosing some of the porches.

Chair Weathersby commented it was by enclosing porches and adding dormers.

Member Patten commented it was also by creating living space on the third floor with dormers.

Member Hoyt stated he had called it an "ambitious project". However, for all the reasons Member Patten gave, he voted "yes".

Chair Weathersby explained it was basically the same house. It was being raised and some spaces were being enclosed.

Member Drake stated that granting variances to a "hypothetical" FEMA Code is a slippery slope. He personally does not think the board should do it. The 2ft freeboard arbitrarily pushes everyone to 30ft; however, there is really no need to go above 30ft. He does not think it is advisable, without the town voting on it, to give a variance based on hypothetical. From a legal perspective, the board does not have a lot of guidance on that, other than the 2ft.

Chair Weathersby noted they have the maps and the proposed regulations. She asked if he felt this is enough to grant a rehearing.

Member Drake stated that he was not there so he was going to ask the board if they even wanted him to vote on this. He has some opinions that he has formed from the basic review. However, he does not feel that he has the full flavor of the content of the board's decision, not having sat on the case that night. He continued it is definitely an "ambitious" project but it is a little too ambitious. The other comment he has is that it is an improved septic system but it is a "run-of-the-mill" system. This is in the Wallis Sands area with a lot of pollution problems. There are high-tech systems available. With the high-porosity sand, this might have been a good situation for one.

Member Patten stated that he agrees. However, if the system is legal with the State, he does not feel that the board can tell someone to over engineer something to a higher standard.

Chair Weathersby noted there weren't any issues of bedrock, where the board may require one of those. The applicant did not need relief for the septic, other than the septic setback. Speaking to Member Drake, she stated that if he feels he does not have a full understanding, it would probably be best that he does not vote. If he feels that he has a full understanding, then he could vote. She continued that whether a member has voted for or against the variances is somewhat irrelevant. It is whether or not there is reason to rehear it. Was there a legal error? Did the board do something unreasonable? Is there something that should be corrected? There has not been any new information that was not available.

No further comments were heard from the board.

Motion by Shawn Crapo to deny the request for rehearing. Seconded by Charles Hoyt.

Vice-Chair Crapo stated he voted "no" to the overall project and "yes" for certain subsets. In terms of the rehearing request and the arguments that were raised, he does not think the board made an error or lacked information in order to make a reasonable decision that evening.

Chair Weathersby noted that the board went through each of the factors and there were rather thoughtful answers. The board really considered those. It can't be said that there was no support for the way the board voted. She called for a vote on the motion.

Vote: 4-0-1 Abstained: Frank Drake

IV. APPLICATIONS

- 1. Sharon & Joshua Scott for property owned and located at 144 Washington Road, Tax Map 17, Lot 14** request variances from Section 603.1 for expansion of a non-conforming structure by adding a second floor above existing first floor; from Section 203.3B for second floor addition where 12.5' exists, 12.5' is proposed and 20' is required from the side yard setback. **Property is in the Single Residence District. Case #22-2019.**

Patrick Driscoll, contractor representing the applicant, presented to the board. He stated this is a straight forward project. The area that is within the setback is the bump-out that is currently off the second floor master bedroom and off the living area on the first floor. The footprint is going to remain the same. The foundation may be reinforced but it will not be altered. The walls will remain in line and the soffits will not be changed. He continued that the applicants are looking to reasonably add more

space. The house is currently a four bedroom house and the proposal is for a four bedroom house. The project will add more closet space and an office off the existing master suite.

He reviewed the criteria for granting the variances.

- *The variance is not contrary to the public interest and the spirit of the ordinance is observed.*
The essential character of the neighborhood remains virtually unchanged. The homeowner and architect made intentional efforts to make sure the character of the building, property and the neighborhood remain as is. There is no threat to public health, safety or welfare with the proposed changes.
- *Substantial justice is done.*
There is no harm to other individuals with this application. It is a substantial benefit to the homeowners. They would have a home that is safer, more code compliant, fits their living style and provides more room staying within the existing footprint within the setback.
Mr. Driscoll noted that outside the setbacks they are increasing the footprint of the house. A farmer's porch is being proposed for the front. There are also two very small changes off the kitchen on the driveway side. Those changes are well within the building area and there is no need for variances.
- *The value of surrounding properties are not diminished.*
The value of surrounding properties will not change due to the proposed changes.
- *Literal enforcement of the ordinance would result in unnecessary hardship.*
The property is burdened by the zoning restrictions. To keep the character of the existing home, and in its most efficient use, the proposal is to build off its current living areas, which is on the side of the house which encroaches into the side setback. With the garage and driveway on the opposite side, it doesn't make sense to expand the living area and master bedroom in that direction. Using the existing footprint allows the homeowners to reasonably achieve their goals of improving their home.

Mr. Driscoll noted the deed itself references the stonewall. The stonewall was used for measurements on that side for the setback. This was discussed with the building inspectors. He also noted there are no wetlands anywhere close to the property. There are no issues with impervious or pervious stones on this project. He reiterated that there will be no change in the number of bedrooms. Mr. Scott has reached out to his abutters, especially the ones that are most effected by the project, and they had no issues with the proposal.

Chair Weathersby stated that she first had a question about the need to put the second story on the bump-out, as there is so much room off the back. In looking at the plans, she now understands why it needs to be there. It is more than just an office. She continued that the neighbors to the east have a driveway that goes way back to their house. There is a pretty good distance between the houses.

Mr. Driscoll reiterated that Mr. Scott made sure to speak with both neighbors about the project.

