

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, November 6, 2019

7:00 p.m. – Rye Town Hall

Members Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Rob Patten, Charles Hoyt and Patrick Driscoll

Others Present: Planning/Zoning Administrator Kimberly Reed

I. Call to Order

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

II. Approval of October 2, 2019 meeting minutes

Motion by Burt Dibble to approve the minutes of October 2, 2019 as amended. Seconded by Shawn Crapo. Vote: 5-0-1 Abstained: Patricia Weathersby

Communications:

- Rye Conservation Commission, along with Amanda Stone and Lisa Wise of UNH, will be holding a workshop regarding protection of wetlands on Monday, November 18th, 5:30 p.m., at the Rye Junior High. The Conservation Commission is requesting that as many members from the municipal boards attend as possible. The workshop is also open to the public with a light dinner being served starting at 5:00 p.m.

III. Revisions to the Rules of Procedure Moved to the end of the meeting.

IV. Applications:

Charles Hoyt recused himself from the following application. Patrick Driscoll was seated.

1. **Paul R. Bacon for property owned and located at 200 Parsons Road, Tax Map 19, Lot 115, requests variances from Section 204.3B for a retaining wall, and a gravel patio 10' from the side boundary where 20' is required; from Section 204.3C for a retaining wall 1' and a Quonset hut 7' from the front boundary where 30' is required; from 301.8(B)(1) & 301.8(B)(7) for fill, regrading, and improvements including a pervious boardwalk 16.21', grading and gravel patio 30.47', a greenhouse 34.50', Quonset Hut 10', and a retaining wall 33' from the wetlands where 100' is required. Property is in the General Residence, Coastal Overlay and Wetlands Conservation Overlay Districts. Case #33-2019.**

Attorney Tim Phoenix, representing the applicant, spoke to the Board. He noted the application was initially filed in July for the August meeting; however, the applicant asked for a continuance because the Conservation Commission had not weighed in on the proposal. The application was brought before the Board in September and Chair Weathersby caught the fact that additional relief was needed. The

Quonset Hut that was going to be moved needed side setback relief, so the application was continued again. The Conservation Commission wanted to do another site walk, which was done. The Commission has asked for the hut to be relocated to a different location, which has been done but requires relief on the left side of the property versus the right side.

Alex Ross, Ross Engineering, stated this is a large lot but a good portion is tidal marsh. Everything in the upland area, is within the tidal buffer zone. (He pointed the area out on the plan before the Board.) He noted the land is on the corner of Parsons and Marsh Road. He continued that two years ago, his firm did a new septic design for the property. During the work on the septic, the Building Inspector had some concerns about the site. Most of that related to normal activities that anyone would do in their backyard; such as, the storage of cord wood and wood pallets. (He pointed out the sheets that show the items being addressed at this meeting. He showed the gravel area in the eastern corner of the lot and the proposed retaining wall.) Mr. Ross stated the retaining wall was shown on the approved septic plan. The owner has been stocking piling some material to build that wall. The owner would like to build the retaining wall because the front door is at a steep incline. The retaining wall would provide the ability to build some stairs to get to the front entrance.

Mr. Ross stated there were two site walks with the Conservation Commission. They had a concern in regards to the Quonset Hut. The hut was originally going to be placed in a location further from the wetlands. The Conservation Commission's concern was that those wetlands were more important than the other wetlands. The Conservation Commission requested a different location for the hut. (He noted the areas on the plan before the Board that he is referring to.) He continued that the plan set shows a landscaped area along the property line and fencing, so the hut would be adequately screened. (He reviewed photos of the area.)

Attorney Phoenix stated the existing house drives the things around it and the whole property is within the wetland buffer. The existing structure could not be put on the lot today without relief; however, the house is already there. He continued that a lot of the structure that were a concern have been removed. There is an agreement to remove a lot of the other stuff in compliance with the recommendations of the Conservation Commission. He stated this boils down to wetlands buffer relief. The retaining wall that is falling down needs to be rebuilt. The fill is to raise up the grade a bit for better access to the house. He noted that the owner would rather have the Quonset Hut in the location originally proposed. However, the Conservation Commission has requested a different location, which asks for greater relief because it is closer the front lot line and the wetland. He stated they respect the position of the Conservation Commission that the wetland would be less affected.

