

**TOWN OF RYE – BOARD OF ADJUSTMENT
MEETING
Wednesday, March 20, 2018, 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: Building Inspector Chuck Marsden, Dyana Ledger Stenographer

I. Call to order and Pledge of Allegiance

Chair Weathersby called the meeting to order at 7:02 p.m. and led the Pledge of Allegiance.

II. Applications:

- 1. Lisa Lombardi for property owned and located at 1248 Ocean Blvd, Tax Map 17.3, Lot 148,** requests variances from Section 603.1 for expansion of a non-conforming structure; from Section 304.4 for height where 28.85' exists, 33.16' +/- is proposed and 28' is required; from Section 204.3 B for a retaining wall with a 3.72' right setback, for steps with a 5.8' right setback, for a house with a 6.59' right setback and for an addition with a 8.8' left setback where 20' is required; from Section 202.5 for a septic system with a 10.84' side setback where 20' is required and relief from Building Code Section 7.9.2.5 for a septic system with a 10.84' side setback where 20' is required. **Property is in the General Residence, Coastal Overlay District and Special Flood Hazard Zone. Case #03-2019.**

- **Applicant requested a continuance to the April meeting.**

Attorney Phoenix explained there are some minor corrections being made to the plans. Also, the team has been working with NH DES regarding the 50ft reference line and where building can take place. Based on discussions with DES, the house is going to be moved back closer to the line. The plans are being revised to show the board exactly where the house will be located.

Chair Weathersby asked if they need to re-notice the application.

Attorney Phoenix replied no.

Motion by Patrick Driscoll to continue to the April meeting. Seconded by Shawn Crapo. All in favor.

2. **Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA, for property owned and located at 395 Washington Road, Tax Map 16, Lot 117**, requests a special exception from Section 301.7 B for a driveway within 100' of a vernal pool and wetlands setbacks and within 75' of the wetlands buffer. **Property is in the Single Residence District. Case #11a-2019.**

3. **Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA, for property owned and located at 395 Washington Road, Tax Map 16, Lot 117**, requests variances from Section 202.13 for total upland soils of 27,970sf all of which is contiguous where 44,000sf of upland soils and 30,000sf of contiguous upland soils is required; from Section 203.3 C for a house 20.1' from the front yard where 40' is required; from Section 203 F for lot area of 52,270sf where 66,000sf is required; and for 149' +/- of frontage where 200' is required; from Section 301.8 B (1)(2)(5) & (7) for surface alteration, septic system, tree cutting, and construction of a dwelling 48' +/- from the vernal pool where 100' is required and 23.9' +/- from the wetland where 75' is required; and for tree cutting 15' +/- from the wetland where 75' is required; from Section 601 for building on a vacant non-conforming lot; from Section 500.3 for one parking space in the front yard setback. Applicant also requests relief from Building Code Section 7.9.2.2 for an effluent disposal system 85' +/- to vernal pool and 50' to wetland where 75' is required. **Property is in the Single Residence District. Case #11b-2019.**

Attorney David Brown, representing the applicant, presented to the board. He noted that the application was before the board in December where it was reviewed. The applicant listened to some of the concerns that were expressed at that meeting. The project has been downsized so the house has become a lot smaller; between 25 and 30%. This change eliminated one of the variances that was needed in December. He reiterated that they listened carefully to what was said and they are presenting a new application. He continued that an appraisal has been done by Stanhope Appraisal. That report has been submitted to the board and supports the value question of "no diminution". Also, the applicant has had contact with some of the abutters. The closest abutters are Mr. and Mrs. Bartley to the left of the property. They would have been the most impacted by the project. The applicant and the Bartleys have reached an agreement and consent to move forward with some mutual understandings.

Attorney Brown stated the lot is vacant now. It was created in a 1972 subdivision the Planning Board approved. There were four lots and one large lot was cut again so they became five. This is the only lot that is not built on. It is a lot of record. The lot is fairly large. It is over 50,000sf. The lot is a rectangle shaped lot and has a vernal pool that has developed over the years. Mr. Durkin would not be able to do anything without some sort of relief. There is approval from the Conservation Commission and that letter is in the board's packets. They concluded that they would approve of the project, as proposed, with three conditions that Mr. Durkin has agreed to. About 96% of the lot will not be changed and left as is. He thinks they have come up with a fair balance what gives Mr. Durkin some property rights and also works well to protect the environment. Relief is needed for this property; otherwise, there is zero value and the property would be taken away from the owner if he was denied this relief.

Jesse Durkin, applicant, explained this is a piece of property that his grandmother and father bought together. The intention was to one day develop the property to move the family from California back to New England. He continued that his father passed away and his grandmother held the property in her name until 1997, when she transferred it to him. He noted that he and his family always come back to Rye every summer. He grew up going to Rye as a child. He hopes to be able to develop this land with the board's approval. Referring to the abutters, he stated that he spoke with Mrs. Jones after December's meeting and sent a follow-up letter to all the abutters when a new application was submitted. He gave the

abutters his contact information. Mrs. Jones called him and after discussion said that she no longer objected to the proposal. He continued that he has been communicating via email with the Bartleys. They have said that they no longer object as well. He hopes he has come to terms with all the abutters, which is important when something is going to be developed and built upon. He noted that a significant amount of changes have been made based on all the feedback.

Eric Weinrieb, Altus Engineering, stated that Joe Noel mapped the wetlands and did test pits on the property. Jim Verra did the existing conditions survey on the area of impact. (He pointed out the location of the vernal pool and the wetlands on the plan for the board.) He noted that the grade drops off relatively steep off the road because there is an old excavated area and a man-made wetlands from excavation. He continued the original septic system design, encroached into the side setbacks. When the plan went back to the drawing board, the footprint was reduced and the building was slid slightly more towards the Jones' property. This allowed for the septic system to be outside the side yard setback. There is still a variance required for the front yard. The driveway will be permeable. There are no areas beyond the retaining wall and the house that are going to be lawn. It will remain in a natural state. The analysis shows that there will be no increase of runoff in any of the storms on the lot. They used the Cornell study and followed a more stringent requirement for the analysis. They also looked at the part of the lot that will be developed, as opposed to looking at the entire parcel, so it is a more conservative approach. If they looked at entire lot, it would be more of a reduction. He continued they are within 50ft of the poorly drained wetland and still within 50ft of the vernal pool.