Chair Weathersby opened to the public for comments or questions. None were heard. The public session was closed at 7:47 p.m.

Member Hoyt stated that Mr. Driscoll has convinced him that the applicant has met the criteria. They have done as much as possible to keep it a humble expansion.

Member Patten agreed.

Member Hoyt commented the only issue would have been if a neighbor complained about it because there is no engineering drawing or survey. As long as no abutters are in objection, he has no problems with the project.

Chair Weathersby noted it is minimal impact but they will gain a lot. She called for a vote on variances to *Sections 603.1 and 203.3B*:

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

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

- 7. The proposed use is a reasonable one?**

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

- 8. Therefore, literal enforcement of the ordinances would result in unnecessary hardship?**

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

Motion by Charles Hoyt to grant the variances for the property owned by Sharon and Joshua Scott located at 144 Washington Road from Section 603.1 for expansion of a non-conforming structure by adding a second floor and from Section 203.3B for second floor addition with a side setback of 12.5ft where 12.5ft exists and 20ft is required. Seconded by Shawn Crapo. All in favor.

- 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 301.8 B(2) for replacement septic tanks and fill within the buffer. Property is in the General Residence, Coastal Overlay District. Case #23a-2019. Request continuance to the July 10, 2019 ZBA Meeting.**

- Continued to the July meeting. *(See motion above)*
3. **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 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 #213b-2019. Request continuance to the July 10, 2019 ZBA Meeting.**
- Continued to the July meeting. *(See motion above)*
4. **Albeo & Christina DesJardins of 203 Adams Street, Manchester for property owned and located at 19 Glendale Road, Tax Map 20.2, Lot 4.1,** request variances from Section 304.3 for a non-conforming lot containing 7,517s.f. within the coastal overlay district; from Section 3.4.4 for height of 28' 8 5/16" where 28" is required; from Section 500.3 for a driveway within the 10' front setback; and from Section 601 for construction on a non-conforming lot. **Property is in the General and Coastal Overlay District. Case #24-2019.**

Attorney Derek Durbin, 144 Washington Street, Portsmouth, representing the applicants spoke to the board. He explained that 19 Glendale Road is a non-conforming lot of record. It contains approximately 7500sf and 44,000sf is the minimum requirement. The lot was conveyed to the DesJardins in 2018 by Harriet Kouchalakos, who is the mother of Christina DesJardins. Mrs. Kouchalakos also owns the property to the right; 15 Glendale Road. Prior to the DesJardins owning the lot, it was owned by Mrs. Kouchalakos for forty years, along with the property to the right. During her ownership, the two properties were involuntarily merged by the town. They have been historically deeded as two lots. They have been identified on a plan of record from 1921, a State subdivision plan, which has been included in the board's packets. In 2016, Mrs. Kouchalakos applied for and received approval from the town to unmerge the two lots. They DesJardins acquired the lot with the purpose of ultimately developing a modest single-family home that they can live in long-term. It will allow them to manage and maintain Mrs. Kouchalakos' property at 15 Glendale Road, which abuts this lot.

Attorney Durbin continued the proposed home has been designed and configured to minimize the zoning relief necessary from the board, while also allowing for reasonable space to live within. There are two bedrooms and two bathrooms proposed for the home. He noted that there was a request for building height because it was slightly over the 28ft required. However, that issue has been resolved. There was a discrepancy regarding the building height. It is actually within the 28ft height requirement so a variance is not required. He noted that they have received a letter from the building inspector to that effect, dated May 10th.

Building Inspector Chuck Marsden explained that they had submitted to the building department a cut-away of the house with a dotted line showing the grade as it moves towards the street. The building department took that as acceptable, knowing that the building height cannot be any greater than 28ft from that mark. During the permit process, they will get a spot elevation for the building for verification. He noted the building department is okay with the way it is going right now.

Vice-Chair Crapo asked if there is a benchmark that the building department will be able to measure off later.

Building Inspector Marsden confirmed.

Speaking to Attorney Durbin, Chair Weathersby asked for clarification on the left side setback.

Attorney Durbin explained the home is located 20ft from the setback to the left. The 14ft that is shown on the plan is actually depicting the width of the driveway.

Tobin Farwell, Farwell Engineering, stated that he was trying to give dimensions. Impervious surfaces are critical in this district. They wanted dimensions for everything to tally the impervious area. The plan shows the width of the driveway at 14ft. The dash line on the plan represents the building setback line, which is 20ft from the property line.

Chair Weathersby pointed out that the driveway permit has been denied for that location. She asked if there is an alternative plan.

Mr. Farwell replied that they do not have an alternative plan. There is an existing driveway there now and it made the most sense to put it there.

Chair Weathersby explained the denial was because it was too close the property line. The driveway needs to be 10ft from the property line.

Attorney Durbin stated that a variance was applied for to park within that area but that does not mean a driveway will ultimately be in that area. An appeal will be filed to ultimately get the permit that is needed to locate the driveway there.

Member Hoyt asked if it should be “parking within the left side lot line”.

Chair Weathersby suggested “front and left”.

Speaking to Mr. Marsden, Vice-Chair Crapo stated the driveway is depicted as being 50x14. There could be two 20ft spaces with 10ft of driveway left open.

Mr. Marsden agreed.

Member Drake commented the driveway is supposed to be 10ft away from the side line.

Chair Weathersby read the driveway regulations from Section 5, Construction Standards.

Member Drake commented it is a Planning Board regulation.

Chair Weathersby asked if the driveway could go on the other side.

Mr. Farwell replied it would be the same situation.