Attorney Phoenix summarized the relief being requested. He stated that it boils down to making the site better by moving a lot of encumbrances and encroachments. Grading and filling to make the site better and moving the Quonset Hut. He noted that the Conservation Commission has written a couple of letters. The most recent letter is dated October 29th. Dr. Bacon is fine with all of their nine recommendations, except for the first one which addresses the Quonset Hut. He explained that there is vegetation near the drive. If the hut is pulled up there, that vegetation will be cut down and going 16' will put it way off.

Mr. Ross explained that at the second Conservation Commission site walk, they spent a lot of time in that area. The thought was to nestle the hut between the existing trees. That is the way it is shown on the plan.

Vice-Chair Crapo asked the dimension of the hut.

Mr. Ross replied 16'x15'.

Vice-Chair Crapo commented that to have the hut 16' away, the hut would have to be right on the edge of the driveway.

Chair Weathersby asked if they are requesting to locate the Quonset Hut in the area, as shown on the plan, which is not 16' from the drive.

Attorney Phoenix confirmed.

Referring to the Conservation Commission's letter, Vice-Chair Crapo noted there are some dates in the letter for performance. The December 15th date seems close. The Building Department will not issue a building permit until the 30-day appeal period has passed from date of decision. He asked if that time frame is doable.

Attorney Phoenix asked the Board to give 30 days from the date the appeal period ends. He went on to review the criteria for granting the variances.

- The variance will not be contrary to the public interest and the spirit of the ordinance is observed. The underlying test is whether it will threaten the public health, safety or welfare or will it alter the essential character of the locality. What is being done is going to improve the site. Stormwater treatment is going to be improved. The effect on the wetlands is going to be improved. The Quonset Hut is going to be screened. Granting the variances is not going to change the essential character of the locality. It is essentially the same character, just improved. These variances will not threaten public health, safety or welfare.
- Granting the variances will not diminish surrounding property values. It looks like a lot of relief; however, it is all being done to make the site better in all respects. None of this can be done on the site without getting variances. The value of this property will be improved and will not harm the value of other properties.
- Denial of the variances would result in an unnecessary hardship. Special conditions exist that distinguish the property from others in the area. The existing house has been there for many years. The house and all the improvements are in the wetland buffer. It cannot be argued that special conditions don't affect this property.
- No fair and substantial relationship exists between the public purposes of the ordinance and its application in this instance. There are wetland buffer setback requirements to protect the resource. There is an existing home and the homeowner has rights. Since things are going to be better, there is no circumstance, in this instance, to apply the strict requirements of the buffer. The setbacks are primarily for the Quonset Hut, which is in the location that the Conservation Commission wants it, and for the grading and retaining wall. Since it is at ground level and it is not going to harm anyone, there is no reason to apply those.
- The proposed use is reasonable. It is a residential use in a residential zone.
- Substantial justice will be done. Denial of the variances would rob Dr. Bacon of the efforts he has made thus far in improving the property. It would also deny the relocation of the Quonset Hut in the location that the Conservation Commission wants it. It is very clear that substantial justice is done by granting the variances.

Member Driscoll asked what is stored in the hut.

Dr. Bacon replied that it is used to store lawn equipment, a snowblower, lawn furniture and other tools.

Chair Weathersby commented there were photos from the Conservation Commission's first site walk. She asked Attorney Phoenix if he has the photos.

Attorney Phoenix noted that he has the first Conservation Commission letter with the photos attached. (He submitted them to the Board.)

Member Dibble asked if there are catch basins and storm drainage along the roadway.

Mr. Ross replied across the street. He noted this is shown on the plans.

Chair Weathersby noted that it is not technically a Quonset Hut because that would be metal. She asked if the "temporary garage" is fixed to the ground.

Dr. Bacon replied "no". There is plywood underneath.

Mr. Ross explained it is a portable shed.