Joe Noel, soil and wetland scientist, noted that he delineated the wetlands in April of 2018. The vernal pool portion was separately surveyed from the wetland. In August, he revisited the site and reviewed the buffer area. He has made some suggestions that could be done as part of the project to enhance the buffer. There is some debris and old farm equipment on the property that could be cleaned out. The main thing on the project that is important to keep is the forested area around the vernal pool (the area downslope from the drive and the area of the retaining wall). The amphibians go to the pool during breeding and spend 90% of the time in the uplands around the pool. He commented that he thinks this project has gone a long way to protect natural features.

Mr. Weinrieb pointed out that they have committed to putting wetland buffer plaques at the proposed edge of clearing.

Member Drake stated the Jones are fine with the project. The Bartleys were concerned over the driveway and that is on the other side of the house, which seems odd.

Mr. Weinrieb explained that the Bartleys' driveway is actually encroaching onto Mr. Durkin's property. Mr. Durkin is letting them continue to use the driveway on his property.

Attorney Brown noted there is an agreement for an easement.

Member Drake asked how people feel about the "no clearing or tree cutting outside the building envelope, except for dying trees as certified".

Chair Weathersby clarified that she spoke with the Conservation Commission in regards to what they mean by "building envelope". The response was; "The Conservation Commission considers the building envelope to be the retaining wall up to Washington Road. Basically, just the structure itself. The

engineer told us there would be no work or disturbance below the retaining wall, thereby, leaving the vernal pool and wetland untouched”.

Mr. Weinrieb pointed out the location of the retaining wall on the plan for the board. He noted that they had suggested to the Conservation Commission a couple of feet beyond because it has to be physically constructed. He stated they were looking at the line of the silt fence in the disturbance area because the building has to be constructed. He was under the impression that the Conservation Commission was talking just beyond the retaining wall so work can be done to build the wall and the house.

The board reviewed the modified design of the house.

Referring to the proposed home, Member Drake commented it is small. It has to be small because it is an incredibly challenging topographical piece of land.

Member Driscoll stated he realizes everything right now is wet with the snow melt. However, there was a collection of water that seemed to be closer to the road when he drove by the property. When he looks at the top of the map, there does not seem to be any dip. He asked if the plan is to fill that area in.

Mr. Weinrieb stated that he did not see any ponding that jumped out at him.

Mr. Noel stated it has been somewhat of an unusual year because there has been a lot of frost in the woods. Typically, frost is not in wooded areas. It's usually seen in open fields and disturbed areas. He continued there is no wetland vegetation on the slopes so there is a chance there may be some frost in the ground. During the snow events that have turned to rain, he has noticed there are areas that are clearly uplands that are ponding this time of year. He continued that he knows the area in question is not a hydrant soil and there is no wetland vegetation along the wetland slope. It could just be due to there being frost in the ground.

Vice-Chair Crapo stated it was mentioned that there is no real disturbance past the silt fence.

Mr. Weinrieb pointed out it will be for non-mechanical and there will be some remediation.

Mr. Noel stated he suggested some plantings in a couple of areas where there is currently some debris. Once that is pulled up, it would be nice to plant some native shrub species.

Speaking to Mr. Noel, Chair Weathersby noted that one of the suggestions was about exterior lighting.

Mr. Noel explained the lighting should stay low and be directed away from the wetland. He would still suggest this with the new plan.

Chair Weathersby commented there will likely be some lawn area in front of the house. She asked if it was felt that there should be a no fertilizer or pesticides requirement for the little bit of lawn.

Mr. Noel replied that this is always a good idea.

Mr. Weinrieb explained that when the lawn is trying to be established, it is really important to get some fertilizer down. The no fertilizer requirement can be established later on; however it is important for establishing the lawn in the beginning.

Member Mikolaities pointed out the property is going to pass hands someday. He asked if there would be any objection to some sort of deed reference to these conditions for future owners.

Attorney Brown stated that whether it is a deed reference or a cross reference to a recording will be okay.

Member Mikolaities complimented the applicant for coming back to the board with a revised plan that fits better.

Chair Weathersby opened to the public in favor.

Shawn Durkin, Hampton, spoke in support of his nephew Jesse Durkin and the proposal he is presenting.

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

Stan Jurus, 371 Washington Road, stated that when someone puts something on top of the land it will push the water downstream. His property is downstream from the Durkins' property. This happened before when one of his abutters filled their property. There is basically a pool in his front yard now. He sees the same thing occurring when this project is done. (He noted that he abuts the property in the rear. He reviewed the areas where there have been flooding issues on the plan for the board.) He stated that Mrs. Jones is elderly and has a hard time even going out of the house. If two men showed up at her house and started talking about this, she probably just said okay.

Member Drake asked where his driveway is located.

Mr. Jurus stated it is right down the front. They have an easement.

Vice-Chair Crapo asked if he comes in off Washington.

Mr. Jurus confirmed. He continued that the law provides for reasonable expectations of maintenance for scenic view. He would like to make an objection to the board for maintenance for scenic view and have the multiple exception application denied for a long-term rental property at 395 Washington.

Donald Thompson, speaking for his mother in-law Marlene Jones, 385 Washington Road, stated he believes his mother in-law has an easement between the two stone walls. There will be a permanent structure (retaining wall) being built in the easement.

Member Drake asked if he has a deed.

Mr. Thompson commented that he does not have one with him but can provide it.

Attorney Brown stated he has not seen an easement.

Mr. Weinrieb confirmed they did not find anything in all their research.

Mr. Thompson commented that he would object to any structure being built in the easement but he will have to do some research. He asked if the board has any records from the 1972 subdivision. Were there any reasonable expectations that this property would be built on?

Chair Weathersby noted the applicant has provided subdivision plans.

Mr. Thompson asked if it was approved by the town.

Chair Weathersby confirmed.

