

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

**Wednesday, May 1, 2019, 7:00 p.m.
Rye Town Hall**

Board Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Patrick Driscoll, Gregg Mikolaities and Frank Drake.

Also Present: Planning/Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

Chair Weathersby called the meeting to order at 7:03 p.m. and led the Pledge of Allegiance.

Chair Weathersby congratulated Vice-Chair Crapo for recently passing his bar exam.

II. Business

- **Approval of the March 20, 2019 meeting minutes**

Motion by Shawn Crapo to approve the minutes of March 20, 2019 as presented. Seconded by Patrick Driscoll. All in favor.

- **Approval of the April 3, 2019 meeting minutes**

Motion by Shawn Crapo to approve the minutes of April 3, 2019 as amended. Seconded by Gregg Mikolaities.

Vote: 3-0-2

Abstained: Patrick Driscoll and Frank Drake

III. Applications:

1. **Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH for property owned and located at 140 Harbor Rd, Tax Map 9.2, Lot 17, request variances from section 603.1 and 603.2 for expansion of a non-conforming structure on a non-conforming lot; from section 301.8 B(1) & (7) for removal of privy and shower and expansion of dwelling 14.8' from tidal marsh and 19.6' from wetland; and from Section 301.5 A for surface alteration for pervious patio 35' from tidal marsh and 23.5' from wetland. Property is in the Single Residence District, Coastal Overlay and SFHA, Zone AE. Case #20a-2019.**

2. **Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH for property owned and located at 140 Harbor Rd, Tax Map 9.2, Lot 17, request a special exception pursuant to section 301.7 and section 301.8 B(6) for gravel driveway with parking in the wetland buffer. Property is in the Single Residence District, Coastal Overlay and SFHA, Zone AE. Case #20b-2019.**

Chair Weathersby stated that the board's procedures require new applications that involve wetlands to go before the Rye Conservation Commission. This application has been submitted but the commission has not had an opportunity to review the new application and make recommendations.

Attorney Phoenix explained that the application was submitted by email to the Conservation Commission and a package was dropped off at the town hall. Sally King, of the Conservation Commission, sent an email through Kim Reed stating that they did receive the package; however, it was not put on their hearing list because there was no request to do so. He commented that he has always submitted the packages in the past but has never had to request a hearing. He thinks it is unfair to the applicants, who came from California to be here, just because he submitted the application but did not say "put it on the hearing list". He pointed out that the commission has seen the first proposal, which was presented to the BOA in January. That proposal was much more ambitious with a footprint that doubled. The Conservation Commission's primary complaint was that they did not want the addition, which has now been taken off. In the past, the commission liked the fact that the building was going to be moved back. However, this board did not like the building being moved back and denied the variances for the location. He continued that now the building is staying where it is. DES is okay with it and they have sent a new approval. He does not think the Conservation Commission is going to have a significant problem with the proposal because it primarily answers the concerns they had last time.

Chair Weathersby pointed out to the board that they have the Conservation Commission's letter of October 2018 regarding the last application. The commission expressed concerns about the size of the house and the footprint. They also had concerns about the patio being excessive. She commented it would be helpful to have their recommendation but she hates to hold things up. She is a bit frustrated with the Conservation Commission because if they received something, it has to be put on their agenda to at least acknowledge the receipt of it.

Attorney Phoenix noted that there was a 150sf patio previously. His submission states that the new patio is smaller; however, it is actually larger. He wants to disclose this because the commission had an issue with the patio.

Referring to the Conservation Commission's October 2018 letter, Member Mikolaities pointed out that they are recommending a vegetative buffer. They also suggested that the new dwelling be restricted to the same size footprint as the current house and that no porch or patio be allowed.

Chair Weathersby commented that in some ways the board has their recommendations.

Vice-Chair Crapo stated he thinks the board should proceed. The commission already reviewed a larger, more impactful (other than the patio), application. The board already approved the septic part so that takes care of that part of the commission's letter. The Conservation Commission's recommendations are valid but they do not "make or break" an application. He continued that the recommendations made in their letter apply to everything but, perhaps, the new size of the patio.

