

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, March 6, 2019, 7:00 p.m.

Rye Town Hall

Planning Board Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Clerk Burt Dibble, Tim Durkin and Alternate Rob Patten (sitting for Patrick Driscoll).

Others Present: Planning & Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

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

II. Alternate, Frank Drake for consideration

Chair Weathersby introduced resident Frank Drake who is requesting a position on the board as an alternate. Mr. Drake is a lifelong resident of Rye and served on the board for several years about five years ago.

Motion by Patricia Weathersby to approve Frank Drake as an alternate to the Zoning Board of Adjustment. Seconded by Shawn Crapo. All in favor.

- **Patrick Driscoll as alternate**

Chair Weathersby noted that member Driscoll's term is up in March as a member of the board. He has requested to stay on as an alternate.

Motion by Burt Dibble to appoint Patrick Driscoll as an alternate when his term expires. Seconded by Shawn Crapo. All in favor.

III. Approval of Minutes

- **January 2, 2019**

Motion by Tim Durkin to approve the revised January 2, 2019 meeting minutes. Seconded by Shawn Crapo. Vote: 4-0-1 Abstained: Burt Dibble

- **February 6, 2019**

Motion by Shawn Crapo to approve the minutes of February 6, 2019 as amended. Seconded by Burt Dibble. All in favor.

Motion by Shawn Crapo to continue the applications of Lisa Lombard, Jesse Durkin, Seacoast Property Holdings, LLC and Louis and Elizabeth Orlando to the March 20th meeting as requested by applicants. Seconded by Burt Dibble. All in favor.

IV. Applications:

1. **Lisa Lombard for property owned and located at 1248 Ocean Blvd., Tax Map 17.3, Lot 148**, request 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 204.3B 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 an 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. **Property is in the General Residence, Coastal Overlay District and Special Flood Hazard Zone. Case #03-2019.**
- Continued to March 20, 2019
2. **Rannie Webster Foundation d/b/a Webster at Rye for property owned and located at 795 Washington Road, Tax Map 11, Lots 52 & 6**, requests a Special Exception from Section 203.2 C, 604, and 701.3 for a nursing home where 51 beds exist, 21 new beds are proposed for a total of 72 beds; for assisted living beds where 84 exists, 2 new beds are proposed for a total of 86 beds; and for square footage building expansion where 108,017sf exists, 18,324 new square footage is proposed for a total of 126,341sf. **Property is in the Single Residence District. Case #04-2019.**

Attorney Tim Phoenix, representing Webster at Rye, spoke to the Board. He introduced the members of the team. He pointed out that Peter Stanhope's supplemental report has been submitted in the board's packets. The report addresses property values, specifically on Blueberry Lane. Also, Eric Weinrieb's updated plan has been submitted. The plan has been changed from what was originally submitted, in response to comments and meetings with the neighbors. The changes include moving the leach field and moving the parking to the front of the lot. He continued that Webster at Rye exists in this zone as a special exception. Webster has been before the board before and received relief back in 2008. Almost identical relief was granted for what is being requested now but it was never built. He noted that an addition is being proposed to the rear left (facing building from Washington Road). There will be another small addition. The purpose of that is primarily to increase single nursing home beds. The demand these days for people needing these services is for private rooms. Medical conditions create situations where people can't, or don't want to, share rooms. Hospice patients and families need room to be alone to grieve. Private bathrooms and showers have become the norm for most. More and more, people who want to go into Webster are demanding private rooms. Webster has also identified the need for a better equipped rehab facility to enhance recovery from surgeries in order for patients to return home. When an almost identical plan was approved by the Zoning and Planning Boards in 2008, for a similar number of residents located in the same place, the town affirmed the need for the improvements being requested today. The goal of Webster is to provide the highest quality of services to meet the demand for the people who want to move into Webster at Rye. He noted that everyone can agree that Webster at Rye has an excellent reputation.

Attorney Phoenix stated there are several sections that come together in order to get to the special exception; 203.3 C, 604, and 701.3 to permit the expansion. There are 51 nursing home beds existing with 21 beds being added for a total of 72. There are 84 assisted living beds with 2 being added for a total of 86 beds. The overall total number of beds today is 135 beds with the proposed total 158 beds. The building square footage is about 108,000sf today and will be about 126,000sf, which is an increase of approximately 18,000sf. He noted there will be no changes in the dumpster locations and the pickup schedule will remain the same. There is not going to be any additional deliveries or septic needs. The traffic counts will change slightly but with no noticeable effect. The site is 48.8 acres. A lot of it is wet but nothing is proposed in the wetlands. (He referred to Peter Stanhope's original report that concludes there is no marked evidence indicating that granting the special exception will result in the diminution of real estate market values.) He noted that Mr. Stanhope also went through a specific analysis of properties on Blueberry Lane. (He reviewed the information which was also submitted to the board.) In regards to the traffic report, the study determined the proposed expansion of the Webster at Rye will not alter the prevailing traffic operations at the Washington Road existing site driveway intersection. The intersection is capable of providing reasonably safe vehicular access for the size and type of expansion that is proposed. (He highlighted information from the traffic study.)

Attorney Phoenix reviewed the requirements for the Special Exception:

- The application will not be injurious or detrimental to the neighborhood.
He noted the increase is to the back of the building. There won't be a traffic problem. There won't be a valuation problem. The septic leach field has been moved in response to some neighbors' comments. The parking that was going to be on that side has been moved to the front. This board found in 2008, that this use would not be detrimental or injurious to the neighborhood and that is still the case.
- In harmony with the general purpose and intent of the zoning ordinance.
He noted they only need the special exception. They do not need any zoning relief.
- In accordance with the general and specific rules contained in the zoning ordinance.
He stated they are in accordance because they do not need any variance relief. The proposal meets the special exception requirements. The purpose of the ordinance is for the purpose of promoting public health, safety and general welfare of the community.
 - That is done by avoiding congestion in the streets: The Pernaw traffic study demonstrates that.
 - Secure safety from fire, panic and other dangers: This will be a code compliant secured facility.
 - Promote the health and general welfare: This is providing single bed rooms, which is the demand of the aging society.
 - Promote adequate light and air: It is a very large lot. There is still ample distance to the nearest neighbors to the left (facing the facility). In the past, Webster has put up some buffers and agreed to a "no build" zone, which is being respected. There is also a wooded area between Webster and the nearest homes.
 - Prevent the overcrowding of land: This is a facility on 49 acres.
 - Avoid undue concentration of population: This applies.
 - Facilitate provision of transportation, solid waste, water, sewer, schools and recreation facilities: This is met.
 - Proper use of natural resources: The Conservation Commission reviewed the proposal. They requested that placards be installed to identify the buffer, which has been done.