Attorney Brown stated the plans that were provided show that the Planning Board approved this 70's. There is no easement shown on the plans. He did not see any mention of the easement in the deeds. He has no knowledge of any said easement. He reviewed the criteria for the special exception for the driveway.

- The driveway is essential and there is no alternative feasible route. It's the least intrusive and is essential to have the driveway to connect to the house.
- The proposal is not for economic advantage. It is just to have a normal house, like everyone else in the subdivision. Therefore, it is nothing that would be injurious to the neighborhood and would be in harmony with the general purposes of zoning.

He went on to review the criteria for granting the variances.

Citing the cases of Malachy Glenn and Simplex; to consider the financial burden to the applicant if the application was denied. The burden in this case would be 100% loss of value.

The Simplex stands for a more relaxed approach. The hardship test in Simplex also talks about constitutional rights protecting property owners so they don't lose all their value. He thinks this is a fair and valuable approach that creates a viable house of modest size. It respects the environment as much as possible. The Conservation Commission letter shows that they agree.

- This has met the test that it would not be contrary to the public interest because it is a residential house in a residential district. It is a buildable lot of record, going back to 1972, and the vast majority of the lot will not be changed.
- This would be consistent with the spirit of the ordinance because it is acting in furtherance of the 1972 subdivision lot. The applicant just wants to do what everyone else has done. Everybody has known that there is another lot there that could be built on.
- Substantial justice has been met. There will be no change to the neighborhood. It is residential today and will be residential tomorrow. There is no benefit to the public by denial that would outweigh the hardship to Mr. Durkin. Certainly, there is no harm to the public health and welfare.
- The Stanhope appraisal concludes that there are no abutters in the neighborhood that would suffer any diminution of value if this proposal was approved and developed. There is also a letter from a local realtor saying the same thing.
- Hardship is a three part test. It has been shown there are very special conditions on this lot of record with a vernal pool that has developed over time. There are overlapping setbacks that show it is unique and distinguished from other properties.
- There is no fair and substantial relationship between the general purpose of the ordinance and application in this case. The data shows that this would be a very balanced and reasonable approach to develop as shown.
- The use is a very reasonable one. It has been downsized and is very protective.

- Literal enforcement would cause an unnecessary hardship. Mr. Durkin just wants to do what everyone else in the subdivision has done and build a house. Nothing can be done without relief. A variance is absolutely necessary in order to proceed.

Attorney Brown stated variances are a safety valve so property rights are not taken away. The constitution stand behind him to give him some relief for a reasonable proposal.

In regards to the building code waiver, Attorney Brown stated this is necessary also. Just like all the criteria for the variances are met, it would manifest injustice not to give Mr. Durkin some relief. He noted they are happy to live with conditions from the Conservation Commission and other conditions discussed. He hopes the board will consider this and vote in favor for Mr. Durkin's relief.

(Mr. Weinrieb submitted a copy of the deed to the board, which does not reference any easement for access across the property.)

Vice-Chair Crapo asked if this was a copy of the most current deed.

Mr. Weinrieb replied that it is the deed that transferred the land to Mr. Durkin.

Attorney Brown stated he looked at the deed from the 70's and they match.

Speaking to Mr. Weinrieb, Chair Weathersby asked him to address Mr. Jurus' concerns about the stormwater.

Mr. Weinrieb explained that they did not analyze the entire parcel. (He pointed out the vernal pool area, wetland and forested area in the front on the plan.) He explained that if they looked at a big area, with a small improvement, it would make it even more conservative. (He pointed out the area that was used for the point of analysis. He also pointed out the area for the proposed lawn, forested area and pervious pavement.) He noted the proposal is well above and beyond the town's criteria for runoff in their predictions.

Member Drake asked if there is a stream coming out of the bottom left corner of the lot. He asked where the vernal pool drains.

Mr. Weinrieb explained the vernal pool drains into a narrow channel and then opens up into the larger wetlands.

Member Drake stated that it seems that any runoff coming from this proposal would come down the slope, go to the vernal pool area and out. He commented it would not go across to Mr. Jurus' lot. He continued that the runoff from the Browns' property, on the other side of the Jones', would run down onto Mr. Jurus' area.

Vice-Chair Crapo asked if they are using permeable asphalt.

Mr. Weinrieb replied they are using pavers for the driveway and walkway.

Vice-Chair Crapo noted that part of the stone wall is being removed.

Mr. Weinrieb explained they are removing part of the stone wall. The stone will be used to fill in the gap where the existing driveway is located.

Vice-Chair Crapo commented that it has been raised that there is a potential right-of-way. It is not sure if the stonewall is not the boundary of a right-of-way.

Member Drake pointed out that the boundary line is right on the plan. There is no reference to a right-of-way in the deed. He pointed out that the Jones' stonewall isn't on the property line, except for the corner near Washington Road. It runs diagonally away from the property line. So, that is not a property line stonewall. The interior stonewall is well on the other fella's land. Back in farming days, there may have been a gentlemen's agreement between the two properties as a way to get down to the lowlands.

Chair Weathersby noted the board has the plans and information but nothing other than this possibility. When the public hearing is closed, the board will discuss what they want to do with this issue. Referring to the retaining wall, she asked what the distance is to the property line.

Mr. Weinrieb replied it is about 13ft at its closet point.

Chair Weathersby commented that side setback relief is needed for the structure.

Mr. Weinrieb stated he did not think the retaining wall was considered a structure.

After reviewing the ordinance, Chair Weathersby noted that stonewalls and fences are exempt; however, retaining walls are not. A retaining wall is considered a structure and would need relief. She asked if they are verbally amending their application to include the retaining wall.

Mr. Weinrieb confirmed. He reiterated that the nearest distance to the property line is about 13ft.

Referring to the discussion about the right-of-way, Attorney Brown stated the Planning Board approved this subdivision. The board has a copy of the plan from 1972, which created the new lot lines that their plan follows. The Planning Board approved these lots when they carved up the old farm. The right-of-way is not depicted on the subdivision plan.

Mr. Thompson commented that this is from the 1800's but still exists and is still enforceable. It might not have shown up on their plans because it is relief for the adjacent property.

Chair Weathersby asked if he has anything he can show the board confirming this.

Mr. Thompson replied no.