Chair Weathersby stated the commission really gave the board guidance because they did not like the smaller patio so they are not going to like a bigger patio. She pointed out there is going to be a vegetative buffer of native plantings, along the entire wetlands area.

Member Driscoll agreed.

Member Drake also agreed.

The board was in agreement to proceed with the presentation and not continue the application to a future meeting.

Chair Weathersby stated that the board should first deal with the issue of whether this is a materially different application. Another application did come in that was denied. In order for the new application to be heard by the board, it has to be materially different. She asked Attorney Phoenix to summarize his position.

Attorney Phoenix stated this is a Fischer v. Dover issue. The law is that once a request is before the ZBA and is denied, a second variance cannot be heard on the same matter absenting material change of circumstance or unless it is for a use that is materially different in nature and degree. The use is not different but the project is different. In the Hill Grant Living Trust Case, the court clarified that restriction does not apply to a subsequent application explicitly or implicitly invited by the ZBA to modify to address the concerns. He thinks that both of these apply in this instance. (He explained the new plans by showing the old plans and existing structure.) He explained the new plan leaves the building exactly where it is, which also addresses the neighbors' (Millers) concerns. He thinks it is pretty easy to see that the new proposal is a substantial change. It is about 50% less in total footprint than the last building. (He presented the architectural elevation plans from the first application.) He noted that how they are going to get the extra room to make the house livable is by the addition of dormers on both sides. He does not think that anyone can argue that it is not a materially change of circumstances. He also noted that the floorplan is at 50% and that is a pretty substantial change. In addition, the orientation of the building is different than what was originally proposed. Adding the dormers is not going to change anything the Millers see because they can't look through the existing roof as it is. He reiterated that the new plan is a substantial change.

Attorney Phoenix noted the he has the minutes of the January 2nd BOA meeting. There were a number of board member complaints, which he has summarized in his submissions. Tim Durkin said he did not have a problem with the new septic system. The applicant had every right to

build on the existing footprint because it was grandfathered. Shawn Crapo said it is modest compared to other structures but it is being expanded a great deal. He agreed that relief was needed for the septic. Attorney Phoenix noted that the board approved the septic, which leads to the conclusion that if there is an approved septic there has to be a building to live in to use the septic. He stated they are using the same building and the same footprint but just giving it dormers. He thinks that is what this board invited. Also, that is what the Conservation Commission and the Millers wanted. He continued that Charlie Hoyt was okay with the building. That suggests that he would be in favor of this proposal. Patricia Weathersby said the lot is small and entirely in the buffer. The house is being used as a dwelling and should be allowed to continue; therefore, it should have a good septic system. Attorney Phoenix stated that they took from those comments that as a whole, the board did not have a problem with having a structure there. It was just felt that what was being proposed was too big. He pointed out that everything has been taken off, except the four main corners of the structure with it lifted up. That is both a substantial change and the board implicitly invited the applicant to do that and come back before the board.

Chair Weathersby asked the board members if they had any questions for Attorney Phoenix. The board had no questions. She called for a poll vote on whether the new application is materially different than the one that came before the board and if the board should proceed;

Shawn Crapo – Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Frank Drake – Yes
Patricia Weathersby – Yes

Chair Weathersby noted that a lot of information has been submitted. She invited Attorney Phoenix to continue with the merits of the application.

Attorney Phoenix stated this is a very modest proposal. The fact the Millers are not present demonstrates that. They were the ones who were the most concerned about the first proposal. He reviewed the variance requirements:

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The Malachy Glenn case says to consider whether it would alter the essential character of the locality or threaten the public health, safety or welfare. Given everything that has been said, he thinks it is pretty clear that is not going to happen. The photographs show this is by far the smallest house in the area. It is not going to alter the essential character of the locality. It is tastefully designed and fits in well. The septic has been approved by the board and the State as well. The new design also addresses the concerns of the Conservation Commission.
- The variances will not diminish surrounding property values. Peter Stanhope has issued a new report. This proposal is less impactful than the last one. If that one did not have any impact on property values, this one does not either. The fact the Millers are not present suggest they are not concerned about it in that respect.