Vice-Chair Crapo noted that the town’s regulations “kick” it to the Planning Board.

Attorney Durbin explained there is a parking requirement in the zoning ordinance. There is a setback for parking and that is what has been applied for. With respect to the driveway regulation itself, that is something they will have to proceed next with. He commented that normally any planning relief would come after.

Chair Weathersby stated the notice says “front setback” but it should actually be “front and side” setback (Section 500.3).

Member Drake stated his view would be that they are asking for a variance from 500.3 for 10ft to the left side line and that is a viable variance to grant.

Attorney Durbin commented this falls in line with what they are saying.

Member Drake asked the board if they are all in concurrence that the notice is a little “fuzzy” and they are going to assume it is for the left side setback.

The board agreed.

Attorney Durbin reviewed the criteria for granting the variances:

- *The variances are not contrary to the public interest and the spirit of the ordinance is observed.*
The property is a lot of record and has existed since 1921 as part of the Fairhill Subdivision. That subdivision created the original layout of roads and lots in this particular area of Rye. The DesJardins’ property is similar to surrounding properties. There are some that are larger because they have been voluntarily or involuntarily merged together with lot lines being adjusted over time. In looking at the tax map of that area, many of the lots remain in their original configuration. The home proposed by the DesJardins is modest in size. It will be consistent in design, height and scale to existing surrounding homes. The proposed home will have minimal impact to abutters, as it conforms to side, front and rear setback requirements, thus preserving light and space between abutting properties while accommodating necessary improvements on the site; such as, septic system and driveway. Septic and stormwater are treated on-site, as approved by the town. The proposed home will not alter the essential character of the neighborhood.
- *Substantial justice is done.*
If the DesJardins were denied the zoning relief, they would be unable to construct a reasonably sized single-family home on the lot. Thus, this would deny them the benefit of primary use of the property, which would cause a significant financial loss. That loss would not be outweighed by any gain to the public.
- *The value of surrounding properties are not diminished by granting the variance relief.*
The value of surrounding properties would arguably be improved by the tasteful design of the new home on the current vacant lot.
- *Literal enforcement of the ordinance would result in unnecessary hardship.*
The property has several special conditions that distinguish it from other surrounding properties. It is one of the only lots remaining of the original Fairhill Subdivision that has remained undeveloped, since 1921. It has been conveyed as a separate lot overtime with the reasonable expectation that a home would be built upon it. When the lot was created, the current zoning standards did not exist; therefore, would never be able to meet the dimensional requirements that are currently set forth in the ordinance.

- *Knowing these special conditions, 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*
- *The proposed use is reasonable.* The property is in the General Residence, as well as, the Coastal Overlay District. The use of the property for a single-family residence is obviously a use that is permitted by right in the district. The homes is reasonable in size. Reasonable in scale, dimension and design. It is consistent with other uses in the area.

Attorney Durbin respectfully requested that the board grant the variances being requested.

Chair Weathersby asked if the lot has been taxed as a buildable lot.

Attorney Durbin replied that since it has been unmerged, it has been taxed at a pretty high value. Any taxing on that particular lot is more recent because of the unmerging.

Chair Weathersby asked for an explanation of the site plan and the stormwater management.

Mr. Farwell explained the lot has been surveyed by a land surveyor. The lot generally slopes from Glendale Road to the rear. A 30% impervious coverage is proposed for this lot. To counteract the increase in impervious area, drip edge infiltration is being proposed at the eave lines of the roof. Also, an infiltration trench is being proposed at the rear of the driveway and a raingarden on the east side of the lot to help with rainwater absorption.

Member Drake asked why the raingarden is going on the high side of the lot.

Mr. Farwell explained that the house will create water flow in that direction.

Vice-Chair Crapo asked if it would work to put the driveway on that side and the raingarden on the other.

Mr. Farwell replied no. He explained the house divides the lot. The infiltration trench and the raingarden are both pretty effective. He noted that the septic system has been approved by the State and the town.

Chair Weathersby opened to the public in support. No comments were heard. She opened to the public in opposition. She noted that the board received a letter from **Frances Crandall, 21 Glendale Road**, who is not in favor of the proposal and has concerns. Mrs. Crandall is the abutter to the left.

Maggie Duffy-Durkin, 4 Alan Court, noted that her property is directly behind this property. Her biggest concern is that this obstructs her view. If a house goes onto this lot, she will no longer have a water view. The other concern is the change in the water table and the drainage. A couple of lots up on Glendale, a house went in about ten years ago and she has never recovered from the water that seeps downhill to her lot and 2 Alan Court. She stated she is really concerned about the size of the house, the impact to the neighborhood and the density neighborhood. However, the view is the number one concern and it would impact the property value because she is directly behind that lot.

Member Drake asked if she has a view corridor through the other houses to the ocean.

Mrs. Duffy-Durkin replied yes.

Member Drake commented it is just happenstance that there is a view.

Mrs. Duffy-Durkin replied this is one of the reasons they bought their house.

Member Drake asked if she always assumed this would be an unbuildable lot.

Mrs. Duffy-Durkin replied yes because it is a tiny lot. It is basically a big side yard.

Member Drake stated it is the same size, or larger, than the abutting lots. It is certainly not the smallest lot in the neighborhood.

Ray Panek, 9 Manor Drive, stated the character of the neighborhood on Glendale is definitely not house after house. There are definitely wetlands and open spaces in the neighborhood. The drainage flows back into the estuary, not down into the ocean. He wonders why they would want to build a home next to their property that has not been maintained in years. He asked why they would not want the driveway next to the other property that they own. He is against the proposal.