Hearing no further comments from the public, Chair Weathersby closed the public hearing at 8:06 p.m.

Regarding the easement discussion, Chair Weathersby stated she does not personally feel this is an obstacle. If it is an issue, it would be a legal issue between the two parties. She does not see anything about any rights that the Jones family may have to use that property.

Member Drake stated that if it becomes to be a problem, it is a civil problem. At this point, it would just be the retaining wall and some fill in the right-of-way. He is not going to vote "no" because of that.

Vice-Chair Crapo commented that all they have is a quitclaim deed so there could be rights; however, that is a separate civil process.

Member Drake asked if the board is going to let the applicant amend the application to include the retaining wall intrusion. He asked if this could be done or if it has to be re-noticed.

Chair Weathersby pointed out that it is all part of the plan.

Regarding the drainage, Member Drake stated the topography speaks for itself. The lot is all downhill. It is all going to run down to the flat marshy area. It looks like the stream carries it over to Long John Road.

Chair Weathersby noted that the stormwater management plan showed there would be no increase in water. There will be runoff, there always has and always will, but it will not increase.

There was discussion about having a condition that the outdoor lighting be “dark sky compliant”.

Chair Weathersby read the conditions recommended by the Conservation Commission; **(1) no clearing or tree cutting, outside the silt fence area, except for dead or dying trees as certified by a licensed arborist; (2) no lawn beyond the silt fence; and (3) wetland buffer boundaries installed at 25ft intervals along the silt fence area.** There is also the dark sky lighting. There are additional conditions suggested by Mr. Noel about removing the waste from the vernal pool; and planting blueberry bushes (appropriate native plantings). She would add that the porous walkways and driveway remain and be maintained such that they remain porous.

Referring to the porous walkways and driveway, Chair Mikolaities suggested that the cut sheets be submitted to the building inspector for him to inspect.

Chair Weathersby noted that the notice of decision should also be recorded. She asked the board how they feel about the project.

Member Drake stated he is in favor with the conditions. It is a very small house. It is not the only house in the front setback along there. Unless it is said that the land is useless, it is about as reasonable as a proposal as possible.

Chair Weathersby stated she is not concerned about the amount of frontage of 149ft where 200ft is required. There is good visibility. Parking in the front setback is because the house is in the front setback. Would she like to see it remain vacant land? Yes. Is that fair and just to the applicant? Probably not. Given that, what is presented is a pretty reasonable proposal. She noted that her concern was more the environment, rather than the dimensional and structural issues. With the conditions suggested she can support it. She read from Section 301.7 B; construction of roads and driveways that require special exception.

Chair Weathersby called for a poll vote of the board for a special condition for the **driveway** in the wetland buffer:

- **Due to existing conditions, no alternative route that did not involve the wetlands is feasible?**
 - Shawn Crapo – Yes
 - Frank Drake – Yes
 - Patrick Driscoll – Yes
 - Gregg Mikolaities – Yes
 - Patricia Weathersby - Yes
- **Is it (driveway) neither injurious nor detrimental to the neighborhood?**
 - Shawn Crapo – Yes
 - Frank Drake – Yes
 - Patrick Driscoll – Yes
 - Gregg Mikolaities – Yes
 - Patricia Weathersby - Yes
- **Is it (driveway) 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
 - Frank Drake – Yes
 - Patrick Driscoll – Yes
 - Gregg Mikolaities – Yes
 - Patricia Weathersby - Yes

Chair Weathersby called for requested variances to *Section 202.13; 203 C; 203 F; 203.3 B; 301.8 B(1)(2)(5) & (7); 601; and 500.3:*

1. **Granting the variances would not be contrary to the public interest?**
 - Shawn Crapo – Yes
 - Frank Drake – Yes
 - Patrick Driscoll – Yes
 - Gregg Mikolaities - Yes
 - Patricia Weathersby – Yes
2. **The spirit of the ordinance is observed?**
 - Shawn Crapo – Yes
 - Frank Drake – Yes
 - Patrick Driscoll – Yes
 - Gregg Mikolaities - Yes
 - Patricia Weathersby – Yes
3. **Substantial justice is done?**
 - Shawn Crapo – Yes
 - Frank Drake – Yes
 - Patrick Driscoll – Yes
 - Gregg Mikolaities - Yes
 - Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Building Code waiver request from 7.9.2.2 for an effluent disposal system 85' +/- to vernal pool and 50' to wetland:

• Would enforcement of 7.9.2.2 do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?

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

Motion by Frank Drake to approve the waiver to the building code as specified, the special exception and all variances as requested, with the addition of the retaining wall side setback, and with the conditions as discussed. Seconded by Shawn Crapo. All in favor.

- 4. Lucia Moura for property owned and located at 1681 Ocean Blvd., Tax Map 13, Lot 11,** requests variances from Section 204.3 B for a deck 12' from the left side setback where 20' is required; from Section 204.3 C for a wall 4.2' and an eave 2.87' from the front setback where 30' is required; from Section 301.8 B (1)(2)(6) and (7) for a deck 8.7' from the wetlands where 100' is required; from Section 304.4 for height from the roof 28.6' and tower 30.8' where 28' is required; from Section 603.1 for expansion of a non-conforming structure; and from Section 500.3 for parking with the side setback where 10' is required. Applicant also requests relief from Building Code Section 7.9.2.2 for septic setback 50' from wetlands where 75' is required and for Section 7.9.3.2 for the bottom of the effluent disposal 2' from where 4' is required above the seasonal high-water table. **Property is in the General Residence, Coastal Overlay and SFHA, Zone AE (9). Case #14-2019.**
- 5. Lucia Moura for property owned and located at 1681 Ocean Blvd, Tax Map 13, Lot 11,** requests a special exception from Section 301.7 B for a driveway within the wetland buffer. **Property is in the General Residence, Coastal Overlay and SFHA, Zone AE (9). Case #14b-2019.**

Attorney Tim Phoenix, representing the applicant, presented to the board. He noted that they have two letters for support from abutters; Marlene Wolfe and the Kwiatowskis. There is also a letter from the Conservation Commission who had no objections to the project with the recommendations that the edge of wetland be planted with native species, to a depth of 5ft, and the existing cedars on the south side of the house remain. He noted that the applicant has agreed to the recommendations of the commission as a condition. He continued the lot is 109,000sf. There is an existing single-family home that covers about 1260sf, which is about 1.5%, and total impervious coverage of 2052sf. The applicant is proposing to remove the existing rear deck, bulkhead, and the shed that is within the buffer. It is going to be replaced with a new rear deck, in the existing decks location, which will be wrapped around the home. In front, there will be a tower to "dress" up the existing house. Relief is needed for the tower. It was the architect's opinion that relief was needed for the roof to the top of the cupola on the tower. That is not what has been asked for in the application. If the board thinks that is where the top of the roof should be, that would be an additional 2ft. Attorney Phoenix commented that his opinion is that cupolas are not counted; however, the architect disagrees.