Chair Weathersby stated that she has questions regarding how the property is used. There is a two-car garage and storage under the deck. The cars seem to be parked outside all that time. She is trying to understand why the things that are in the Quonset Hut cannot be put inside the garage to eliminate the need for this temporary structure.

Dr. Bacon explained that the garage is full of equipment. He noted that he develops rehabilitation equipment. The garage is used as a research lab and a place to store the materials and tools used in building the rehab equipment.

Chair Weathersby asked about the enclosed storage under the deck.

Dr. Bacon replied that it is used for materials, paint and tools.

Chair Weathersby asked the height of the proposed retaining wall.

Mr. Ross replied the maximum height is 4'.

Chair Weathersby asked for clarification on the retaining wall and the grade.

Mr. Ross noted there are contours shown on the first sheet to indicate regrading. He pointed out there was a retaining wall that fell into disrepair, which is being reinforced. (He pointed out the location of the wall on the plan.)

Chair Weathersby clarified that the existing wall is being reinforced and a new wall is being built in the front.

Mr. Ross confirmed.

Member Driscoll asked about the grade change shown on the plan and what it will do to that side of the house.

Referring to the pervious boardwalk, Mr. Ross explained that Dr. Bacon would like to lift that up a bit and regrade the area. Right now, it tends to slope towards the wetland. The intent is for it to be lifted up to make access and walkability easier.

Member Driscoll asked if it would increase the slope towards the wetland or flatten it out.

Mr. Ross replied it would flatten it out.

Referring to the greenhouse, Chair Weathersby commented that was built without a permit, as everything else. She asked if that is still in use.

Dr. Bacon confirmed.

Chair Weathersby commented there is a boardwalk area with decks above. She asked if they are asking for a gravel patio area to the right of the greenhouse.

Mr. Ross confirmed.

Chair Weathersby asked if the gravel patio area is still needed, given that the garage is being moved to the front.

Dr. Bacon replied that he would like to finish the retaining wall.

Chair Weathersby noted that permission is being requested to have a gravel patio.

Dr. Bacon explained it is already flat land with peastone.

Vice-Chair Crapo asked if the area is already disturbed.

Dr. Bacon relied "yes" it is all flat. It was uneven soil. He took peastone and leveled it out.

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

Jeff Knapp, 162 Parsons Road, stated that he is not really speaking in opposition; however, he does have questions about the Quonset Hut. He asked if the temporary structure needs a building permit.

Chair Weathersby explained that "temporary" means six months or less. This is something that has been there for years. The applicant is asking for it to be permanently placed up by the road. She noted that she used the word "temporary" but it should probably be called a "canvas garage".

Attorney Phoenix explained they asked for permission (from the Building Department) to locate it at the front and it was denied, so it is now before the Board.

Mr. Knapp stated that the whole function of a buffer is to protect the resource. Where it is in the back, is a better place than close to the road. There would be no buffer for whatever comes out of that building and off the roof tarps. Where it is now, it has a better chance to get treated before it ends up in the resource. There is also about a foot of variation in height from where it is now to where it will be. In

driving on Parsons Road, there are no outdoor sheds or Quonset Huts in that front 30' setback. He thinks it changes the character of the neighborhood. It diminishes the value, of not only the neighbors' homes, but also the applicants. He cannot say that he is against the Quonset Hut; however, the proposed location is poor. He is surprised that the Conservation Commission would rather have it moved there, instead of up on the gravel pad, which would include more buffer, and be better for the setbacks.

Speaking to Mr. Knapp, Member Driscoll asked if the hut is the only thing he is opposed to.

Mr. Knapp replied "yes". He noted that he is okay with everything that is helping to keep water out of the property. He is not opposed to the Quonset Hut. He just does not think the location the Conservation Commission prefers is the best zoning wise. Even if it were a shed, it would still be out of place.

It was clarified that Mr. Knapp's residence is a couple of houses up from the applicants but he also owns the property directly across the street.

Heather Reed, Rye Conservation Commission Member, explained that the reason why that site was chosen is because it was measured and it would not fit in the space that was originally requested. Also, there would be a tractor that would be going across the lawn. That is why the site was chosen. She commented that it sounded like there is going to be fill added to the lawn area. The Conservation Commission had asked that no more fill be added to the lawn.