- The fourth requirement is the hardship test. Special conditions exist because it is near the marsh and is in the wetland buffer. If the property was not in the wetland buffer, this could be built because variances to height, setback and coverage are not needed. The variances are all related to wetland and wetland buffer. It is reasonable to use it in its location, as it is, putting a second floor on it and with the improved septic system. There is no reason to apply the requirement of the ordinance. The proposed use is reasonable.
- Substantial justice will be done by granting the variance. The test is if there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied. If the variances are denied, the applicant cannot use the property. The building that is there now, would not meet the minimum square footage requirements. The existing building is only permitted because it is grandfathered.

Attorney Phoenix commented he believes all the variances requirements are met. The patio size is reasonable because it is less impactful than if it were grass.

In regards to the special exception, Attorney Phoenix stated that in some cases that have been before the board he has argued that since the relief is the same and relief for impact in the wetland buffer has already been received, do they really need a special exception? He noted that the access and the parking isn't changing, neither is the nature of the use. He thinks that is grandfathered; however, the building inspectors felt a special exception was necessary so it has been requested.

Chair Weathersby asked Attorney Phoenix to proceed with the special exception and the board will decide whether it is necessary.

Attorney Phoenix reviewed the requirements for the special exception:

- The proposed use is not injurious or detrimental to the neighborhood. This is the only way to get to the lot because it has no actual frontage. The Millers share the driveway. Parking has always been on the lawn and will continue. The home is seasonal and will remain seasonal. The nature of the access and use is not going to change. It will not injure or be a detriment to the neighborhood.
- The use is in harmony with the general purpose and intent of the ordinance and in accordance with the general and specific rules therein. This is the only way to access the property and park. There is no alternative route feasible and it is essential to the productive use of the land.
- Section 301.7 B(f) says that it has to be shown by a certified wetland scientist that to the maximum extent practical the construction shall have the least possible detrimental impact on the wetland. No other construction is proposed. The existing conditions are there and are not going to change. It is common sense that this is the least possible impact because there is nowhere else to put it. Also, there is no alternative feasible route.
- Economic advantage is not the reason for the exceptions.

Vice-Chair Crapo asked if changing the size of the house reduced the size of the septic system or leachfield.

Eric Weinrieb, Altus Engineering, stated that everything for the septic system remains the same because the minimum design is for a two-bedroom by State standards. He noted the lot loading remains the same, as this will be a seasonal residence. The State standards for seasonal is no more than nine months. It does not meet the lot loading for a new lot so it will remain a seasonal residence.

Chair Weathersby commented that she thought the septic tank location had changed.

Mr. Weinrieb stated that the leachfield itself did not move. The septic tank has been sited in a more reasonable location, in terms of proximity to the building.

Member Mikolaities asked for an explanation of the porous pavers for the patio.

Mr. Weinrieb explained that 140 Harbor Road has a long access drive. It is a lot that has no frontage. There are tidal, freshwater and poorly drained wetlands on the parcel so there are numerous constraints. A stormwater management plan has been prepared as part of the wetlands permit application which was submitted to NH DES. He continued that they are proposing a porous pavement patio. The reason is because if this was just left as lawn, it would over compact and it would become so dense that the lawn would not continue to grow and the water will not continue to infiltrate. By creating a formal area that is pervious with a section underneath of crush stone and gravel, that area will remain permeable and allow the runoff to infiltrate. This will have a better environmental impact than allowing that area to become over compacted and have no infiltration capabilities.

Member Driscoll asked for clarification on the elevation. He asked if there has been any water up to the side of the house.

Mr. Weinrieb stated there have been times when there has been flooding on the property. This area is in the 100-year flood plain elevation 9. The finished floor elevation is 10.33 now. It will be raised up to elevation 12.5.

Member Durkin asked if the ridge height raises up from where it is existing.

Mr. Weinrieb confirmed.

Member Drake clarified that what is there will be raised up 2ft with dormers on the two sides.

The applicant confirmed.

Chair Weathersby noted this is all new construction.

Member Driscoll stated that 301.8 B talks about the addition of fill and excavation. He asked how much fill is being added with the project. Also, are there any areas where the elevation will be reduced?