Tamara Denneen, 18 Glendale Road, stated that she lives in the house across from the open lot. She commented it all seems very secretive, which makes the intent seem like it is to not live in the neighborhood. To have rentals around the neighborhood is certainly not going to do anything for property values. She is not sure that this is in the best interest of the neighborhood and the property values. She does not think anyone's interest was taken into consideration.

No further public comments were heard.

Attorney Durbin stated the abutting property to the right, 15 Glendale Road, is owned by Christina DesJardins' mother. The properties are not under common ownership at this time. Mrs. Kouchalakos is elderly, which probably speaks to the maintenance issues. This is not an issue for the board, but it is an issue for the DesJardins which they want to address. That would be the benefit of them being an abutter. He continued that all the beach areas in Rye are densely inhabited, compared to some of the outer lying areas of the town. This area is not any different. It is one of the more densely populated areas. It does fit within that mix. In regards to viewshed, he is sympathetic but it is purely a legal issue. Either someone has viewshed rights or they don't. People are either taxed for their view or not taxed for their view. He noted that there has not been a viewshed easement or anything of that nature granted to any of the abutters. The owners have a reasonable expectation to develop the property and this is a reasonable request.

Member Drake read from RZO Section 304.3, which addresses vacant non-conforming lots.

Chair Weathersby stated she is still concerned about the driveway and why it is on the Crandall side of the property and not the mother's side of the property. She asked what the impact would be if the driveway was put on the other side.

Mr. Farwell replied that it could be done but he is not sure what they are trying to change.

Chair Weathersby stated there is a greater distance between the driveway and the house on the right, than between the driveway and the house on the left. She asked if fill will be brought in for this project.

Mr. Farwell confirmed. He noted the existing grade where the septic system will be going is at 100 and will be filled to 104. Spot grades have been provided for the height verification but the fill has not been calculated to bring it up to that required elevation.

Chair Weathersby commented the back is going to be raised. She asked what kind of impact that will have on stormwater heading onto Mrs. Durkin's property.

Mr. Farwell stated the building inspector was concerned that it will be a steeper slope to the property line. As part of the stormwater management plan, a silt sock will be provided at the rear of the property to create a natural berm to slow the water down even further. He continued the regulations talk about quantity, not velocity. It is going to flow down a slope of 3 to 1 for the septic system. However, it is a grass surface so it is not anticipated that there will be much volume. The runoff from impervious surfaces is going to be caught by the infiltration trench, which will slow it down and detain it. Volume wise, it will be less than what is there now.

Vice-Chair Crapo clarified that the silt sock that will be there during construction will just remain and turn into a natural berm.

Mr. Farwell confirmed. He explained it is a bio-degradable mesh that is filled with woodchips. It can be moved around as needed but then it biodegrades and turns into soil.

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

Mr. Farwell replied no but it is a requirement.

Chair Weathersby clarified that the calculations have been done and this works.

Mr. Farwell confirmed.

Member Patten asked if there is a sense if there will be any blasting.

Mr. Farwell explained a test pit was done for the septic system. They did not run into any ledge.

Vice-Chair Crapo asked if there has been any test digging where the foundation will go.

Mr. Farwell replied no.

Member Patten asked what happens if there is blasting and damage occurs to the surrounding property.

Mrs. Reed explained there is a selectmen's ordinance, which requires a blasting permit from the Fire Department. There is a requirement for a pre-blasting survey, abutters have to be notified and they have to take photos. The requirements are in the selectmen's ordinance with regards to blasting.

Chair Weathersby closed the public hearing at 8:41 p.m. She clarified that the variances requested are to building on a vacant lot that is less than minimum size; 500.3 for parking in the side setback; and 601 for the non-conforming lot.

In regards to the lot, Chair Weathersby stated there are two issues; the lot and the parking. The septic meets the requirements, stormwater seems to work and they still have to submit a stormwater management plan, which could be a condition if this is approved. The issue is whether a house should be allowed on a lot of 7500sf. She reviewed Section 304.3; vacant non-conforming lot in the coastal area if they are under 7000sf they cannot be built upon. If they are more than 7000sf, the ordinance says the board should consider the following, in order to determine if the application is contrary to the public interest or observes the spirit of the ordinance;

- **Whether or not the lot is materially smaller than developed lots in the area, first consider the abutting lots.**

Member Drake pointed out the lot to the right is the same size. The lot to the left is 14,810sf.

Chair Weathersby pointed out the lot behind it is certainly bigger. The lot directly across the street is larger and it is also combined. The lots all started off at roughly 7500sf.

Vice-Chair Crapo stated the ordinance refers to surrounding areas, not necessarily just abutters.

Chair Weathersby noted it does say surrounding areas. First, the board is to consider abutting lots. If there is an insufficient number of such abutting lots, the board then considers the size of the developed lots in the same block. If it is still insufficient, the board considers the size of the lots in the neighborhood.

Member Drake stated that he thinks the situation at hand meets the first criteria, which is abutting lots because every one of them is developed.

Member Patten stated it is not fair to say that immediately abutting is the same thing. There is one lot that is the same and two that are twice the size.

Chair Weathersby pointed out that three lots are significantly larger because they are made up of two original lots. The question is whether the board feels there is a sufficient number of those developed. If it is felt that there is a sufficient number than the board stops. If it is felt that there is not a sufficient number the board should continue and decide on the block and then the neighborhood. The board needs to make a determination on whether there are a sufficient number of lots.