In regards to the tractor going over the lawn, Vice-Chair Crapo asked if the Conservation Commission is saying that the tractor can be left in the Quonset Hut in the driveway. The purpose of a tractor is to use it on the property. The purpose of a riding lawn mower would be to use it on the property. He is having trouble with the fact that the gravel area is already there.

Chair Weathersby stated it is not before the Board. The applicant can ask the Board for anything they would like. They are asking for it to be approved in that location. If they want to amend their application and continue, they are welcome to do so.

Chair Weathersby asked for further comments or questions from the public or the Board. None were heard.

Attorney Phoenix stated that he thinks Dr. Bacon is fine with putting the hut in the location the Conservation Commission prefers. If the majority of the Zoning Board feels it is better off the other way, he believes because the application was amended, the Board could say the original application is okay.

Chair Weathersby pointed out that there was testimony that it did not fit in that location, without changing the retaining wall, etc.

Mr. Ross stated a minor adjustment to that area would make it fit. He clarified there were two site walks with the Conservation Commission. They gave their opinion of where they would like it. It has been shown in that location and adequate screening has been added. There will be landscaping and a fence. He does not think it is going to change the look in driving down Parsons. (Proposed location)

Referring to the other items; such as the Kubota, kayaks and rocks, Chair Weathersby asked if that will all be coming out.

Dr. Bacon noted the Kubota is in that location temporarily. It was moved there to move the rocks. Chair Weathersby commented it has been there for quite a while.

Referring to the "hut", Member Driscoll asked what would happen if when they relocate it, it falls apart and it cannot be put back together.

Dr. Bacon replied that he built it and that will not happen.

Chair Weathersby noted that two letters have been received from the Conservation Commission; dated September 1st and October 29th. The Board has read both letters and a number of conditions are suggested. Hearing no further questions, Chair Weathersby closed the public hearing at 7:57 p.m. She asked for discussion from the Board regarding the front retaining wall.

It was clarified that the front retaining wall is 1' from the front boundary and the side boundary.

Member Driscoll stated it seems like the RCC recommendation is conflicting with what they are asking for here. The Conservation Commission said that they do not want fill in that area. (#6 in the RCC letters) He pointed out that the applicant is asking for fill but they have said they are fine with what the CC has asked.

Attorney Phoenix stated this is an oversight. The applicant is asking for fill in that area.

Member Driscoll asked if they are okay with not adding fill in the back area, so it abides by the Conservation Commission's recommendations.

Attorney Phoenix confirmed.

Mr. Bacon stated he would prefer to put in plantings and level it off. DES thought this was reasonable.

Member Dibble stated if it is flat, it is less likely to runoff into the resource. More likely, the precipitation that lands there will percolate into the ground.

Chair Weathersby asked Mr. Ross to talk about the back area.

Vice-Chair Crapo asked if they are talking about the gravel patio area. He asked what is trying to be leveled; the landscaped area or walkway area.

Mr. Ross explained it is the grass area. (He pointed the area out in the photos.) There is a slight pitch and is landscaped towards the house and the wetlands. Mr. Bacon is asking to lift that up a bit and level it off.

Member Patten asked how many inches and cubic yards of fill is being used.

Mr. Bacon replied it will be 4" to 6" over about 12' to 18'.

Member Patten asked what the pitch will be once the fill is put in.

Mr. Ross noted there will be a slight pitch toward the wetlands.

Chair Weathersby asked if the impervious toward the wetlands will be increased or decreased. Mr. Ross replied there will be no change, as it is grass, but the flow will be slowed down.

Vice-Chair Crapo read the notice. He pointed out that it does not talk about lawn. He is comfortable that what they requested is to pick up parts of the boardwalk and put them back down, which would be right about where people are walking. He does not see any need to regrade the lawn.

Chair Weathersby asked if this was discussed with the RCC.

Mr. Ross replied it was discussed at the site walks. He noted that they recommended more plantings close to the wetland. So, work would be done in that area. In connection with that, they would like to do a little bit of regrading.