Mr. Weinrieb noted that there will be no cutting on the site but the amount of fill will be minimized. There will not be any filling around the building. The fill will essentially be for the septic system for tapering it back to the house. It is the leachfield, tank area and the area between the tank and the building. He noted that the patio area is flat.

Member Driscoll asked for an explanation of how the debris from the construction will be prevented from getting into the wetlands.

Mr. Weinrieb explained that there will be a silt sock all the way around. There is not going to be a lot of excavation for the building because it is going to be on piles. The excavation will be for taking out the top soil for the leachfield and bringing in fill. There is not going to be a lot of mounding and storage of material on the site. He continued there is no intention of doing a silt sock along the driveway because it is a gravel driveway and no disturbance is being proposed.

Vice-Chair Crapo asked if the utilities are all run.

Mr. Weinrieb explained the water line will be done by directional boring so wetlands will not be disturbed. A new water line was put in on Harbor Road. Horizontal directional drilling will be done directly from Harbor Road all the way in to the site. There will be no disturbance along the access drive.

Member Drake asked if they assume they are going to bore all the way through because it is a filled driveway.

Mr. Weinrieb commented it is probably be all peat and moss.

The applicant pointed out that the house next door went down the driveway with their water pipes.

Attorney Phoenix noted that the applicant has a pending appeal on the last application. The intention would be to withdraw the larger project appeal if this is approved.

Vice-Chair Crapo stated that it was mentioned that the neighbors would see just dormers and roof; however, the house is going up 2ft. He asked if the peak of the roof will be 2ft higher from the neighbors' perspective.

Attorney Phoenix confirmed. He noted that he gave the neighbors' attorney a complete copy of the new proposal a month ago.

Chair Weathersby noted that a letter was received from Anton and Donna Miller, dated April 25, 2019. The board also has the findings of DES for the wetlands permit and Mr. Stanhope's submittal. She opened to the public for comments or questions.

No comments were heard. She closed the public hearing at 7:52 p.m.

Chair Weathersby asked the board if they feel the special exception is needed for the gravel driveway and parking. Her feeling is that it is grandfathered, as it has been there.

Member Drake commented they are talking about the gravel driveway from Harbor Road up to the property line. It was mentioned that the parking is just on the lawn; however, there are two parking spaces delineated on the plan.

Chair Weathersby commented that it is because they have to show those.

Member Drake stated that he wonders about the context of the special exception with regards to the parking area.

Chair Weathersby asked Mr. Weinrieb to clarify.

Mr. Weinrieb replied that they are not proposing any changes. They were encouraged by the building department to show two spaces on the plan, even though they are not going to be striped or designated. There is no intention to formalize those spaces.

Vice-Chair Crapo commented that he does not see the harm in adding in the special exception.

Member Mikolaities pointed out that everything the board does sets precedent. If the building inspector hears the rationale behind it, maybe it will help him out in making the next decision.

Member Drake stated it has been advertised on the notice. There is a narrative for it from the applicant. His sense is to go ahead and act on it.

Chair Weathersby stated that her hesitation is that if they start analyzing the driveway and parking, it gets into the pervious pavers, it is in the wetlands buffer and there was talk about how it is getting compacted. What is there is there and it is not being changed.

Vice-Chair Crapo stated in this situation they are using what is there. There may be a future application where it would be better to move it to a new location then continue using the existing one. He thinks it would be better to cause a review. He commented that permeable pavers for the parking are going to flood and fill. That area is routinely under water.

In regards to the special exception, Member Driscoll stated he could go either way.

Chuck Marsden, building inspector, stated he asked for the parking spaces to be designated, especially because it is in the buffer zone and it is a tender area. Showing the parking shows where they can park. It is really just him pointing out what is required.

Chair Weathersby stated that it sounds like the board feels it should be addressed so it is all official. She asked the thoughts of the board in regards to the merits of the application. She

reopened the public hearing to ask the applicant to show where the native plantings will be planted to address the condition of the Conservation Commission.

Mr. Weinrieb explained they hadn't depicted anything at present. He pointed out the tree line on the plan and stated that they could add some plantings in this area. That is essentially the only area that is not going to be disturbed, as it is close to the wetlands.