Attorney Phoenix continued that the current septic system is serviced by an antiquated septic system that does not meet any requirements in the ordinance; including setbacks and it is located within the seasonal high-water table. That will be replaced by a state-of-the-art Advanced Onsite Solutions System on the right side, which will be 2ft above seasonal high-water. The existing home meets neither the front setback, left setback, nor does the entire lot meet buffer requirements. It's now in Flood Zone AE-9 and X with proposed AO-3. The intent is to meet the proposed regulations. The main roof peak is going to be elevated from 27.7ft to 28.6ft by lowering the roof pitch and adjusting the wall heights in the upper flooring. The tower of the roof is at 30.8ft and the cupola roof is at 32.8ft. He continued the house was built in 1975. The home will remain in its existing location, including access to two gravel parking areas on either side of the house. The parking areas have been in that location since 1975. The driveways will be in a slightly different location. Since they are preexisting and have been there since the 70's, he does not

feel they need relief. The architect thinks they do need relief because they have moved. One got a little closer to the sideline so that has been asked for.

Attorney Phoenix noted that the other relief being requested is for the left side setback where 30ft is required. Right now, it is about 11.4ft to the deck. The new deck is going to be 12ft, which is a little bit of improvement. The front setback is 25ft required, which is the average of the lots on either side. The existing setback is 4.2ft to the wall. The proposed is still 4.2ft to the wall but there is an overhang which is 2.87ft. The wetland requirement is for 100ft. This is all within the buffer and everything is staying within the buffer. For the height 28ft is allowed and 27.1ft exists. To the main roof, it is 28.6ft. Because of FEMA compliance, the proposed roof is 30.8ft to the tower and 2ft more is the cupola is counted. The parking spaces need to be 10ft from the sideline. On the left, it is less than 10ft and will remain less than 10ft. On the right, it is greater than 10ft and will still be greater than 10ft. He stated 603.1 is needed because a non-conforming building cannot be expanded. Anything that is done to this building on this lot is going to be an expansion, if it is outside the existing footprint. Under building code 7.9.2.2 for the septic, 75ft is required. It is 8ft now and will be 50ft so it is a significant improvement. He interprets the ordinance that if a septic system is being moved or replaced, and it complies with State requirements under 301.8 B(2), it is permissible under the ordinance. Under 7.9.3.2, distance for seasonal high-water, it is 4ft under the town's ordinance, it is 0ft now and it is going to be 2ft, which is State complaint and permitted under RZO 301.7 B(2). He noted that a special exception has also been requested. There has been some discussion whether that is needed if someone is already getting a variance. Regardless, the special exception has been requested. There is no way to park on this lot without being in the wetland buffer.

Chair Weathersby noted there is a discrepancy in the building height on the plans. The request is for 30.8ft and the building inspector's letter says it is 31.2ft.

Attorney Phoenix explained it is 30.8ft to the top of the tower and it will be 32.8ft to the top of the cupola.

Alex Ross, Ross Engineering, submitted photos showing property views to the board for review. Mr. Ross noted that Marc Jacobs, soil scientist, delineated the wetlands. There was also a very positive site meeting with the Rye Conservation Commission. They had some minor recommendations which the applicant is happy to add to the design. He explained the current septic system is not up to current code standards. With a leachfield, there should be that separation from the bottom of the field to the seasonal high-water table, which the current system does not have. The new design will be a pre-treatment system and the system will be raised up to meet the separation by the State standards. He continued that the building will be raised about 3.5ft. That does not have to be done for the current flood requirements; however, they are looking at the new maps that are in the preliminary stages. By raising the structure, the first floor will be compliant with the new maps.

Member Drake asked the requirements for the first floor today.

Mr. Ross replied that the property is not in the flood zone right now. However, the intention is to go the extra mile and strive towards the new maps that are not yet out. To do that, would require the house to be raised.

Member Drake asked if the proposed 3.5ft is over the grade. He asked for the base reference.

Mr. Ross pointed out the existing first floor is elevation 14. That will be raised up to 18.375. The grade plain at the front of the building is at 11.6.

Member Drake asked at what point the height of the house is being measured from.

Mr. Ross replied 11.6.

Member Drake asked if the 11.6 meets the definition of “grade” in the zoning ordinance.

Mr. Ross confirmed. He continued that it is a simple site. The net result is that there will be much better protection in the wetlands with the buffer plantings, impervious walkway and upgraded septic. It is also going to be safer because of it being raised.

Member Mikolaities noted that the existing conditions plan says that the first floor is 14.0. The top of the foundation is 12.81. He asked for clarification on the starting point in measuring for the height.

Mr. Ross explained the starting point to measure the building height is that grade on the front of the house on the street side, which is 11.6.

Referring to the septic plans, Member Mikolaities noted that it says the loading capacity is 300 gallons per day but the design is for 450 gallons per day. He asked if the system is over designed for what the soils can absorb.

Mr. Ross explained there is a State regulation for lot load that has to deal with the amount of upward soils available to receive the effluent. The wetlands cannot be counted so that area is taken out and a certain number of gallons per day is figured. There is another regulation that says if the property is served by town water, which this property is, that allowable number actually doubles.

Member Mikolaities asked if they have septic approval.

Mr. Ross replied not at this point. He pointed out that they will also need a wetland permit. There will be more information provided regarding the wetland permit, charts of the surfaces and plantings.