Attorney Phoenix stated that providing private rooms, as demanded, is important to the community. Therefore, the proposal meets the requirements for a special exception.

Chair Weathersby stated she appreciates the revisions that have been made to address the concerns of the neighbors. Where there was to be a proposed leach field is now a landscape berm. She asked what is happening with the septic.

Eric Weinrieb, Altus Engineering, explained there are currently four leach fields for the property. In order to accommodate the expansion, there is a need for a fifth. There is an existing field in the proposed expansion area. That was going to be moved to a green space. It was decided, after speaking with the neighbors who were concerned about the additional clearing, to put the septic under the parking. It will be a chambered system and will be a little more expensive. (He pointed out the location for the fifth leach field on the plan for the board.)

Attorney Phoenix noted there have been a number of letters submitted in support of the proposal:

- Maryanne Goyette, Locke Road
- Howard and Joanne Kale
- Mark Josephs, Washington Road
- Jim Piper, 6 Grove Road
- Jeanne and Richard Leopold
- Bill Scott, Washington Road

Chair Weathersby stated one of the concerns that was raised is that the last time renovations were going on it effected employee parking. Employees were parking on Blueberry Lane. She asked if there would be adequate parking for employees during construction.

Mr. Weinrieb stated they are committed to making sure there are no vehicles parked on Blueberry Lane during construction. The facility might utilize the front lawn area. He noted this project is much smaller in scale than the other project. He continued the light poles, when the last addition was done, are dark sky friendly and LED but they were on an 18ft pole. The lights do not have a residential feel. The Webster is committed to doing a lower scale pole during this renovation project. There will be more lights to get the coverage; however, they will be lower and will give that residential feel. (He pointed out the proposed berm location on the plan.)

Member Durkin asked about the service road going into the facility.

Mr. Weinrieb explained it is a continuous loop. The road will be extended out a little further. The road is not used by regular traffic. It is used for emergency care services only. People coming to the facility are going to go through the front entrance or to the parking on the side.

Member Durkin asked if the road is required by code.

Mr. Weinrieb confirmed.

Member Dibble noted that there is a "Do Not Enter" sign at the entrance to that road. It is a fire lane.

Mr. Crapo noted the road is kept open in order for it to be maintained and plowed during the winter. The gates are down now for plowing.

Chair Weathersby clarified it is not now, nor will it be, a way for employees or visitors to exit that parking.

Mr. Weinrieb confirmed.

Vice-Chair Crapo commented that from the old proposal, he remembers some discussion about vehicles pulling up and dropping people off because there is an activity room on that side. He asked if they are committed to people coming in from another side of the facility for any events.

Mr. Weinrieb confirmed.

Vice-Chair Crapo stated it was mentioned that the dumpster needs and timing would not be changed. There were some people voicing concerns and asked if it **could** be changed to a more amicable time of day. Does it have to be at 5:00 or 6:00 in the morning?

Mr. Weinrieb noted the pickup is at 7:00 a.m. He assured that they will work with Webster to ensure that it is done at a better hour. He noted that the dumpsters will be more screened from the banging than what it is today.

Alan Gould, 36 West Road, Webster Trustee, stated there is a town ordinance that prohibits the dumping of dumpsters before 7:00 a.m. He used to live at 1210 Washington Road, across the street from the school and professional complex. If they started creeping in earlier on the schedule, he would call the police department and they would make sure that it did not happen again. He noted that this is rectified by law.

Vice-Chair Crapo stated some of the criticism is that the building keeps expanding. He knows that in facilities, such as this, stairs and elevators are not preferred. However, in modern day, there can be some big elevators and accommodations made. Most doctors' offices are second and third floor. He asked why they do not utilize a second floor to keep the footprint down.

Jerry Minki, EGA Architects, explained the building that is being added onto is a one-story building.

Vice-Chair Crapo asked why this is not a proposal to do a second floor on the existing footprint.

Mr. Minki explained it would be a lot bigger project. The structure that is there is not set up for a second floor.

Chair Weathersby stated there was a letter that complained that the addition was going to be elevated because of the grade and would create more of a wall.

Vice-Chair Crapo stated the latest addition was two-story in the back. There is a large amount of existing facility that is one-story. This will be adding more to the one-story and take up more parking. Everything is expanding outward, instead of up.

Mr. Minki explained the addition has 22 beds, which is not a very efficient amount to run by itself. If the building was going to be made efficient, the same number of nursing beds would be put on top of the other. This would be almost financially impossible.

In regards to the second floor, Attorney Phoenix stated it would be more imposing. There would be more of a "wall" effect.

Member Durkin asked why the propane tank is being relocated to where it is being proposed.

Mr. Weinrieb explained the existing propane tank is in the building envelope. They had to find a place outside the roadway and infrastructure. He noted the tank is below ground.

Chair Weathersby opened to the public in favor of the application.

Alan Gould, 36 West Road, Webster at Rye Trustee, stated when he joined the board at Webster, five or six years ago, it was purely because he thought they have been a good partner with the community. He learned as police chief, town administrator and emergency management director that when people had to be moved from their homes, due to ice storms and such, Webster was always willing to accommodate the seniors that needed to move. Webster has always accommodated the community. He is also one of the founders of the Senior Serve Program. When the program was started, Webster stepped up and loaned Senior Serve their van for two or three years, until the program could get on its feet. He continued that a week ago, his Dad became ill and was transferred from Exeter Hospital to Webster. He was in a double room until the decision was made that he had to go into hospice. He is in a double room but Webster will not fill the other bed in order to fill the needs of the family and his Dad during hospice time. Mr. Gould noted that up until a week ago it had been business and now it has become personal. Having his Dad close by at Webster is really comforting to the family. He hopes that others in the community and the surrounding area can avail themselves of that opportunity when the time comes.

Jim Piper, 6 Grove Road, stated his wife was a resident of Rye from 2015 to 2018, at which time she passed away from complications from dementia. He never thought much about Webster before that time. His wife was born and lived her entire life in Rye. The 2 years, 8 months, 1 week and 4 hours that he spent at Webster on a daily basis, taught him a lot about people that care. He also learned from watching his wife suffer for 8 years, that the true spirit of a good facility is how people care. The care at Webster starts at the top with Tom Argue (Director of Webster) and it goes all the way down to Ernie Johnson who cleans the floors. He noted that he witnessed this on all shifts. The care is amazing. Rye is very fortunate to have a facility like this in the area. He believes the idea, when it was opened in the 80's, was to be a facility for the people who lived in the Town of Rye. He thanks his lucky stars his wife was able to be a resident there. He is speaking to the board because the residents who live at the facility with dementia cannot speak for themselves. He asked the board to consider this because the need is there.

Hearing no further comments in favor of the application, Chair Weathersby opened to the public in opposition.