Chair Weathersby asked if the applicant would be fine with them saying "to install and maintain native plantings to a depth of 5ft along the entire wetlands boundary, both freshwater and tidal".

Mr. Weinrieb replied that would be a little more disruptive. There is only one area that is really a "hole". The rest of the area is already planted.

Chair Weathersby clarified that she said maintain and install.

Mr. Weinrieb agreed to maintain what is there. He commented that he thought she wanted the existing plantings ripped out and new put in.

Vice-Chair Crapo explained if there is already something there it should be maintained with the gaps filled in with plantings.

Chair Weathersby pointed out it should be at least 5ft of native vegetation along the wetland boundary. She proposed as a condition of approval:

- The applicant will install, if necessary, and maintain native vegetation to a depth of at least 5ft along all tidal and freshwater wetlands.

Member Driscoll stated it is a good application. It seems very reasonable. The property owner has a right to use it. He stated that during construction there is going to be a lot more traffic on the driveway. He would like to see silt socks or some sort of barrier to prevent trucks from going too far over the edge and getting into the wetlands. He commented the application is very sound. He would not hold his decision based on a condition of that; however, that is the only recommendation he has.

Chair Weathersby commented that DES must have regulations concerning this.

Member Drake stated that work vehicles should not be parking all over the lawn and compacting it. That could be handled by the building inspector if it is a condition of the permit that parking be restricted on the lawn to avoid compaction.

Chair Weathersby suggested a condition that during construction there shall be no parking in locations other than the access road and the designated parking spaces.

Member Driscoll commented that can be tough because there will be excavators and trailers. The building department has a lot on their plates.

Mr. Marsden stated it has to be a nature of trust and expectations to be careful. He continued the silt sock is a good idea. Maybe a site walk could be conducted before construction starts and they can come to an agreement on parking that way.

Chair Weathersby summarized the conditions of approval;

- **The applicant will install, if necessary, and maintain native vegetation to a depth of at least 5ft along all tidal and freshwater wetlands.**
- **Silt fence along the common boundary during construction.**
- **The applicant will work with the town officials to manage construction vehicles and minimize construction parking on the property.**

Vice-Chair Crapo stated that at the last meeting the septic was approved. The applicant has a vested right to rebuild what is there. In his mind, the board passed the septic knowing they might come in and rebuild what is there. This proposal is basically that, raised up 2ft, and dormered out. He thinks raising the patio up 2ft will help keep it from flooding all the time. The applicant has addressed the board's concerns with the size and impact on the site. This is a much more reasonable application and he is in favor.

She called for a vote on variances requested to *Sections 603.1, 603.2, 301.8B (1) & (7) and 301.5 A:*

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – 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
Patrick Driscoll - Yes
Gregg Mikolaities – 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
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

For the special exception:

• Due to existing conditions no alternative route is feasible?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on the special exception request to Sections 301.7 and 301.8 B(6), for the gravel driveway and parking:

- **Is neither injurious nor detrimental to the neighborhood?**

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

Motion by Patrick Driscoll to approve the application for property located at 140 Harbor Road for variances to Section 603.1 and 603.2, for expansion of a non-conforming structure on a non-conforming lot, Section 301.8 B(1) & (7), for removal of privy, shower and expansion of dwelling 14.8ft from the tidal marsh and 19.6ft from the wetlands, and Section 301.5 A for surface alteration for pervious patio 35ft from tidal marsh and 23.5ft from wetland; as well as, a special exception from Section 301.7 and section 301.8 B(6) for gravel driveway with parking in the wetland buffer, with the following conditions;

- (1) Installation, if necessary, and maintenance of native vegetation to a depth of at least 5ft along all tidal and freshwater wetlands.**
- (2) Silt fence along the common boundary during construction.**
- (3) Applicant will work with the town officials to manage construction vehicles and minimize construction parking on the property.**

Seconded by Shawn Crapo

Vice-Chair Crapo stated the property values will increase for the neighbor. He does not want them to ask for a rehearing because the board did not address property values. He would like to get that discussion out.

Member Drake pointed out that they voted on this with the variance criteria.