Vice-Chair Crapo commented the RCC requested a 5' boarder of plants along the marsh and edge of property.

Member Patten stated it is very vague as to what needs to be planted and how far apart. He wonders how specific this should be if the Board conditions this on #7. He also has a question about #9 in terms of enforcement.

In regards to the plantings, Chair Weathersby stated her thought is they have recommended a 5' area of plantings and it depends on the plantings that are chosen. There are standards for what is chosen, as far as density. It is dictated by the types of plants that are chosen.

Member Patten asked whose opinion is it that it was done satisfactorily. Who will enforce it?

Chair Weathersby noted the RCC has asked for permission to go back and take photos so they can close their file. If it was not done, RCC would inform the Building Inspector and they would be in violation of the condition.

Attorney Phoenix stated he has not found the Conservation Commission to be unreasonable, in terms of their requirements. The applicant is comfortable with it and the Building Inspector can be the deciding factor.

Vice-Chair Crapo asked if they have settled the issue of fill in the yard. He reiterated that he reads it as fix the boardwalk, not regrade the yard.

Chair Weathersby commented it is pretty vague as to whether it has been requested.

Member Driscoll stated if there is an issue with a high tide coming into that area with fill, the tide will wash out all that non-native soil into the wetlands. He is against it. The applicant is okay with no fill. The Conservation Commission would like no fill. He thinks they should just move forward with no fill.

Attorney Phoenix stated they will withdraw the request for fill in that area.

Chair Weathersby clarified the applicant has withdrawn the request for fill between the boardwalk and marsh. She asked for discussion about the retaining wall and fill in the front yard. She asked if anyone has any issue with the retaining wall that is 1' from the property line, on both the front and left side.

The Board had no issues with the wall nor the fill in that area.

Chair Weathersby asked for thoughts on the gravel patio.

Vice-Chair Crapo stated that area is already disturbed. Cleaning it up is reasonable, which seems to be what is requested. He still thinks the Quonset Hut would be better in that location.

Referring to the gravel patio in the location requested, Member Dibble stated he is okay with it.

Chair Weathersby stated she is not. The applicant has said there is no use for it.

Member Dibble stated it is largely there now. This would be asking for it to be taken out. He is not in favor of any more disturbance.

Vice-Chair Crapo stated the Board can deny this and make him put it back to lawn. He can let the lawn harden and then it would be a dirt patio. It is kind of a moot point. He is asking to clean it up and turn it into a patio.

Chair Weathersby stated that her point was that the applicant has said he has no use for it. She would prefer that area be restored and there be more wetland protection in that area.

Member Patten commented that the wall should be rebuilt.

Chair Weathersby agreed.

Member Dibble stated the wall will get cleaned up in due course. The area will be level and it will be relatively attractive. He reiterated that he is for minimal disturbance of the land.

Vice-Chair Crapo noted there was testimony that the Conservation Commission did not want the lawn tractor going back and forth in that area. In order to get rid of the gravel, trucks or heavy equipment would be needed.

Chair Weathersby asked the Board their thoughts on the greenhouse.

Regarding "after-the-fact" variances, Vice-Chair Crapo stated the Board has to look at it as if nothing was there and they came in and proposed it. If this was open lawn and they came in and proposed this, his thought is as long as the stormwater runoff is not going to be drastically affected. It's a structure that is in the buffer. He is not sure he would necessarily approve it from the "get-go", but it is there. There is no evidence that it is harming the wetlands.

Member Driscoll stated he looks at the special conditions of the property and what is being asked of the property. He thinks there is a lot that is being asked for. To have this as a spot to do all the plantings and hardscaping, is asking a lot of the property as it is. He has less of a problem with the gravel and the greenhouse because it is protected from the visual effect it will have on the neighbors. He also sees, from his site walk, that it is as far away from the wetlands as realistic. He has a much larger issue with the canvas garage. Where it is proposed now, does not fill in what he needs to approve the variance. He has far less of an issue with the gravel and the greenhouse. The retaining wall improves the property. The vinyl garage is what he has an issue with.