Toby Jackson, 761 Washington Road, stated he has written a letter and it is in the file. The facility is in his backyard. He has heard the figure of 49 acres. It is not 49 acres. There are a lot of wetlands. It is a very large facility. Also, this is a single-family zone. It is absolute opposition to the town's zoning. The facility is already too big and the neighbors don't want it. He asked that the board not approve the proposal.

Mary Harb, 48 Mountain View Terrace, stated she lives right behind the facility. Her mother is currently a resident at Webster. She agrees that her mother gets fabulous care and it is a wonderful place. She continued that four years ago she was hearing about the facility expanding. She was concerned about

how the expansion would impact this residential zone. The difference between this time and last time, is what has been proposed is not a residential section of Webster. It is a rehabilitation center. The rehabilitation center is short term occupancy. People will come and go. That represents a 20% increase in the number of beds, which means there will be a 20% increase in everything needed to support the increase in beds. She continued there have been promises made about the lighting, traffic, septic and noise from the dumpsters. That is exactly what was said four years ago. They said there would be no problem with lighting because they were going to make special lighting so it wouldn't shine into the back of her house. She has lived the last four years with her shades drawn on one side of her house every night because it looks like a Christmas tree. She stated enough is enough. This is a residential zone and that should be respected by Webster and the Town of Rye.

Brendan Carney, 19 Blueberry Lane, stated he is speaking for himself and on behalf of his neighbors, the Pielas, who were not able to be present. He stated he and his family are part of the neighborhood that directly abuts Webster. There has been a history of expansion with this facility; 2004 and 2008. There was another request in 2014, which was approved. The State has nursing and long-term care statistics. The total of 158 beds will bring this facility to the top 10% of these type of facilities in the State. There are about nine facilities that are larger than 152 beds in the State. This facility is the largest one in a single residence district. He noted that if there was an expansion that was closer to his backyard, when he bought his house in 2017, it would have impacted his decision on whether or not to buy the house. What he really wants to speak to is the word "harmony". Is this in harmony with the current state of the neighborhood? He would say "certainly not". He does not want to devalue what the facility does for the community. However, this facility, sitting in a single-family neighborhood, with the flavor of Rye, does not sit in harmony. He is asking that the board deny this expansion. A vote "no" will further preserve the residential district and the flavor of the neighborhood. A vote "yes" will increase an already large commercial facility that exists within a single residence neighborhood, which is already one of the largest in New Hampshire.

Jean Moser, 6 Blueberry Lane, stated her house faces Webster at Rye. She witnesses every morning, at 5:30, Webster employees "flying" down Washington Road, slamming on their brakes and turning in to Webster. Sometimes vehicles have parked on her lawn when there have been events at Webster. The employees smoke their cigarettes and flick their butts on her lawn. That is not what she expected when she moved to Rye. She is not in favor of an expansion that would mean more employees.

Phyllis Breitman, 44 Mountain View Terrace, stated there is no doubt in her mind that Webster is doing good work. She noted there are children all over the neighborhood now and it is a revitalization. It is a residential neighborhood. She does not want the facility to over expand and infringe on the neighborhood.

Jen Carney, 9 Blueberry Lane, noted she works from home so she sees a lot of activity from her office. She thinks the barrier between her yard and the Webster is beautiful. However, there are workers at the picnic tables in that area that sit and smoke cigarettes. If she is sitting in her backyard, she can smell the cigarette smoke. That is detrimental to her kids and her yard.

Hearing no further comments in opposition, Chair Weathersby asked Attorney Phoenix if he would like to address the comments.

Attorney Phoenix commented it is good to hear that folks think Webster is doing good work. Certainly, Webster is concerned about the community and the neighborhood, especially the neighbors on Blueberry

and Mountain View. He noted that Tom Argue has been paying attention to the meeting, even though he is not present. As far as the one neighbor's comment about rehab versus long-term care, Mr. Argue said it is about 50/50. In terms of harmony with the neighborhood, Webster **is** the neighborhood. Webster is part of the neighborhood fabric. The question becomes whether or not this expansion, which is driven by the needs and demands of the public, keeps it in harmony. He thinks it does. He reminds the board that this similar project was approved in 2008. The board felt that it met the requirements. He continued there is a traffic report from an expert that says there isn't a traffic problem. There is an expert's report that opines there is no diminution in value. There is a fair amount of distance between the buildings and the neighbors. There have been some plantings in the past to address the neighbors' concerns. The need for Webster to stay competitive is relevant. If the demand is for single room beds, and that is denied, they may not be able to stay and provide the quality of care and services that they have. He noted that a special exception is permitted, as long as the requirements are met. While he respects the concerns of the neighbors, he does not think this is overreaching, given its location and given the efforts that will be taken to move parking, lower the lights and make sure the side drive is emergency only, and it should happen.

Chair Weathersby clarified that about half the new beds would be for rehabilitation and half for nursing home beds.

Mr. Gould confirmed.

Chair Weathersby asked if additional parking is being added as a result of the expansion.

Mr. Weinrieb confirmed. Currently, there are 124 spaces and 13 are being added for a total of 137 spaces. He noted that only 80 spaces are required so it far exceeds zoning minimum.

Member Patten stated he is counting the rooms and looking at the diagram. Half and half doesn't make any sense.

Steve Humphries, EGA Architects, explained that the nursing home has rooms that can have one or two people in them and it fluctuates depending upon occupancy. There are 31 rooms right now under health care and 22 being added. The rooms and beds cannot be counted the same because double rooms are being made singles.

Member Patten asked if the PT/OT area only for residents of Webster. Will it also service people who can come and go from outside the facility?

Mr. Gould explained it services people who cannot care for themselves and need rehab to return to their former living situation. The beds fluctuate on the daily needs of the facility.

Member Patten asked if this will be an expansion of the therapy services that are currently provided. If that is the case, will it increase the amount of traffic?

Rebecca Helm, Webster Trustee, explained that in order to provide any rehab services at Webster, now and in the future, the individual must be admitted. Webster does not provide walk-in services to anyone. They must be a resident of Webster.

Vice-Chair Crapo asked if a 75 year old seacoast resident that breaks their hip can be admitted for 15 or 30 days, without having been in the assisted living care or nursing home part first.

Ms. Helm explained that if an individual had surgery at a hospital and needed to have rehab care, they can come to a rehab facility such as Webster. In this case, they would be admitted as a rehab patient.

Referring to Section 203.2, Vice-Chair Crapo stated this is a residential zone but this type of facility can exist. Is the board looking at the expanded dimensional use of the land or the expanded services?

Chair Weathersby explained the use is allowed by special exception. The board is not voting on 203.2. The board is voting on special exception 701.3 only.