Chair Weathersby stated that she would like to add another possible condition;

- (4) The pervious patio be maintained such that it stays pervious.**

The board agreed.

Member Driscoll amended his motion to add that condition and Vice-Chair Crapo seconded the amendment.

Chair Weathersby called for a vote:

Vote: 5-0. All in favor.

- 3. Beth Dietz-Tuttle for property owned and located at 31 Breakers Road, Tax Map 8.4, Lot 58,** request variances from section 204.3 B for a patio 15.1' from the side property line where 20' is required; and section 304.5 for a shed which will increase the lot coverage to 30.8% where 30% is allowed. **Property is in the General Residence, Coastal Overlay District. Case #21-2019.**

Dwight Tuttle presented to the board. He explained that the house is located at 31 Breakers Road on the corner of Surf Lane. The lot is 9,973sf. The lot has 100ft of frontage on both streets. A single-family home was built on the property in 2018. They are back before the ZBA for two additional variance requests. One which will allow the installation of a ground-level permeable patio to the rear of the property. While the proposed patio will meet the overall lot coverage requirements, it will have a side setback of 15.1ft where 20ft is allowed. He noted that because it is a corner lot, there are two fronts and two sides. The second variance is to allow an 8x10 shed for storage of garden tools and materials. The placement of the shed will meet the lot setbacks; however, it will require a variance for additional lot coverage, which is 30.8% where 30% is allowed. Relief is being requested to 204.3 B for a 15.1ft side setback, where 27.2ft exists and 20ft is permitted. Also requested is 304.5 for lot coverage of 30.8% where 30% is permitted.

Mr. Tuttle noted that he has spoken to all but one neighbor and none have given any negative feedback. He submitted emails from a couple of the neighbors with no oppositions. He also noted that he is an abutter to this property and he does not object (50 Jenness).

Member Driscoll asked if he is the abutter closest to the stone patio.

Mr. Tuttle replied yes. He is also the closest to the shed. He stated that the letter from the building inspector talked about stormwater runoff. Ambit Engineering put in the stormwater management system. He had them look at the system to see if it would handle the additional lot coverage. Ambit has sent a letter regarding their evaluation and they stated there should be no issue. He pointed out the summary for the variance requirements are in the board's packets.

Chair Weathersby confirmed the members have read through the submitted materials. She asked the board if they had any questions.

Member Driscoll commented there are three garage doors facing Surf Lane. He asked if the shed is going in front of the garage door on the right.

Mr. Tuttle showed the plans and explained the location of the shed, which will have a 17.4ft setback off Surf Lane.

Given the amount of garage, Chair Weathersby asked the applicant if he has a basement.

Mr. Tuttle stated that it is just a crawl space.

Chair Weathersby asked why a shed is needed.

Mr. Tuttle replied it is for the gardening tools and lawnmower. The garage is packed with outboard motors and other things.

Member Mikolaities asked what the relief was for in 2016.

Mr. Tuttle replied that one would have been for lot size. The minimum lot size for the area is 44,000sf and the lot is 10,000sf.

Mr. Marsden noted that he has copies of the minutes from that meeting.

Mr. Tuttle stated that during the original application there was discussion about the patio. When the civil engineering on the lot was being done, everyone said the setbacks for the patio didn't matter. However, when it came before the board, it obviously did matter. At that time, the patio was pulled. He thought he would come back when there was a chance to look at the size and the setbacks.

Referring to the minutes of the 2016 meeting, Chair Weathersby noted it was approved with the condition that the Planning Board approve the lot line adjustment and the building inspector's confirmation that no relief is needed from 202.6 regarding the corner lot. The relief that was requested was transferring 5,000sf from one lot to the other, 204.3 for a lot depth of 100ft where 150ft is required; 204.3 F for frontage on the other lot; 603.2 to tear down the existing non-conforming dwelling and replace it with a new non-conforming dwelling in a different location; there was a request for the patio that got removed; and 304.5 for dwelling coverage of 19.7% where 15% was allowed. There were no other conditions other than the lot line adjustment being approved and the issue of the corner lot being straightened out with the building inspector.

Member Drake asked how the new house is a non-conforming structure.