Referring to the canvas garage, Member Patten asked how long it has been there. He is wondering about an application for equitable relief, if it has not been brought up in ten years of being constructed, if it has to be taken out.

Chair Weathersby opened up to Attorney Phoenix for an answer.

Attorney Phoenix replied that it has easily been there for six years.

Vice-Chair Crapo commented he would much rather see it in the gravel area.

Chair Weathersby noted that is not what is before the Board. She continued that she has a problem with it entirely. She is treating it as a permanent structure and putting aesthetics aside. It is in a terrible location now and there is no good location for it. Frankly, it is a pretty big ask when there is a two-car garage and the entire property is within the wetland buffer. Ideally, the cars and lawn mowers would be parked in the garage. This is a home in a residential district. To add another garage onto this property when it is so stressed, is too big of an ask. Even though it will be screened, it will be able to be seen. It changes the character of the neighborhood and stresses the wetland. The Board saw what is stored in it. She thinks it is a big problem and could very well damage the wetlands. She does not think that type of structure belongs in a location so close.

Member Patten asked if they were asking to put a garage next to Parsons Road, would the Board say is that okay? He would say probably not. However, the alternative is to easily throw a tarp over chainsaws, gas cans and the tractor wherever he wants on the property. If the building is taken away, what is going to happen?

Chair Weathersby noted that he can't be storing materials in the wetland. It is a violation of the wetland ordinance. The storage that is on this property should be used for the uses that serve the residence. She understands that he has a business and loves to work from home; however, maybe that stuff should be located somewhere else. Regardless of the use, her main objection is the potential harm to the wetland and the potential effect on property values. She does think it is in conflict with the spirit and intent of the ordinance.

Member Dibble stated this is a very congested piece of property and there is already too much going on. He does not agree with the Conservation Commission that this being closer to the road is a better location and protects the marsh even better. He pointed out it is closer to the marsh. Whatever runs off that side of the driveway is going to land in the marsh. There are a lot of other options for storing things on this property and this structure should not be approved.

Member Driscoll stated he appreciates that the RCC is trying to work with the applicant. However, if the RCC was asked in general if they would prefer that to be there or not, they would say they do not want it there.

The Board discussed possible conditions of approval.

Chair Weathersby called for a vote on variance to 204.3 B and 204.3 B for the front and rear retaining walls:

1. Granting the variances is not contrary to the public interest?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

Chair Weathersby called for a vote on variances to 204.3 B and 301.8 B(1)(7) for the gravel patio:

- 1. Granting the variances is not contrary to the public interest?**

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - No**

- 2. The spirit of the ordinance is observed?**

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - No**

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - No

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - No

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby – No**

Chair Weathersby called for a vote on variances to 301.8 B(1) & (7) for fill in the front:

1. Granting the variances is not contrary to the public interest?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

2. The spirit of the ordinance is observed?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

3. Substantial justice is done?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

4. The values of surrounding properties are not diminished?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

Chair Weathersby called for a vote for a variance to 301.8 B(7) for the boardwalk:

1. Granting the variance is not contrary to the public interest?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

3. Substantial justice is done?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

4. The values of surrounding properties are not diminished?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

Chair Weathersby called for a vote for variance to 301.8 B(7) for the greenhouse:

1. Granting the variance is not contrary to the public interest?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

7. The purposed use is a reasonable one?

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

Chair Weathersby called for a vote for variances to 204.3 C, and 301.8 B(1) and (7) for the canvas garage/"Quonset Hut":

1. Granting the variances is not contrary to the public interest?

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - No

2. The spirit of the ordinance is observed?

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - No

3. Substantial justice is done?

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - No

4. The values of surrounding properties are not diminished?

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble - No
Patricia Weathersby - No

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

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - Yes

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

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - No

7. **The purposed use is a reasonable one?**

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - No

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

Shawn Crapo – No
Patrick Driscoll – No
Rob Patten – No
Burt Dibble – No
Patricia Weathersby - No

Motion by Burt Dibble to approve the application by Paul Bacon for property owned and located at 200 Parsons Road for variances to Section 204.3 C, for a retaining wall 1' from the front boundary where 30' is required; Section 301.8 B(7), for a boardwalk and a greenhouse; Sections 301.8 B(1) and (7), for fill and regrading improvements and a retaining wall 33' from the wetlands where 100' is required; and deny the application for a Quonset hut 10' from the wetlands and 7' from the front setback; conditioned upon the letter from the Rye Conservation Commission, dated October 29, 2019, excluding condition #1 and changing the dates from December 15th to December 31, 2019.