Vice-Chair Crapo asked if they are voting to allow them to add rehab or to allow the expanded facility.

Ms. Helm noted that Webster has offered rehab services for many, many years.

Member Dibble stated Webster has assisted living facilities, which are for people who are reasonably independent. There are also skilled nursing facilities, which are to provide rehabilitation services to provide larger for longer-term care services. There is no real fundamental change in the services that have been offered here. It is a few more skilled care beds and expanded facility, which offers the opportunity for single room occupancy. The fundamental services are entirely the same as what they have always been.

Chair Weathersby explained the board is voting on the expanded services, as an increase to the existing services, and the facility to house all that.

Vice-Chair Crapo commented he would like a ruling from Attorney Donovan as to whether they are on the right path.

Member Durkin agreed.

Member Dibble commented the argument could be made that the expanded space doesn't increase the intensity on the footprint. It just gives the opportunity for greater services in the community.

Member Durkin asked how it does not increase the intensity.

Member Dibble replied the services on the footprint of the building is basically the same or even a little less because there are more single rooms so there are fewer people on the floor space.

Chair Weathersby explained the facility is being adjusted internally and there are more beds being added in this new space. That is the increase in the use. The proposal has to go before the Planning Board, if it is approved by the BOA, and they will look at the land uses. The public will have a chance to voice all their concerns. The BOA is voting on the proposed use.

Member Dibble stated there is no question this facility has been a great benefit to the citizens of Rye. There is no doubt that the population is graying. He is a probably the only physician, in the last 50 years, that is a licensed nursing home administrator. He completely understands the business aspect of trying to have enough people to make the business work and having to balance the desire, from the public, to have single rooms.

Chair Weathersby noted there were some concerns raised about the septic pumping. She asked how frequently the tanks are pumped.

Gary Spaulding, Advanced On-Site Solutions, explained that an inspection is done in April every year. A recommendation will be given on when it needs to be pumped. He believes the tanks are being pumped once per year, on the primary septic tanks, and the grease trap for the kitchen gets pumped more frequently, depending upon the use. He noted there really is no set schedule. It depends upon how the system is operating.

Chair Weathersby asked if the septic systems are pumped approximately once per year.

Mr. Spaulding confirmed.

Vice-Chair Crapo asked if there is any day-to-day odor possible from the chambers.

Mr. Spaulding replied not that he is aware of.

Chair Weathersby asked if the employee smoking area could be moved.

Mr. Gould confirmed that this can be taken care of.

Chair Weathersby commented that if this was to be approved, possible conditions might be to move the employee smoking area, the lower lighting, no employee or event parking on Blueberry Lane, and the back driveway to be for emergency only. She asked if these would be agreeable to the applicant.

Attorney Phoenix confirmed.

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

Speaking to the board, Chair Weathersby noted they need to decide on 701.3. The nursing/assisted living use is allowed by special exception. The board must decide if the special exception for the expansion is warranted.

Member Dibble stated that the question they are trying to decide is if this is injurious to the neighborhood.

Member Patten noted the expansion. It sounds like it is injurious to the neighborhood as it is, in the opinion of some of the people who are present. The question becomes, is it going to become more injurious?

Chair Weathersby stated the board needs to decide if the expansion is going to be injurious or detrimental to the neighborhood. The traffic study accounts for the number of new employees and the number of new visitors. Speaking to Attorney Phoenix, she asked for the number of new employees.

Attorney Phoenix replied he did not have that number.

Mr. Gould stated they anticipate 8 or 9 employees during the day and fewer on the evening and night shift.

Vice-Chair Crapo stated that basically the board is evaluating the expansion of their existing special exception.

Chair Weathersby noted that the criteria for that is 701.3; is it injurious or detrimental to the neighborhood?

Vice-Chair Crapo stated that he heard people had an issue with the speeding up and down Washington Road. The speeding issue is with the employees getting to and from the facility. He does not know if the facility can do anything other than make a policy that the employees need to respect the town's laws and ordinances.

Member Durkin commented there is just going to be more of it. There will be more employees and more visitors. The infrastructure is getting bigger and bigger. He finds it difficult to believe there is not going to be a material increase in the traffic, as a result of this expansion. He struggles with the argument that this expansion will not be injurious or detrimental to the neighborhood. He continued this is an 1800sf expansion and that is significant.

Member Dibble asked how many employees are there at the present time.

Speaking to Steve Pernaw, Chair Weathersby asked if his study accounted for the increased number of employees and visitors to the facility as a result of the expansion.

Mr. Pernaw confirmed. He asked if the board would like him to go through the study.

Vice-Chair Crapo commented that the types of beds that are being added will change the nature of some of the visits. He is guessing it might be a little more frequent than someone who has a relative in the nursing care facility. Part of the argument is there is some flux in how the beds are filled. He is wrestling with that.

Referring to the traffic report, Chair Weathersby stated she took away that there was an increase; however, it is a handful of cars that come in every hour. Compared to the traffic on the street, the whole thing is negligible.

Member Durkin stated he would like to listen to the report. He does not know how that conclusion can be made.

Attorney Phoenix stated that a question had been asked about the number of employees. Mr. Argue has said there are approximately 130 full and part time employees. There will be approximately 9 additional employees.

Chair Weathersby reopened the public session to hear from Mr. Pernaw in regards to traffic.

Steve Pernaw, Pernaw & Company, noted his office prepared the traffic study for this proposal in December 2018. He continued they installed traffic recorders on Washington Road and on the site driveway to monitor traffic on a 24 hour basis. They also did a more detailed analysis of turning movements at the intersection; how many go left, right or straight on Washington Road. In looking at the daily volumes on Washington Road, there are about 4,000 cars per day and this is generally consistent. The site driveway has 500 cars per day (250 in/250 out). The rate of flow changes considerably over the

course of a day. At midnight, there is very little traffic and it builds rather quickly in the morning, drops off and reaches its highest point in the evening and drops off to midnight. This shows that a detail count should be done in the morning. A count was done during a two hour window from 7:00 a.m. to 9:00 a.m., and another was done between 2:00 p.m. and 6:00 p.m. He continued that every day the traffic volume is different during any given hour because it is random traffic flow. The analysis was based on the busier of two days during the week and that was Thursday. The peak hour in the morning is 7:45 to 8:45. The count was 369 vehicles during that time, entering the intersection; 173 cars went west, 10 turned in, 3 came out and 167 went east. The generator peak hour is when the site generates its highest traffic moment, which was 2:00 to 3:00 p.m. There were 315 vehicles for the two-way volume. The highest peak was from 3:30 to 4:30 p.m. and the volume was 349. Entering and exiting the facility in the morning were 49 cars, 55 in the afternoon and 44 during the evening peak hour (those numbers are made up of cars going out and going in.)