Chair Weathersby pointed out it did not meet the dwelling coverage and was on a non-conforming lot.

Member Drake stated that it is his understanding, in reading about the drainage, that all the runoff is collected on the property, or at least on the north side of the property.

Mr. Tuttle replied that it all ends up in a stormwater management system.

Member Mikolaities asked how the system is working.

Mr. Tuttle replied that he has no water in the crawl space.

Chair Weathersby asked if the patio is going to interfere with the runoff.

Mr. Tuttle stated that he has a letter from Ambit that states it can handle what he is trying to do.

Chair Weathersby noted letters of support received from:

- Jim & Debbie Carnevale, 30 Surf Lane
- Richard & Theresa Carey, 11 Surf Lane

Chair Weathersby closed the public hearing at 8:40 p.m.

Member Drake stated the patio seems to be reasonable. Even though it is only .8 on the lot, he is a little hesitant to stick a shed on it. The lot is built up and it seems to be adding clutter to it.

Member Driscoll stated he is battling with the variance criteria for hardship. There are three garage bays and a lot of lot coverage. Is there a need to have a shed? He is not sure if that can be taken into consideration with the necessary hardship. However, it is an 8x10 shed. It is not a massive shed. In his understanding of the zoning ordinance, he does not think he can vote against it.

Chair Weathersby replied that he can if feels it does not satisfy the criteria; "therefore, literal enforcement of the ordinance would result in unnecessary hardship".

Member Driscoll commented that he does not know what is in the garage bays. He does not think he can use that.

Chair Weathersby stated she had the same thoughts. She wonders if it is really necessary if they changed things around in the garage; however, it is the smallest shed that is made. She commented she could go either way.

Member Driscoll commented if the shed was any larger, he would probably say no it is not needed. He is in favor of both of these without any conditions.

Chair Weathersby pointed out they have suggested a condition that the patio be maintained to continue its porosity.

Vice-Chair Crapo stated he is wavering similarly on the shed. Distance wise, there is distance between their property line and edge of pavement so it seems farther away from the road. With a small shed, the runoff in some ways is the same as a car parked there.

Member Drake commented it is going to clutter up the lot. He does not think it is necessary.

Member Mikolaities stated that what bothers him is the incremental. He is not sure what the thought process is when giving a variance for lot coverage and this is two years later. That is what bothers him. He is not sure what the thought process was when the patio came off.

Chair Weathersby clarified that relief was granted for 19.7% dwelling coverage where 15% is allowed. The total lot coverage can go to 30% and they are now asking for 30.8%. She continued the patio doesn't bother her as much as the shed. She thinks the shed is kind of creep. However, it is such a small creep that she has a hard time denying it.

Member Drake stated that wanting additional storage is not a hardship.

Chair Weathersby reopened the public hearing for a question.

Vice-Chair Crapo asked what the white fence area to the left is.

Mr. Tuttle replied there is going to be a shower there.

Chair Weathersby closed the public hearing at 8:51 p.m.
She called for a vote on variances to Section 204.3 B for the patio:

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – 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
Patrick Driscoll - Yes
Gregg Mikolaities – 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
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - Yes
Patricia Weathersby – Yes

A vote was called for variances to Section 304.5 for the shed:

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

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - No
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – No
Frank Drake - No
Patricia Weathersby – No

3. Substantial justice is done?

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – No
Frank Drake - No
Patricia Weathersby – No

4. The values of surrounding properties are not diminished?

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – Yes
Frank Drake - No
Patricia Weathersby – Yes

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

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – No
Frank Drake - No
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 provisions to the property?

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – No
Frank Drake – No
Patricia Weathersby – No

7. The proposed use is a reasonable one?

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – No
Frank Drake - No
Patricia Weathersby – No

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

Shawn Crapo – No
Patrick Driscoll - Yes
Gregg Mikolaities – No
Frank Drake - No
Patricia Weathersby – No

Motion by Shawn Crapo to approve the variance requested to Section 204.3 B for a patio 15.1ft from the side boundary with the condition that it be maintained to continue its porosity. Seconded by Patrick Driscoll. All in favor.