Member Patten stated that with regard to abutting lots, he sees one that is the same size and two that are twice the size. There is another lot diagonally across that is nearly an acre. He thinks it fails the abutter test.

Chair Weathersby read the legal definition of “abutter”: “Those that share the boundary line, including those across the street”. There is a lot to the north of 7500sf, the one behind is significantly larger, the one to the southeast is significantly larger and the one across the street is significantly larger. She called for a poll vote:

- Do you believe there is a sufficient number of developed abutting lots to make a determination?

Shawn Crapo – No; Rob Patten – Yes; Charles Hoyt – Yes; Frank Drake – Yes; Patricia Weathersby – Yes

She explained if they fail the first test, then it does not move on to the next questions.

Vice-Chair Crapo commented that the neighborhood can be evaluated.

Speaking to Vice-Chair Crapo, Chair Weathersby clarified that what she is hearing from him is that it the board needs to consider more than just the abutters for relief.

Vice-Chair Crapo confirmed. He continued the first line says; "the lot shall not be materially smaller than the surrounding developed lots". There is one lot that equals its size so it is not materially smaller than that. Is that sufficient?

Member Hoyt stated in his mind it is. The reason why is because all someone has to do is look elsewhere in the neighborhood, very close to the abutters, and it meets the criteria.

Vice-Chair Crapo commented he has first-hand experience where judges have ruled against the town and made sure that the whole neighborhood was considered.

Referring to the map of the lots, Chair Weathersby stated it is really not until the area of Manor Drive that the tiny lots were developed.

Member Hoyt stated this was once a subdivision and it was called 'Fairhill Estates'. Some of the lots were merged for whatever reason. The lots started off at 75x100. Walking down Glendale to Manor, there are similar size lots with similar size houses. He thinks they would not only be doing the owner of this lot a disservice, but also the community as a whole if they start saying the lot next to it is 14,200sf is significantly larger. He does not see it as being significantly larger. He sees it as all being 'Fairhill Estates' and they all start off as relatively small houses.

Chair Weathersby commented that some of them read it differently. They need to look at abutting lots and whether they are materially similar in size. If it is not materially smaller than abutting lots, then they go to the bigger pool. She thinks Member Drake's point was that even if they go to a bigger pool, and look at the area south of Manor Drive to Ocean Boulevard and Alan Court to Fairhill, most of the lots are materially bigger.

Member Drake commented it is a mix.

Member Patten stated that he is stopping at the second sentence and is saying that it is difficult to go much further than that; "It shall not be materially smaller than developed lots in surrounding area. The board first has to consider developed abutting lots". In that case, there is one that is the same size and three that are twice the size.

Member Hoyt stated that the next sentence says; "If there are an insufficient number of such lots to make the determination, the board shall then consider the size of developed lots within the same block. If there are still an insufficient number of developed lots, the board shall consider the size of developed lots in the neighborhood." It allows the board to determine whether this is as buildable lot or not.

Member Patten commented this is saying that if it fails the first test, the second test can be used to approve it. If it fails the first and second, the third test can be used to approve it.

Speaking to Member Hoyt, Chair Weathersby asked if his interpretation is that they should look at a bigger neighborhood.

Member Hoyt confirmed.

Chair Weathersby clarified that she and Members Drake and Patten are saying that they have to look at the abutting lots, and only if there is an insufficient number to make that determination, they would look at the block. Only if there is an insufficient number of those, they would then look at the neighborhood. She continued that she does not think this is a bad proposal. They have done a good job of not asking for setback relief, other than for parking. They have an approved septic, and there is no height issue. If the lot was not so small, she could see perhaps voting for it; however, she is stuck with the lot size and the rule the board has to follow.

Member Drake stated the difficulty is the way it is written.

Vice-Chair Crapo stated his argument is much like Member Hoyt's. The lot next door is the same exact square footage. The lot to the south has a rear yard, but the house itself was pretty much built on the same size lot as what is proposed. The lot across the street is a double lot but their house is situated, all but about a tenth, on one of the lots with a large yard. The tax maps do not give 100% of the story. Other than a couple of houses, all of the buildings were constructed within the old boundaries and they either purchased the land or expanded. Most of the character of this neighborhood is that there is a house on 7,000 to 9,000 square feet.

Member Hoyt agreed.

Vice-Chair Crapo pointed out that the notice should have probably used the word "under". There is a request under 601 to build on a non-conforming lot. In order to get to 601, the criteria of this section has to be satisfied for the 7,500sf lot. The variance is ultimately to 601. To get there, they need to satisfy 304.3. He continued that his vote on B (304.3B) is that it is in character with the neighborhood. The 7,517sf that they are asking to build on, is not materially different than the neighborhood.

Chair Weathersby called for a poll vote on whether 304.3B is satisfied:

Shawn Crapo – Yes; Rob Patten – No; Charles Hoyt – Yes; Frank Drake – No; Patricia Weathersby - No

Chair Weathersby called for a poll vote on whether 304.3C is satisfied:

Shawn Crapo - Yes; as long as the engineering calculations confirm the presentation

Rob Patten - Yes; Charles Hoyt – Yes; Frank Drake – Yes; Patricia Weathersby - Yes

Variance from 304.3; to allow building on the lot

Chair Weathersby called for a vote on variance request from 304.3 and 601, to allow building on the non-conforming lot;

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

Shawn Crapo – Yes

Rob Patten – No

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby - No

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes

Rob Patten – No

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby - No

3. Substantial justice is done?

Shawn Crapo – Yes

Rob Patten – No

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby – No

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes

Rob Patten – Yes

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby - No

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

Shawn Crapo – Yes

Rob Patten – No

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby - No

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 – No

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby - No

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – No
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - No

Chair Weathersby called for a vote on variance request to 500.3, for parking in the side and front setback;

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

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

Motion by Charles Hoyt to approve the application of Albeo and Christina DesJardins for variances from Section 304.3, and all its subparts, to build on a vacant non-conforming lot containing 7517s.f. within the coastal overlay district; and from Section 500.3 for parking within the 10ft side/front lot line; and Section 601 for construction on a non-conforming lot, with the

stipulation that they provide the Building Department a viable stormwater management plans.