Mr. Pernaw stated those numbers are used for the future projections. (He reviewed the numbers on the chart for the expected projection for 2020 and 2030.) He noted that basically nothing changes on the site driveway but there are higher volumes on Washington Road. The addition, during the normal peak hour, is expected to generate 5 trips, which is based on the fact that the existing site did 29 during that hour. During the p.m. peak hour, it is expected to go from 44 to 52. In 2020 and 2030, during the p.m. peak hour, it is projected that 398 cars will be entering the intersection without the development and with the expansion it goes to 406. The impact on Washington Road is 1%. These are single digit increases. That will not alter the prevailing traffic operations in the area. It will not be a significant increase.

Chair Weathersby opened to the public for traffic questions for Mr. Pernaw.

Mrs. Harb asked if it is pretty much the same number of staff people on site on the weekends as during the week.

Mr. Pernaw explained that the weekday high was 500. On Saturday, the number was 308 and Sunday was 365. The numbers are lower on the weekends than it is during the week.

Hearing no further questions, Chair Weathersby reclosed the public hearing at 9:11 p.m.

Member Patten stated this is tricky. This is looking at a 10% increase in employees and a 17% increase in the number of beds. It starts to sound like a lot. However, the traffic study shows that it is not much per hour. His concerns are more with some of the issues that were brought up about people being able to enjoy their property. He is curious as to where that gets addressed.

Chair Weathersby stated it is the board's territory to look at what is being presented right now. Given what is presented, is it injurious or detrimental?

Member Dibble asked if it would be helpful to list the concerns.

- Septic odors
- Dumpster noise
- Traffic and density
- Lighting
- Property values

Chair Weathersby stated she struggles with whether the addition and the increase in use are going to change these factors. Trucks are going to come on the same schedule. The septic is pumped once per year, roughly. She continued the lighting is going to improve. There will be no more parking on Blueberry Lane. There will be a slight increase in traffic. She does not see this rising to the level of what she considers to be more detrimental or more injurious to the neighborhood. There has been testimony that property values, on Blueberry Lane in particular, will not be affected by the presence of Webster.

Vice-Chair Crapo stated it sounds like a large increase, going from 51 beds and adding 21. Even if the traffic study is off by 20 or 30%, it doesn't necessarily make a huge difference. A little bit of roof is not going to block the dumpster noise. The hours on that may need to be more restrictive than 7:00 a.m. He noted they are not really before the board for dimensional relief. The size is not necessarily before the board. The change in impact is. From that perspective, he doesn't see that it rises to a huge violation. If it needed dimensional or setback relief, it might have a harder time reaching the variance criteria. He pointed out hardship is not in play for this relief.

Speaking to Member Dibble, Member Durkin asked if he feels he should recuse himself from the vote.

Member Dibble stated he didn't raise the question on the need for recusal because he doesn't think the project has any impact on the care of his mother's friend. (His partner's mother lives and is cared for at Webster.)

Chair Weathersby asked if he can be impartial in handling this application.

Member Dibble replied he can.

Chair Weathersby stated it is up to Member Dibble to recuse himself. If the board wants to make a motion for him to recuse himself, it can be voted on but usually it is up to the person to decide if they can be impartial. She commented that she thinks they have all known, or do know, people who have been or are there. She has known people who have been there and have witnessed the care they have been given. Most people in the community have had some experience with Webster.

Member Durkin stated if it is felt that it can be looked at objectively, as any other application, then fine.

Member Dibble stated he does feel that way. He noted he does not have any direct, or indirect, business relationship here. He thinks he brings some additional perspective because of his professional background and his involvement in long-term care.

In regards to the additional beds being proposed, Vice-Chair Crapo stated one of the things they have discussed in the past is the additional load on the town. If someone was to get hurt at this facility, the 911 call has to be answered first by Rye ambulance. In looking at what is being proposed for the 21 beds, it is his guess that it is not going to increase, at least to a detrimental amount, the amount of ambulance calls to the facility.

Chair Weathersby commented the board has no additional information on that. She continued the other factor to consider is whether it is in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained therein.

Member Durkin stated he thinks the impact this will have on the neighborhood outweighs the benefit to Webster. For that reason, he does not support the special exception.

Chair Weathersby called for a vote on the special exception with the conditions that the back driveway access is continued to be restricted use (for emergency access); the employee smoking area will be moved away from the Blueberry Lane side; the lighting will be lowered as represented; no employee or guest parking on Blueberry Lane; and no servicing of the dumpster before 7:30 a.m.

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

Shawn Crapo – Yes
 Rob Patten – No
 Tim Durkin – No
 Burt Dibble – Yes
 Patricia Weathersby – Yes

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

Shawn Crapo – Yes
 Rob Patten – No
 Tim Durkin – No
 Burt Dibble – Yes
 Patricia Weathersby – Yes

Motion by Shawn Crapo to approve the requested Special Exception by the applicant under 203.2 C as conditioned. Seconded by Patricia Weathersby.

Vote: 3-2

Opposed: Rob Patten and Tim Durkin

3. **Brian & Diane Ferguson for property owned and located at 60 Parkridge Ave, Tax Map 19.4, Lot 17, request variances from Section 603.1 for expansion of a non-conforming structure; and from Section 301.8 B (1) & (7) for surface alteration for a garage and driveway within the 75' wetlands buffer. Property is in the General Residence, Coastal Overlay District. Case #05-2019.**

Attorney Tim Phoenix, representing the applicant, presented to the board. He pointed out on the plan the existing home and the location for the new garage. He also pointed out the impervious surface that is being removed to make the apron of the driveway to the garage. There is also a shed in the back that is going to be removed, if this is granted. He noted the garage could not be put in the back because of wetland and septic issues. The proposed location is pretty much the only place that it can be. The lot is .49 acres. There were some improvements in 2016 and the owners would like to add the garage, which is 24 x 26. The only services to the garage will be electricity with no other utilities. The garage will allow for parking and storage off the pavement, which will be safer with better protection of the environment and wetland. The overall lot coverage is being reduce from 17.2 to 12.3% and open space is being increased. The requested relief is from Section 301.8 for the wetland buffer. A request is being made to Section 603.1 to construct an attached garage on a pre-existing non-conforming residence. He does not think this applies because they are not expanding an existing building but it was in the building inspector's letter so he asked for it.

Attorney Phoenix continued that at the previous meeting, Sally King from the Conservation Commission raised some issues and she requested a continuance while some things were followed up on. He noted they have not heard anything from the Conservation Commission since, until today. There were two letters from the commission. In both letters, they say they do not really have a problem with the project. There is pavement in front of the house that also goes onto conservation property. The Conservation Commission wanted the pavement on their property removed. A second letter was sent that said they approve with the conditions that the pavement be removed, a drainage and restoration plan be prepared, and native plants be installed. He continued there is a new letter that came in about 5:30 today. He is confused as to what the commission wants.