Motion by Shawn Crapo to deny the variance requested to Section 304.5 for the shed because it will increase the lot coverage to 30.8%. Seconded by Patricia Weathersby. Vote: 4-1 Opposed: Patrick Driscoll

IV. Other Business

- The Planning Board will be hearing a presentation on May 14th given by Amanda Stone and Lisa Weiss 'Protecting Land and Water Resources in a Changing Climate'. Anyone who is interested is welcome to attend.

The board discussed procedures for applications and the frustration of having documents submitted at the last minute or the night of the presentation. The board agreed that documents should be submitted at least one week prior to the meeting, in order for them to have time to do a thorough review. They also agreed that documents should not be handed in at the meeting and expected to make it into the record. All documents that are going to be part of the record should be submitted at least one week prior.

Planning Administrator Reed and Chair Weathersby will work on wording for this procedure to be reviewed by the board at the next meeting for adoption.

Adjournment

Motion by Gregg Mikolaities to adjourn at 9:14 p.m. Seconded by Patrick Driscoll. All in favor.

**All corresponding documents and files 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: Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH

Property: 140 Harbor Rd, Tax Map 9.2, Lot 17
Property is in the Single Residence, Coastal Overlay and SFHA, Zone AE.

Application case: Cases #20a-2019 and 20b-2019

Date of decision: May 1, 2019

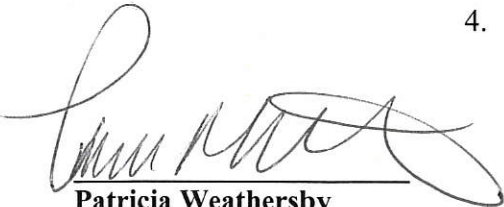
Decision: The Board voted 5-0 to grant variances from the following sections of the Zoning Ordinance:

- Section 603.2 for demolition and replacement of a non-conforming structure;
- Section 603.1 for expansion of a non-conforming structure on non-conforming lot;
- Section 301.8 B (1) & (7) to remove the privy, shower and expansion of dwelling 14.8' from the tidal marsh and 19.6' from the wetlands;
- Section 301.5 A for surface alteration for a pervious patio 35' from the tidal marsh and 23.5' from the wetland.

The Board voted 5-0 to grant a special exception for a gravel driveway and two parking spaces within the wetland buffer.

Each variances and special exception was conditioned upon continued compliance with all of the following conditions:

1. Installation, where necessary, and maintenance of native species vegetation to a depth of 5' along the edge of all fresh and tidal wetlands on the property;
2. A silt sock be in place along the common driveway during the construction phase (in addition to erosion control measures on the plans);
3. The Applicant work with town officials to manage construction vehicles and minimize construction parking on the property; and
4. The patio be installed and maintained such that it remains pervious.



Patricia Weathersby
Chairman

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner:

Beth Dietz-Tuttle

Property:

31 Breakers Road, Tax Map 8.4, Lot 58
Property is in the General Residence, Coastal Overlay District.

Application case:

Case#: 21-2019

Date of decision:

May 1, 2019

Decision:

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

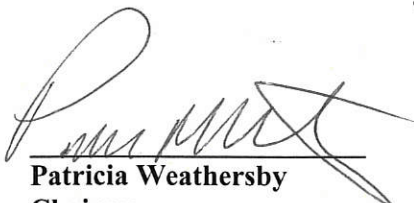
- Section 204.3 B for a patio 15.1' from the side boundary.

The variance was conditioned upon the patio being installed and maintained such that it remains pervious.

The Board voted 4-1 to deny a variance from the following section of the Zoning Ordinance:

- Section 304.5 for a shed which would increase the lot coverage to 30.8%.

The reasons for denying the variance include a finding by a majority of the board that enforcing the ordinance would not result in unnecessary hardship as the applicant had a three stall garage and basement crawl space for storage of gardening and other items, granting the variance would be contrary to the public interest, the spirit of the ordinance would not be observed, substantial justice would not be done, surrounding property values would be diminished and there was a fair and substantial relationship between the general purposes of the lot coverage requirement and the specific application of that section to the subject property.



Patricia Weathersby
Chairman