Seconded by Shawn Crapo. Vote: 3-2 Opposed: Patricia Weathersby, Rob Patten. (Passed)

- 9. Brian J. Mitchell of 51 Islington Street, Portsmouth for property owned and located at 3 Heather Drive, Tax Map 24, Lot 61-22, requests a variance from Section 203.3C for construction of a house 30.1' where 40' is required in the front yard setback. Property is in the Single Residence District. Case #26-2019.**

Attorney Tim Phoenix presented. He noted that only one variance is needed for the proposal. Emails have been received from the abutters on either side (1 Heather Drive and 5 Heather Drive), in support. There is also a letter in the town's file from Wentworth by the Sea Country Club supporting the proposal and the required relief. The lot is 44,000sf with 163ft of frontage running along the curve of Heather Drive, which is a private road. The Mitchells would like to build a two-story home with a foundation footprint of 4628sf and heated living space of 5492sf. (He presented the architectural drawings of the home.)

He explained that one of the issues faced by the Mitchells with respect to the neighborhood, is that the homeowners' association directs the size of the home. The home has been approved by the association. It is one of the smaller homes on Heather Drive. The idea is to build a house of a certain quality, given the value of the land. With regards to the request for the variance, it is on the other side near the 16th hole. It is one of the narrowest fairways on the golf course and on the other side is the harbor. There is a golf course easement and a 250ft shoreline setback. This house was originally designed to be pushed back a little and built within the 250ft shore land. The actual easement stops at about 195ft. The golf course takes the position that for safety sake, they would not let any of the house be put in the area between 250ft and the 195ft line. The architects had to do a fairly major redesign of the rear of the house. They lost quite a bit of open sun area and covered porches. The house was slid forward, as much as possible, to get the back of the house at the 250ft line, which pushed two small areas of the house slightly in front of the 40ft setback line. The areas are about 30ft each. The total amount of house in the setback totals about 112sf. For 112sf, it might be questioned why the house could not just be made smaller. A lot of time and effort was put into designing the house with the belief that they could put the house back and be well within the 40ft setback line. Also, a complete redesign is going to be expensive and that part cannot be just cut off because it is a whole room and would change the look of the front of the house. He noted that it is for two little corners and the rest of the house complies. There is roughly another 10ft of area, in the right-of-way, from the property to the travel portion of Heather Drive so visually, there is 40ft.

Vice-Chair Crapo asked why the homeowners' association, or Wentworth, decide to prejudice this lot versus the other lot, where the whole house is closer.

Attorney Phoenix stated he is speculating, but this subdivision was done in the mid 90's and they may have had different concerns. This is probably based on experience. After the houses have been there for 20 years, they realized the danger of the golf balls and imposed the 250ft setback.

Robert Carty, TMA Architects, confirmed that the property owners have been told that houses have been hit with golf balls and windows have been broken. There is an issue at that hole.

Brian Mitchell, applicant, stated the club has taken the position that on the other side of the 16th fairway is the public beach area, which has further forced golfers from the "T" box to face their shots towards the houses because they don't want the potential of hitting people at the beach area. They have seen that there has been an increase in shots on the house next door.

Attorney Phoenix summarized that the owners do not want to go through a whole redesign for that small amount. The neighbors on either side have given their approval. It is a private road and there are very few houses and no through traffic on the road. For sight line and stormwater purposes, there is plenty of area. He noted that only one variance is needed; 203.3C for the front yard. At its closest point, the house is 30.1ft, with 112sf footprint. The size of the house is consistent with the neighborhood. He asked the board to consider the golf courses position, which was established after the house was designed. He reviewed the criteria for granting the variances:

- *Granting the variance is not contrary to the public interest and the spirit of the ordinance is observed.*

The Malachy Glen Case says “will the variances unduly and to a marked degree conflict with the ordinance such that they violate the basic zoning objectives”. The underlying issue is “Will granting the variance alter the essential character of the locality? Will it threaten public health, safety or welfare?” Clearly, the small lot line front variance, given the extra 10ft, the open area and the private road that is not heavily traveled, will not violate either one.

- *Granting the variance will not diminish surrounding property values.*

This is a very minor variance. The two most effected neighbors are in favor. Also, the country club has given their consent. If people thought their property values would be diminished, they would be present to say so.

- *Special conditions exist that distinguish the property from others in the area.*

This is the smallest lot of all the lots. The house is on a curve. If it was on a straight portion it might not have the same issue. The biggest impediment is not being able to build, in what would otherwise be the entire building envelope, because of the position and existence of the golf course. The trade is a small front variance for safety in an additional area out back.

- *There is no fair and substantial relationship between the public purposes of the ordinance and the application of it in this instance.*

Front setbacks are for adequate air, light, separation from neighbors, sight lines and stormwater management. This is so small that none of the factors for the front setback are violated.

- *The proposed use is reasonable.*

It is a single-family home and is a permitted use in the area. The variance is minor so the proposed use is reasonable.