Chair Weathersby explained that her understanding is that they are asking for a portion of the pavement on the Fergusons' land to be removed.

Planning and Zoning Administrator Reed explained that Sally King spoke to her earlier and stated that RCC would pay for the removal of pavement and plantings on conservation land.

Vice-Chair Crapo asked if the right-of-way has been extinguished.

Attorney Phoenix stated the Fergusons have been using it to back their cars out since they have owned the property.

Brian Ferguson, applicant, explained it is a family property. His uncle built the home in the 50's. At that time, what is now conservation land, was part of the property. It has been in consistent use for the past 70 years.

Vice-Chair Crapo stated that these people own part of it and conservation owns part of it. He asked if the town still maintains the right-of-way. Will it affect the town's part of plowing? This is a bigger discussion between Attorney Donovan and public works.

Member Patten stated they are trying to determine if they can have a garage. He asked what this has to do with the pavement.

Member Durkin commented it is just a condition suggested by the Conservation Commission. They do not have to take the RCC's advice on this.

Member Patten stated he does not see the relationship, nor would he want to take it up as a condition. He thinks it is overreaching and isn't related enough.

Attorney Phoenix commented they would like that to not be a condition. He reviewed the criteria for granting the variances.

- Granting the variances are not contrary to the public interest and the spirit of the ordinance is observed. Will the variance alter the essential character of the locality or will it threaten the public health, safety or welfare?

He stated the answer to both of those is no. There are numerous homes on Parkridge that have garages. The character of the locality will not be changed. The public, health, safety and welfare is not going to be harmed by a garage that will only be used as a garage with only electricity to it. It would probably benefit the health, safety and welfare from the sense that things that are being

stored and parked outside will now be indoors. The structure was put as far from the wetlands as was reasonable.

- Granting the variance will not diminish surrounding property values.
He stated it is a fairly good distance from the other homes on the street. It will make the property look and feel better with all the storage and cars inside so there will not be a diminishment in property values.
- Hardship: Three prong test:
 - Special Conditions.
He stated the lot has wetlands on both sides of it that reduces the building envelope and the location of the septic is directly behind the house. This constitutes special conditions.
 - No fair and substantial relationship exists between the public purpose of the ordinance and its application in this instance.
The purpose is to protect the wetlands. Conservation Commission has said that adding this with the removal of imperious surface and shed is positive and they support it. There is no reason to apply the wetlands setback specifically in this case.
 - The proposed use is reasonable.
It's a residential use. The RCC seems to think it is okay. That is reasonable.
- Substantial justice will be done by granting the variance. If there is no benefit to the public outweighing the hardship to the applicant this factor is satisfied. Any loss to the applicant, not outweighed by any gain to the public, is an injustice.
He noted the public will not be benefited in any way if this is denied. The family will be harmed if it is denied because they won't get a garage for storage and parking of cars.

Referring to the design, Member Durkin asked what the space on the second floor will be used for.

Mr. Ferguson replied storage only.

Chair Weathersby opened to the public for comments in support or opposition. Hearing none, she closed the public hearing at 10:00 p.m. She noted the proposed conditions are the removal of asphalt in the front on the Ferguson's property and plantings along the wetland on the Ferguson's property.

Member Patten stated he is not opposed to the planting but he does not see how it really relates to the garage.

Chair Weathersby noted from the RCC letter that it states native plantings at a depth of 5ft on the wetland buffer boundary on the applicant's property.

Vice-Chair Crapo commented the wetland buffer boundary runs through the middle of the garage.

Speaking to Attorney Phoenix, Chair Weathersby asked if he had a conversation with the commission about where the plantings should go.

Attorney Phoenix stated not with this application. However, his experience is that they want them to go within 5ft of the wetland. (He reviewed the location of the wetlands on the plan for the board.)

Member Dibble stated the easy way to condition this is native plantings in any areas of the property that are within 5ft of wetlands.

Member Durkin stated they are trying to interpret what the Conservation Commission was asking. He does not think they should have that as part of the decision. He is not sure what they are specifically asking for.

Member Patten stated it is unclear as to what they want and no one is here from the commission to explain it. He is not comfortable putting a condition on it when it is unclear what they are asking for.

Vice-Chair Crapo stated the commission lists three items but they all key off the removal of the pavement. The project is 50 to 100ft away from the other actual wetlands.

Chair Weathersby stated the pavement in front of the Ferguson's house is very close to the buffer. She commented that maybe it should come up because there is an increase of impervious in the buffer.

Attorney Phoenix stated that the RCC first said they were okay with it as proposed and then came up with a drastic change.

Member Patten asked if they can ask someone to remove roadway the town is using.

Chair Weathersby explained they can require people to remove pavement on their land. She would be in favor of having them removing that asphalt from their land.

Vice-Chair Crapo noted that the Conservation Commission is asking for an area to be removed which basically eliminates half the end of the street, which is the hammerhead for these people to back out.

Member Dibble stated he thought there was agreement that what the Conservation Commission was asking for is on town land and not the applicant's responsibility.

Chair Weathersby opened to the building inspector for comment.

Chuck Marsden, Building Inspector, stated the impervious surface change is a matter of decision for the board. The calculations were a little bit off on the post construction but it doesn't make a big difference in total percentage.

Chair Weathersby noted there is a slight decrease in total lot impervious coverage. The Conservation Commission's point was the amount of impervious coverage in the wetlands buffer is increasing because of the garage being added. She continued that it sounds like the board is generally in favor of the garage and may or may not be in favor of taking up the pavement in the front on the Ferguson's land.

The board agreed that they were in favor of the garage. They were not in favor of having a condition to take up the pavement. The board also agreed that they were good without the condition for native plantings.

Chair Weathersby called for a vote on variance relief from Sections 603.1, 301.8 B (1) and (7):

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

Shawn Crapo – Yes

Rob Patten – Yes

Tim Durkin – Yes

Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

5. 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
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

6. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Diane and Brian Ferguson for property owned and located at 60 Parkridge Avenue for variances from Sections 603.1, 301.8 B (1) and (7) as advertised. Seconded by Shawn Crapo. All in favor.