Member Mikolaities stated that on the architect’s plans it shows a full basement with a wine cellar, washer and dryer. He asked if sump pumps are going to be needed to put in a full basement.

Mr. Ross explained there is a full basement currently. A portion of that foundation will be filled in with stone and the basement will be raised.

Charles Hoyt, architect, explained it will be raised up 3.1ft from its existing grade now.

Member Mikolaities stated the test pit looks like it will still be under water. He asked where the water will be going if it is being pumped.

Mr. Ross explained in the test pit data; they find the estimated seasonal high-water table. When a pit is dug, that is not the actual water level. The water table is feet below that. With an existing full basement, this will be a big improvement because that basement floor is being raised.

Member Mikolaities asked if there is going to be a sump pump and discharge from the basement.

Mr. Ross replied that he does not anticipate that.

Mr. Hoyt noted that during all his visits to the site, he has not seen any indications that the basement is moist.

Member Drake asked the number for the seasonal high.

Mr. Ross explained that they have found the seasonal high-water to be 32 inches below grade.

Member Drake noted the proposed basement floor height is 9.64. The basement is going to be about 2ft below ground level. The seasonal high-water would stay about a foot below the basement. He asked if it is going to be a gravel basement.

Mr. Hoyt stated they have gone back and forth on whether it is going to be gravel or concrete. They wanted to save on costs and go the path of least resistance. It is a major renovation, not only with the renovation, but with the landscaping and compliance with FEMA. Now, the basement is gravel and it is very dry.

Lucia Moura, applicant, noted that the basement has flooded once over the past five years.

Mr. Hoyt noted the elevation of the basement now is 6.56 and it is being brought up 3.1ft to be as compliant as possible with the future regulations of FEMA.

Chair Weathersby asked if there is fill being brought in for the septic.

Mr. Ross confirmed.

Mr. Hoyt reviewed the architect plans that were presented in front of the board.

Chair Weathersby asked why the tower has to be as tall as it is being proposed.

Mr. Hoyt explained there is an observation platform at the top of the tower. Plus, it made the architectural aspect pleasing.

Chair Weathersby asked if the tower could be lowered.

Mr. Hoyt stated they are 2ft above the existing ridge. If the tower was lower, it would look out of proportion with the house.

Vice-Chair Crapo stated he is pretty comfortable with the cupola not being the height measurement mark, as long as it just stays a cupola. However, he is really having trouble justifying the tower.

Mr. Hoyt reiterated that he could not make it smaller.

Attorney Phoenix reviewed the requirements for the special exception for the parking areas on both sides of the house:

- 301.7 B provides for a special exception for driveways within the wetland buffer when due to existing conditions, no alternative route is feasible. There is no possible location for the driveway areas outside the buffers.

- 701.3 says a special exception can be granted if the proposed use is not injurious or detrimental to the neighborhood. Is in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general or specific rules contained therein. The parking areas are where they have always been. There is nowhere to put them that would not require a special exception. The neighborhood remains as it is with respect to the driveways. It is not injurious or detrimental. The general intent and purpose of the zoning ordinance is to get off street parking and this does that.

Attorney Phoenix 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 test is whether the variances unduly and to a marked degree conflict with the ordinance such that they violate the ordinance's basic zoning objective. Mere conflict is not enough. The underlying test for public interest and spirit is whether the variances will alter the essential character of the locality or whether they will threaten the public health, safety or welfare. Virtually all the requested variances, with the exception of the height of the tower, are things that would be needed if the house was put there today. The deck will be farther from the wetlands than it is. The driveway is a little closer on the left. The main roof is only 1.5ft over and that is from the architect's efforts to keep the main peak lower. Behind the building is the marsh. They will not be affecting anyone's views, air or light. People who live closest to this property are in support of the proposal. Since the main roof has been lowered as much as possible, while complying with flood requirements, to have the architectural feature of the tower and to get inside to enjoy it would be a reasonable compromise. The septic setback under the building code is reasonable. The system is actually farther away from the wetland and higher above the water table.
None of the variances or requested relief alter the character of the central locality, nor does it threaten the public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. The new proposal, which is environmentally better and supported by the Conservation Commission, will be aesthetically more pleasing and will be flood compliant with future regulations. The design is a much nicer look than the "box" that is there today. Overall, this is a vast improvement. This property will increase in value so in no way will it decrease the values of surrounding properties.
- Regarding the hardship test and the special conditions exist; this is a lot that is mostly in the wetland buffer. It is a narrow lot and everything has to be pushed to the front. Virtually, nothing could be done on this lot without relief. If the house was built today, the same variances would be needed.
No far and substantial relationship exists between the public purpose of the ordinance and its application in this instance. The neighbor closest to the tower has written in favor. The neighbor two doors up, has submitted something in favor. In the right-side wetland buffer, stairs, bulkhead and shed will be removed increasing space on that side. The new septic system is unseen and is much better. The tower expansion is further from the lot line than the existing deck. Raising the main roof 1ft over the limit and the narrow aesthetically pleasing tower, will have no effect on property values. The purpose of the ordinance, with respect to setbacks, height, septic, driveway locations and parking locations, are not violated by any of these variances; since, similar variances would be required if the house was built there today.

The proposed use is reasonable. There is case law that says, if it is permitted it is deemed reasonable. This is a permitted use. The variances, on an overall basis, improve the site, particularly environmentally and esthetically so the use is reasonable.

- Substantial justice will be done by granting the variances. If there is no benefit to the public that would outweigh the benefit to the applicant this factor is satisfied. Any loss to the applicant not outweighed by any gain to the general public is an injustice. For the applicant to beautify this house, make it more environmentally and flood complaint, is a great benefit to her and will not hurt the public; especially since all the variances, except the height for the tower, would be required to build that house there today. There is no harm to the public in granting any of the relief and there would be significant harm to the applicant if it was denied.

Chair Weathersby stated that it seems that the tower also needs side setback relief. She does not see that it has been asked for.

Attorney Phoenix noted the tower is 16.9ft from the side and the deck is 13.3ft to the property line. The closet part of the structure to the side line is what is being called out for relief.