- *Substantial justice will be done by granting the variance.*

If there is no benefit to the public, that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to the applicant not outweighed by a gain to the general public is an injustice. A variance is needed for a total of 112sf for both sides. The public is not harmed in any way by granting these variances. Denial of the variances would cause a fairly substantial redesign for reasons that are not necessary.

Chair Weathersby opened to the public. No comments were heard. She noted that letters have been received from the three abutters. She closed the public hearing at 9:34 p.m.

Member Drake stated it is very minor.

Chair Weathersby agreed. To make the applicant redesign the whole house would create a hardship.

Chair Weathersby called for a vote on variance request to 203.3C, front yard setback of 30.1 ft;

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

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

- 7. The proposed use is a reasonable one?**

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

Motion by Frank Drake to approve the variance to 202.3C for construction of a house in the front yard setback at 30.1ft where 40ft is required, for Brian J. Mitchell of 51 Islington Street, Portsmouth, for property owned and located at 3 Heather Drive, Tax Map 24, Lot 61-22. Seconded by Shawn Crapo. All in favor.

- 9. 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 204.3C for a building in the front yard setback where 6' encroachment into right-of-way exists, 1.36' is proposed and 19.5' (average of adjacent lots) is required; from Section 500.3 for parking within the side and rear setback; from 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. Request continuance to the July 10, 2019 ZBA Meeting.**

- **Continued to the July meeting. (See motion above.)**

- 10. Bearman Realty Trust, Patrick & Stephanie Driscoll, Trustees for property owned and located at 147 Clark Road, Tax Map 19, Lot 76, requests variances from Section 603.1 for expansion of a non-conforming lot and Section 203.3B for a shed 5' from the side property line where 20' is required. Property is in the Single Residence District. Case #28-2019.**

Patrick Driscoll, applicant, spoke to the board. He stated that the application is straight forward. He marked out the area with flags for the location of the shed. He spoke with all the neighbors, including the abutter who is most effected by the application. He noted that this neighbor actually lives eight houses down on Clark Road; however, she owns a lot of property in the area. He continued the reason they are requesting to put the shed so close to the property line is because of the way the site is situated. The neighbor on the other side looks out at his property from their backyard. If anything was to go closer to either house, it would affect the neighbors' sight line quite a bit. He considered putting the shed behind the septic; however, the location is too far away. The denial letter says the shed is roughly 13ft from the field; however, the shed will be on piers and does not have a full foundation. There are no clearance issues from being that close to a septic field. He noted that it is a sizeable shed. It is potentially going to be 16x24. (A drawing of the potential shed design was in the packets for the board's review.)

Chair Weathersby asked how they would be accessing the shed.

Mr. Driscoll replied across the property. There is space to access the shed on both sides. He noted that the shed will be for storing backyard items.

No members of the public were present for comment.

Building Inspector Chuck Marsden confirmed there is plenty of space to the septic and the leachfield. Only 5ft is needed without a foundation drain.

Chair Weathersby asked why relief from 603.1 was being requested.

Mr. Driscoll explained that they received a variance when they first purchased the property so he put it in just in case.

Chair Weathersby noted that 603.1 is for expanding a non-conforming part of the building or structure. Her opinion is that the variance is not necessary in this case.

The board agreed.

Chair Weathersby called for a vote on variance request to 203.3B, side yard setback of 5ft for the shed.

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

Shawn Crapo – Yes

Rob Patten – Yes

Charles Hoyt – Yes

Frank Drake – Yes

Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – Yes
Patricia Weathersby - Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt – Yes
Frank Drake – 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
Frank Drake – Yes
Patricia Weathersby - Yes

Motion by Shawn Crapo to grant the relief requested from 203.3B for a shed 5ft from the property line where 40ft is required. Seconded by Charles Hoyt. All in favor.

V. OTHER BUSINESS

Chair Weathersby stated there was a discussion last month regarding applicants submitting materials up to the day of the meeting. There was discussion that maybe it should be a week in advance or so, but it should be submitted so there is ample time for the board to review the material, unless there is a very good reason and the board can decide whether to continue the case or not. She read her proposed update to Section 10.1 of the Rules of Procedure. Her suggestion is to require all materials to be submitted at least seven (7) days in advance of meeting. She also suggested adding that the board may continue an application that had materials submitted less than 7 days to allow sufficient time for review.

Vice-Chair Crapo stated this gives everyone a target to shoot for. In the past, it seems that a couple of attorneys were just submitting a set of plans to hold their spot. They were then submitting the “real” materials last minute, after they had time to flush out the application.

Chair Weathersby commented this can still be done; however, they have to get it to the board a week in advance. She noted this is worded for “persons who wish to address the board”. She commented the board may be more lenient with non-applicants. Ideally, if an abutter or representative of an abutter has a lot of material, they should submit things a week in advance.

Vice-Chair Crapo noted that the abutters may be getting the notice around the same time they are being asked to submit their response. The board will definitely have to be more lenient with the abutters.

Member Drake stated the standard should apply solely to the applicant.

Chair Weathersby stated this would address opposing counsel, or a citizen, who come in with stacks of information to be reviewed.

Vice-Chair Crapo noted the verbiage gives an out, if the board wants to accept something from an abutter late.

There was some discussion about what would be a sufficient time frame for submittals. There was also discussion on the appropriate verbiage that should be used.

After discussion, Vice-Chair Crapo stated that he likes Chair Weathersby's proposal. He asked if this section of the Rules of Procedure could be included with the application so the abutters will know that this rule exists.