- 4. Peter J. Dirksmeier for property owned and located at 47 Surf Lane, Tax Map 8.4, Lot 17, requests variances from Section 603.1 for an after-the-fact enclosure of a porch which received relief on 12/1/1999 from Sections 301.5, 204.3 A & B and 603.1 with the condition the porch not to be enclosed. Property is in the General Residence, Coastal Overlay District. Case #05-2019.**

Peter Dirksmeier, applicant, spoke to the board. He explained that he purchased 47 Surf Lane approximately one year ago. The key to his renovations was to create a first floor master suite by incorporating a three season porch, on the northern edge of the home, and making it four season year round space. Unbeknownst to him at the time he purchased the home, there was a variance obtained in 1999 to build that three season porch. That application showed different setbacks than his application shows. In 2008, land was granted to the lot, roughly 20x50ft of land, when it was decided to not let Atlantic Avenue continue from Surf Lane to Ocean Boulevard. The lot set back to the porch, on the northern side, has now increased. The setback to the lot line is now approximately 52ft. He noted that he has received verbal support from all his neighbors. He pointed out he is not building anything new. He is just trying to convert existing space into year round space. In continued that the owners in 1999 applied for a variance to build the porch and a room above it, which was going to extend beyond the height requirement. The variance for the room above the porch was denied. They received a variance to build a three season screened in porch with the space underneath to remain open. At some point, the screens were taken out and windows were put in. The porch is still a three season porch. It is not fully heated or insulated.

Vice-Chair Crapo stated that structurally a deck is designed differently than a room. He asked if it is structurally sound.

Mr. Dirksmeier replied it has big steel eye beams that support the porch.

Chair Weathersby opened to the public for comments.

Mary Alice Patton, 45 Surf Lane, spoke in favor of the proposal.

Mr. Marsden stated what triggered the research was when the owner proposed to extend the garage on the ground level to take up that space that was supposed to be left open, along with the porch. The plans have since changed and the garage is no longer going to be extended.

Mr. Dirksmeier explained that before he understood the situation, his plan was to enclose underneath. He was going to extend the garage and create a mudroom. When the building inspector brought up the issues, the contractor suggested just renovating the existing space.

Chair Weathersby stated that the building inspector has decided that the Atlantic Avenue side of the house should be considered the front because that was the original street that was never built. Surf Lane should be the side setback.

The public hearing was closed at 10:25 p.m.

Chair Weathersby noted a letter of support was received from:

- Thomas and Margaret Berry, 55 Surf Lane

Chair Weathersby called for a vote on variance relief from Sections 204.3 A & B and 603.1:

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

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

5. 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
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

6. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes

Burt Dibble – Yes
Patricia Weathersby -Yes

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

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Peter Dirksmeier for property owned and located at 47 Surf Lane for variances from Section 603.1 and 204.3 A & B as advertised. Seconded by Tim Durkin. All in favor.

- 5. Zachariah Malpass of 46 Barrington Road, Bronxville, NY for property owned and located at 120 Garland Road, Tax Map 7, Lot 113, requests a variance from Section 203.3 B for a wellhouse 19 +/- from the side setback and an implementation shed 4ft +/- from the side setback. Property is in the Single Residence District. Case #10-2019.**

Zachariah Malpass, applicant, spoke to the board regarding his request for a wellhouse and shed in the side setback.

Chair Weathersby opened to the public for comment.

Joe Tucker, 60 Washington Road, spoke in favor of the application.

A letter of support was received from the Garritys at 100 Garland Road.

Hearing no further comments, the public hearing was closed at 10:36 p.m.

Chair Weathersby called for a vote on variance relief from Section 203.3 B:

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

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. The values of surrounding properties are not diminished?
Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes
4. There are special conditions to the property that distinguish it from other properties in the area?
Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes
5. 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
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes
6. The proposed use is a reasonable one?
Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes
7. Therefore, literal enforcement of the ordinance would result in unnecessary hardship?
Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Zachariah Malpass for property owned and located at 120 Garland for variances to Section 203.3 B as advertised. Seconded by Shawn Crapo. All in favor.

6. 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 within 75' of the wetlands buffer. **Property is in the Single Residence District. Case #11a-2019.**

- Continue to March 20, 2019

7. **Jess 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 total 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 wetlands 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.**

- Continued to March 20, 2019.

8. **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 12.0 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) & (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 within the side setback where 10' is required. Applicant also requests relief from Building Code Section 7.9.2.2 for septic setback 50' from the wetlands where 75' is required above the seasonal high-water table. **Property is in the General Residence, Coastal Overlay and SFHA, Zone AE (9). Case #14a-2019.**

- Continued

9. **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.**

- Continued

10. **Seacoast Property Holdings, LLC of 3710 Buckeye Street, Palm Gardens, FL for property owned and located at 55 Harbor Road, Tax Map 9.21, Lot 2,** request 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 District and SFHA. Case #15-2019.**

- **Continued to the March 20, 2019 meeting.**

11. **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 into 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.**

- **Continued**

12. **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 1.0' exists, 11.3' is proposed and 20' is required; from Section 204.3 C for the house in the front 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 39.85 exists, 35.1% is proposed and 30% is allowed. **Property is in the General Residence, Coastal Overlay and SFHA, Zone AO1. Case #18-2019.**

V. Other Business

- The board agreed to send a note of condolence to former board member Ben King for the recent passing of his father.
- Member Durkin stated that his intent is to resign from the ZBA, if he is elected to the Planning Board at the upcoming election. He would be willing to continue as an alternate to the ZBA. He will send a letter of intent to the board after the election.
The board thanked Tim for his service on the board.

VI. Next Meeting: Wednesday, March 20th

Members to sit at meeting:

Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Gregg Mikolaities and Frank Drake

Adjournment

Motion by Shawn Crapo to adjourn at 10:45 p.m. Seconded by Burt Dibble. All in favor.

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

Respectfully Submitted, Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner: Zachariah Malpass of 46 Barrington Road, Bronxville, NY

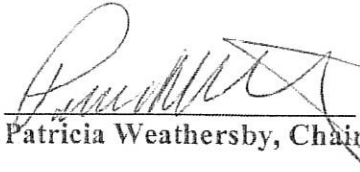
Property: 120 Garland Road, Tax Map 7, Lot 113
Property is in the Single Residence District

Application case: Case #10-2019

Date of decision: March 6, 2019

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

- Section 203.3B for a wellhouse 19' +/- from the side boundary and
- Section 203.3B for a shed 4' +/- from the side boundary.


Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner: Peter J. Dirksmeier

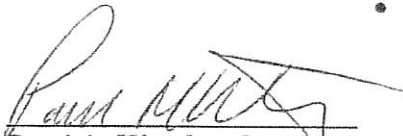
Property: 47 Surf Lane, Tax Map 8.4, Lot 46
Property is in the General Residence, Coastal Overlay

Application case: Case# 65-2019

Date of decision: March 6, 2019

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

- Section 603.1 for an after-the-fact enclosure of a porch expansion; and
- Section 204.3 A for a porch 17.75' from the rear boundary; and
- Section 204.3 B for a porch 7.5' from the side boundary.


Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner:

Brian & Diane Ferguson

Property:

60 Parkridge Ave, Tax Map 19.4, Lot 17
Property is in the General Residence & Coastal Overlay

Application case:

Case #05-2019

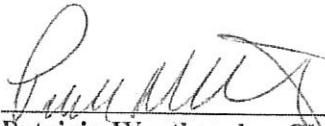
Date of decision:

March 6, 2019

Decision:

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

- Section 603.1 for a garage on a non-conforming lot;
- Section 301.8 B(1) for surface alteration for the garage within the 75' wetlands buffer; and
- Section 301.8B(7) to construct the driveway and garage within the 75' wetland buffer.



Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-


NOTICE OF DECISION

- Applicant/ Owner: Rannie Webster Foundation d/b/a Webster at Rye
- Property: 795 Washington Road, Tax Map 11, Lots 54 & 6
Property is in the Single Residence District
- Application case: Case# 04-2019
- Date of decision: March 6, 2019
- Decision: The Board voted 3-2 to grant a special exception for the proposed nursing home/assisted living expansion with the following conditions:
1. The outdoor lighting is lowered to 12' in height;
 2. The applicant moves the employee smoking area away from Blueberry Lane;
 3. The dumpsters are not to be emptied before 7:30 AM;
 4. There is no employee, contractor or visitor parking on Blueberry Lane; and
 5. The portion of loop road near Blueberry Lane will remain restricted and not used for general traffic flow.

A majority of the Board found that the proposed expansion project, with the above conditions, was neither injurious nor detrimental to the neighborhood and was in harmony with the general purpose and intent of the zoning ordinance and with the general and specific rules contained therein. The reasons for the Board's decision include:

- The traffic study showed an increase in 5 vehicles (4 arrivals, 1 departure) during the morning peak hour, nine vehicles (3 arrivals, 6 departures) during the Generator peak hour period and 8 vehicles (3 arrivals, 5 departures) during the afternoon peak hour which the board did not feel would reasonably negatively impact the neighborhood;
- The traffic study showed the proposed expansion project will add only 6 vehicles to Washington Road during its peak traffic hour and that Washington Road will operate below capacity at all times through 2030 with the addition fully occupied;
- Parking on Blueberry Lane by employees, contractors and visitors to Webster at Rye is eliminated, thus reducing traffic in the abutting residential neighborhood;
- There is to be no increase in the schedule for the pumping of the septic system;
- There is to be no increase in the schedule for emptying dumpsters, the dumpster area will be better shielded from Blueberry Lane and new restrictions are added to ensure dumpsters are not emptied prior to 7:30 AM which will better protect the neighborhood from noise;
- Outdoor lighting is being lowered so as to reduce light visibility in the abutting neighborhood;

- The proposed additions to the structure are one-story in height and thus will not dominate the landscape, block light or air nor shed considerable light off site;
- Expert testimony demonstrated that the proposed expansion will not affect property values of abutters specifically or the neighborhood generally;
- Cigarette smoke should no longer waft off-site towards Blueberry Lane with the relocation of the smoking area;
- The proposal does not impact the wetlands or wetlands buffer on the site;
- The facility serves an important need of the Town by providing skilled nursing, assisted living and rehabilitation residential services to area residents;
- The addition of more single occupancy rooms and rehabilitation beds and services will better serve the facility's patients;
- The addition of more single occupancy rooms and rehabilitation beds and services will better meet the demand of area residents seeking admission; and
- The purpose of the Zoning Ordinance of promoting the health, safety and general welfare of the community is furthered by the proposal.



Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner:

Louis J. Orlando & Elizabeth F. Orlando

Property:

103 Old Beach Road, Tax Map 8.4, Lot 126
Property is in the General Residence, Coastal Overlay and
SFHA, Zone AO-1

Application case:

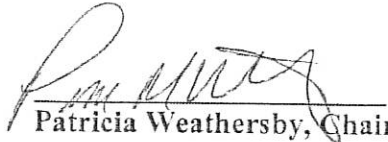
Case # 18-2019

Date of decision:

March 6, 2019

Decision:

The Board voted 5-0 to continue the application to the March 20, 2019 meeting.


Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/ Owner:

Lisa D. & Thomas S. Sherman, Trustees,
Lisa D. Sherman Revocable Trust of 2009

Property:

296 Harbor Road, Tax Map 8, Lot 62
Property is in the Single Residence District

Application case:

Case # 17-2019

Date of decision:

March 6, 2019

Decision:

The Board voted 5-0 to continue the application to the March 20, 2019 meeting.



Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

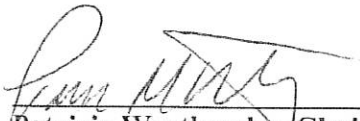
Applicant/ Owner: Seacoast Property Holdings, LLC of 3710 Buckeye Street, Palm Beach Gardens, FL

Property: 55 Harbor Rd, Tax Map 9.2, Lot 2
Property is in the Single Residence, Coastal Overlay and SFHA

Application case: Case # 15-2019

Date of decision: March 6, 2019

Decision: The Board voted 5-0 to continue the application to the March 20, 2019 meeting.


Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

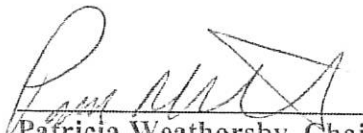
Applicant/ Owner: Lucia Moura

Property: 1681 Ocean Blvd, Tax Map 13, Lot 11
Property is in the General Residence, Coastal Overlay and SFHA

Application case: Cases # 14a-2019 and 14b-2019

Date of decision: March 6, 2019

Decision: The Board voted 5-0 to continue the application to the March 20, 2019 meeting.


Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

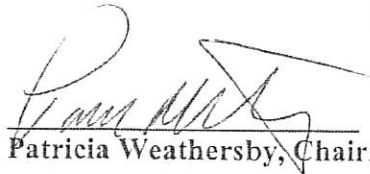
Applicant/ Owner: Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA

Property: 395 Washington Road, Tax Map 16, Lot 117
Property is in the Single Residence District

Application case: Cases # 11a-2019 and 11b-2019

Date of decision: March 6, 2019

Decision: The Board voted 5-0 to continue the application to the March 20, 2019 meeting.


Patricia Weathersby, Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

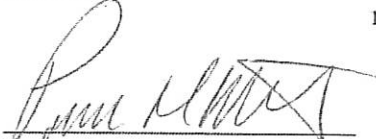
Applicant/ Owner: Lisa Lombard

Property: 1248 Ocean Blvd, Tax Map 17.3, Lot 148
Property is in the General Residence, Coastal Overlay and SFHA.

Application case: Case #03-2019

Date of decision: March 6, 2019

Decision: The Board voted 5-0 to continue the application to the March 20, 2019 meeting.


Patricia Weathersby, Chairman

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