Chair Weathersby stated it was described as side setback necessary for a deck but it is also for the tower that is two stories plus.

Vice-Chair Crapo commented the notice says 12ft. He asked for clarification.

Attorney Phoenix explained it is 12ft to the gravel driveway. He must have picked up that number. The closest point is 13.3ft, which is the corner of the deck.

Mr. Hoyt noted it is 16.9ft to the edge of the tower.

Chair Weathersby asked for clarification on the proposed driveway locations.

Mr. Ross reviewed and explained the proposal for the driveways on the plan for the board.

Chair Weathersby opened to the public for comments.

Chuck Marsden, building inspector, stated that during the review of the ZBA packet versus the building packet, he found some discrepancies. He would like to review some of that with the board. He noted that there will need to be a second means of egress from the basement, since the bulkhead is being removed. The new driveway locations need to be passed through NH DOT. Also, there was a discrepancy in existing grade. The permit packet, as submitted, shows an existing grade of 10.4. The ZBA packet shows it at 11.6. That is where the discrepancy with his letter regarding the building height came from. He does not see any indication on the site plans of where it could be 11.6; however, he also feels 10.4 is low. He noted that he believes 11ft would be more accurate for the existing grade. He noted the part of the structure, in the back, is currently in the AE- 9 flood zone according to FEMA regulations. If they want to build to the new maps, the AO Zone has specific regulations about not allowing basements. If the intent is to build to those maps, the applicant needs to think this out a little bit more.

Member Drake asked if the proposal meets the requirements for AE-9 at this time.

Mr. Marsden replied it is probably close but he would need more information to make that determination.

Addressing the discrepancy in the grade, Mr. Ross explained there was a survey done about three years ago on the property. He noted that it is 11.4 at the corner and in the front, it is 11.6. The 10.4 was an error in CAD. In regards to the flood zone, there are flood maps that are enforced and that is what they comply to. In the future, there are also the preliminary maps. With that in mind, that is why the first floor was raised up. As far as the basement, the flood line goes underneath the deck. It does not go through the basement. The existing structure and the proposed structure are compliant with FEMA.

Member Drake pointed out that the flood elevation today is 9. He asked if it is going to go to 11.

Mr. Ross explained that current elevation is 9. With the new maps, it is AO-3. In that requirement, basements are not allowed.

Member Drake asked if they would have a grandfathered basement if this gets built as proposed.

Mr. Ross confirmed.

Vice-Chair Crapo stated that FEMA may consider the applicant to be well on notice of the new maps. They have not been adopted but they have been published for a long time. He thinks there were some cases that had to comply if they were built within a certain time frame of the maps being adopted. He thinks that may be the same case here.

Mr. Ross replied it is just preliminary. He noted that they spoke with N.H.'s Floodplain Coordinator, Jennifer Gilbert. Everyone tries to lean towards the new maps. The maps are preliminary maps and don't have to be complied to.

Chair Weathersby asked for clarification on the roof height.

Mr. Hoyt confirmed that the main structure is 28.6ft, from existing grade, and the tower it is 30.8ft (without the cupola).

Hearing no further questions from the board, Chair Weathersby closed the public hearing at 9:46 p.m.

Chair Weathersby noted suggestions for conditions if approved; **(1) edge of the wetland buffer be planted with native species, to a depth of 5ft; and (2) the existing cedars on the south side of the house remain.**

Member Driscoll stated that he really likes the main living area of the house. He thinks they have done a good job in trying to keep the ridge line as low as possible. He does not have a problem with the setbacks. He really struggles with the observation tower passing muster on unnecessary hardship. He is fine with the cupola, as that would be about the same size as a chimney. He thinks they may run into issue with FEMA and the basement being washed out but that is not something he has any standing to try to establish. He reiterated that he is okay with the entire application other than the height variance for the observation tower.

Member Drake stated he has always been a stickler on the 28ft height. He agrees that cupolas are structures, and have to be counted for height, because they come in all shapes and sizes. The main roof

without the cupola is 30.625 so it is 2ft above the height limit. He is not so bothered by the height because it is a very small section of height. It is not the whole house.

Vice-Chair Crapo stated he has no problem with FEMA driving the height and the peak of the main structure reaching 28ft. His rationale is that is a reasonable relief. The tower and the observation deck, can't possibly pass hardship. His view on the cupola is different. In the past, he does not think they have counted. He noted he would agree on this property to the height of the peak. If the tower was brought down to match that.

Referring to the cupola, Chair Weathersby stated that traditionally the board has not considered them to be part of the building height. Building height is to the roof of the structure and not the add-on. She continued that she thinks the house is fine. She understands the need to raise it. She appreciates the efforts to change the peak of the roof to keep it as low as possible. She struggles with the height of the tower itself. However, there is no one right to the south and there is no one behind. All the reasons for height variances, light, and air aren't there. She feels it may set a dangerous precedent.

Member Mikolaities stated he is good with everything, except the covered observation deck. He is okay with the 28.6ft. He understands the architectural element but it is not a good precedent to set.

Chair Weathersby called for a vote on the special exception for the driveway:

- **Due to existing conditions, no alternative route that did not involve the wetlands is feasible?**

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

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

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

Chair Weathersby called for a vote on variances to *204.3; deck 13.3ft and tower 16.9ft from side setback, 204.3 C for front wall 4.2ft and eave 2.87ft from front setback; 301.8 B(1)(2)(6) and (7) for a deck, septic fill and other activity in the wetlands, and 603.1:*

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote on variance to *304.4 for height of the main dwelling at 28.6ft:*

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Attorney Phoenix stated that the applicant is willing to stipulate that the tower height would be no higher than the roof that was just approved with the cupola on top.

Chair Weathersby asked if he is amending his proposal to the tower being 28.6ft with a 2ft cupola.

Attorney Phoenix confirmed.

Mr. Hoyt noted the cupola dimensions are 3'9" x 3'9" by 2' tall.