Mrs. Reed confirmed.

Chair Weathersby suggested that the board vote on the proposed change, as written. Mrs. Reed will inform people and add it to the application checklist. The board can start using this procedure in practice.

Motion by Patricia Weathersby to adopt the revisions to Section 10.1 of the Rules of Procedure as written. Seconded by Shawn Crapo. All in favor.

ADJOURNMENT

Motion by Charles Hoyt to adjourn at 10:10 p.m. Seconded by Shawn Crapo. 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: Law Office of Scott E. Hogan, Request for Rehearing of the ZBA
Decision of the April 3, 2019 granting of variance requests for case #03-2019

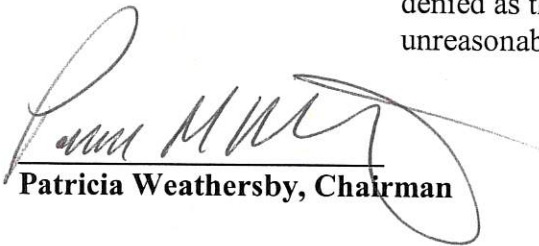
Property owner: Lisa Lombard

Property address: 1248 Ocean Blvd, Tax Map 17.3, Lot 48
Property in the General Residence, Coastal Overlay and SFHA

Application case: Case# 03-2019

Date of decision: June 5, 2019

Decision: The Board voted 4-0-1 to deny the request for rehearing. The request was denied as the Board found its April 3, 2019 decision was not unlawful nor unreasonable and there were not grounds to rehear the application.



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 and Coastal Overlay

Application case:

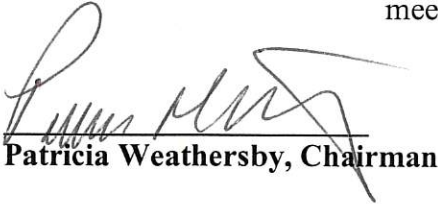
Case# 27-2019

Date of decision:

June 5, 2019

Decision:

The Board voted 5-0 to continue the application to the July 10, 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:

Albeo & Christina DesJardins of
203 Adams Street, Manchester, NH

Property:

19 Glendale Road, Tax Map 20.2, Lot 4.1
Property is in the General Residence and Coastal Overlay

Application case:

Case# 24-2019

Date of decision:

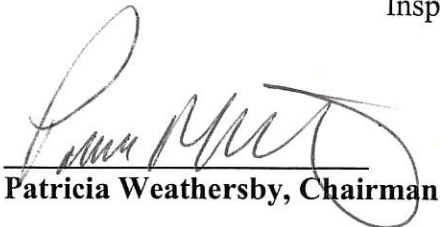
June 5, 2019

Decision:

The Board voted 3-2 to grant variances from the following sections of the Rye Zoning Ordinance:

- Section 304.3 for a non-conforming lot containing 7,517 s.f.;
- Section 601 for construction on a non-conforming lot; and
- Section 500.3 for parking on a driveway within 10' of the left lot line and in the front yard setback.

Each variance was granted upon the condition that the applicant submit a stormwater management plan that is approved by the Rye Building Inspector and install and maintain such plan.



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:

Sharon & Joshua Scott

Property:

144 Washington Road, Tax Map 17, Lot 14
Property is in the Single Residence District

Application case:

Case # 12-2019

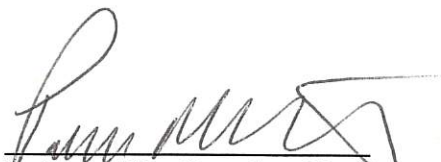
Date of decision:

June 5, 2019

Decision:

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

- Section 603.1 for expansion of a non-conforming structure; and
- Section 203.3B for an addition 12.5' from the side property 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:

John Samonas, Trustee, Samonas Realty Trust of
111 Bow Street, Portsmouth NH

Property:

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

Application case:

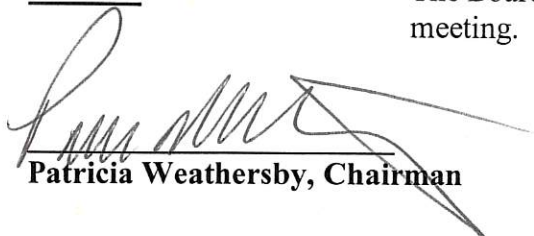
Cases # 23a-2019 and 23b-2019

Date of decision:

June 5, 2019

Decision:

The Board voted 5-0 to continue the application to the July 10, 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:

Brian J. Mitchell
51 Islington Drive, Portsmouth, NH

Property:

3 Heather Dive, Tax Map 24, Lot 61-22
Property is in the Single Residence District

Application case:

Case# 26-2019


Date of decision:

June 5, 2019

Decision:

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

- Section 203.3 C for a house 30.1' from the front property 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: Bearman Realty Trust, Patrick & Stephanie Driscoll, Trustees

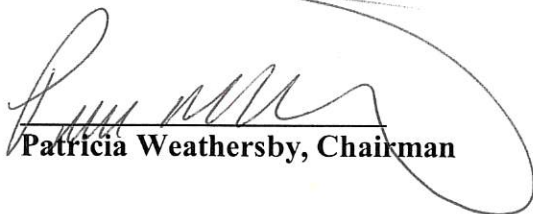
Property: 147 Clark Road, Tax Map 19, Lot 76
Property is in the Single Residence District

Application case: Case# 28-2019

Date of decision: June 5, 2019

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

- Section 203.3B for a shed 5' 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.