Chair Weathersby called for a vote for a variance to ***304.4 for the height of the tower at 28.6ft:***

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote on building code relief to 7.9.2.2 and 7.9.3.2 for the septic:

- **Would enforcement of those two provisions do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest?**

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

Motion by Patrick Driscoll to grant the relief for the building code, special exception, and variances requested for the property at 1681 Ocean Boulevard from Section 204.3 C for a deck 13.3' from the left side setback where 20' is required; from Section 204.3 B for a wall 4.2' and an eave 2.87' from the front setback where 30' is required; from Section 301.8 B (1)(2)(6) and (7) for a deck 8.7' from the wetlands where 100' is required; from Section 304.4 for height from the roof 28.6' and tower 28.6', plus a 2' cupola (not to exceed 4' x 4') where 28' is required; from Section 603.1 for expansion of a non-conforming structure with the conditions as recommended by the Conservation Commission. Seconded by Shawn Crapo. All in favor.

- 6. Seacoast Property Holdings, LLC of 3710 Buckeye Street, Palm Beach Gardens, FL, for property owned and located at 55 Harbor Road, Tax Map 9.2, Lot 2, requests variances from Section 603.2 for demolition and replacement of a non-conforming structure; from Section 202.5 for septic 10.2' from the side setback where 20' is required; from Section 203.3 B for house walkway 7' from the side setback and generator 10' from the side setback where 20' is required; from Section 301.8 B (1)(2) & (7) for a house 50' from the wetland, a leach field 72' from wetland and septic tank 96' from wetland where 100' is required; from Section 304.4 for height of 34.6' where 28' is required and from the Building Code Section 7.9.2.2 for septic system 10.2' from the side setback where 20' is required and from 7.9.2.5 for leach field 72' from the wetland where 75' is required. **Property is in the Single Residence District, Coastal Overlay and SFHA. Case #15-2019.****

- **Continued to the April meeting.**

- 7. Lisa D. & Thomas S. Sherman, Trustees, Lisa D. Sherman Revocable Trust of 2009 for property owned and located at 296 Harbor Road, Tax Map 8, Lot 62, request variances from Section 603.1 for expansion of a non-conforming structure and from Section 203.3 C for expansion of home in the Locke Road front yard setback where 21.6' exists, 17.3' is proposed and 40' is required. **Property is in the Single Residence District. Case #17-2019.****

Attorney Phoenix, representing the applicant, spoke to the board. He stated this is a 1.6 acre parcel at the intersection of Harbor and Locke Road. It currently has a two-story four to five bedroom home with a one-story connector to a barn. The property is essentially right on Harbor Road. On the Locke Road side, the home is set back about 21.6ft. The proposal is to add an addition to the back of the house. It brings the corner of the addition a little bit closer; from 21.6ft to 19ft to the wall and 17.3ft to the overhang along Locke Road. He noted that the existing house is very long and very narrow. The Shermans want a bit more room so they are proposing the addition that will have a great room on the first floor, a master bedroom on the second floor and a small office on the third floor, which ties into the existing roof line. The existing orientation of the house along Harbor and Locke Road cause a square addition to get closer to the lot line.

Attorney Phoenix reviewed the requirements for granting the variances:

- Public interest and spirit of the ordinance – Would the granting the variances alter the essential character of the locality? Would it threaten the public health, safety or welfare? This is going to be a four bedroom house. It is being expanded slightly so 603 is required. The front yard along Locke Road is being violated a little bit more by a couple of feet than existing. This is in the rear of the house. It cannot be seen from Harbor Road. From Locke Road, there is a fair amount of shrubbery that would block views. Locke Road is a wide and heavily travelled road. There is plenty of distance to the homes across the street. This modest addition will not alter the essential character of the locality and will not threaten the public health, safety or welfare.
- It will not diminish surrounding property values. This will improve the value of this house.
- Special conditions exist because this is a relatively large lot but the house is where it has been for hundreds of years. The location of the house and the layout dictates the location of the addition to tie in with the first, second and upper floor.
- Setback requirements are to provide adequate air, light and space. The lot is large with heavily travelled streets on both sides. The proposal is not harming anyone.
- The proposed use is reasonable.
- Substantial justice will be done. There is no way the public could be harmed by granting the minor variances. The Shermans would be denied a modest and reasonable use of their home if this is denied.

Tom Sherman, applicant, noted that the home has no master bedroom. They could not figure out a way, without bumping out, to have a real master.

Chuck Marsden, building inspector, noted that he made a mistake in his letter on the front setback. It should have been 40' not 30'. He noted that information on the septic will be needed before getting the building permit.

A letter of support was received from Mary Ellen Fennessey, 294 Harbor Road.

The public hearing was closed at 10:27 p.m.

Chair Weathersby called for a vote for a variance to *603.1 and 203.3 C*:

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

Shawn Crapo – Yes
 Frank Drake – Yes
 Patrick Driscoll – Yes

Gregg Mikolaities - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Motion by Frank Drake to approve the requested variances to 603.1 for expansion of a non-conforming structure and 203.3 C for expansion of the home in the Locke Road front yard setback, as presented. Seconded by Shawn Crapo. All in favor.

- 8. Louis J. Orlando & Elizabeth F. Orlando for property owned and located at 103 Old Beach Road, Tax Map 8.4, Lot 126, request variances from Section 603.2 for destruction of an existing non-conforming structure and replace with new; Section 304.4 for a height where 17.7' exists, 30' is proposed and 28' is required; from Section 204.3 A for the house in the rear yard setback where 2.9' exists, 16.1' is proposed and 26' is required; from Section 204.3 B for the house in the right yard side setback where 1.5' exists, 2.3' is proposed and 20' is required; from Section 204.3 B for the house in the left side yard setback where 23.1' exists, 24.0' is proposed and 30' is required; from Section 304.5 for a building coverage where 22.6% exists and 34.6% is proposed and 15% is allowed and from overall coverage where 39.8% exists, 35.1% is proposed and 30% is allowed. **Property is in the General Residence, Coastal Overlay and SFHA, Zone A01. Case #18-2019.****

- Continued to the April meeting.

Adjournment

Motion by Shawn Crapo to adjourn at 10:30 p.m. Seconded by Frank Drake. All in favor.

****All corresponding files and documents may be viewed at the building inspector's office, Rye Town Hall.***

Respectfully Submitted,
Dyana F. Ledger