Motion failed due to lack of a second.

Motion by Patricia Weathersby to grant Paul R. Bacon of 200 Parsons Road the following variances:

- **204.3 B for a retaining wall 1' and a second retaining wall 10' from the left side boundary;**
- **204.3 B for the gravel patio 10' from the side boundary;**
- **204.3 C for a retaining wall 1' from the front boundary;**
- **301.8 B(1) and (7) for fill in the front yard as represented; and**
- **301.8 B(7) for the boardwalk, the gravel patio and the greenhouse; upon**

the conditions of the Rye Conservation Commission's October 29, 2019 letter, except for condition #1, and to change the dates from December 15th to December 31, 2019; and to deny the variances requested concerning the "Quonset Hut". Seconded by Shawn Crapo. All in favor.

Patrick Driscoll was unseated and Charles Hoyt was reseated for the remainder of the applications.

2. **LL & MR Tierney Revocable Trust, Leonard & Mary Tierney, Trustees of national Engineering, 72 Mirona Road, Suite 4, Portsmouth, NH for property owned and located at 1 Cable Road, Tax Map 5.3, Lot 43 and 3 Cable Road, Tax Map 5.3, Lot 44,** requests variances from Section 603.1 and 603.2 to tear down two nonconforming dwellings and replace with one nonconforming dwelling on a combined lot; from Section 203.3A for a garage 3.6' from the rear boundary where 23' is required (1/4 depth of lot); from Section 203.3C for a porch 22.6' from the front boundary where 40' is required; from Section 304.4 for the height of a cupola 34.2' and of house 31.09' where 28' is required; from Section 304.5 for house with 21.1% of dwelling lot coverage where 15% is allowed and 48.1% of total lot coverage where 30% is allowed; and from Section 500.3 for parking within 10' of the rear property line. **Property is in the Single Residence, Coastal Overlay and SFHA, Zone AO + (1). Case #37-2019.**

Attorney Tim Phoenix, representing the applicants, presented the application. (He pointed out the two lots in question on the plan before the Board.) He explained the applicants have owned a house on one of the lots for a number of years and recently purchased the little cottage on the lot next door. The cottage and the house are accessed by a right-of-way. The idea is to replace the cottage with a garage that connects to the main house. There will be a second floor on the garage for extra living space. Height relief is needed. He noted that they have asked for a little more than 3'. If they are under the new ordinance, it would be 1'. He continued that he does not think relief is needed for the cupola. He thinks this Board has agreed before it is not a roof. He has put them both in but the cupola is just a couple of feet higher. He also does not think relief for the parking is needed. Once the two lots are merged, the parking spaces for two vehicles is not in the front setback nor within 10' of any side setback. He noted the main lot is 9,042sf and the cottage lot is 5,928sf. The total combined is 14,970sf.

Alex Ross, Ross Engineering, stated they met with the Conservation Commission on site. Typically, when there is wetland area, the grade slopes towards the wetland. On this site, the grading is such that it slopes away from the ocean. He noted that in front of the house is an area with pervious pavers, which is a great way to collect stormwater runoff. Currently, both of the structures do not comply with FEMA. The new structure would comply with FEMA with the proposed improvements.

Chair Weathersby asked if the house at 1 Cable (bigger house) is being demolished or just being raised.

Mr. Ross replied it is being raised up for FEMA compliance.

Scott Tarantino, Architect, presented before and after plans to the Board. He explained that a new entrance is proposed for the main house because it has to be lifted so new steps will be needed to the entrance. The main house is going to stay pretty much the way it is now, other than some siding and replacement of some windows. He noted that the existing shed will be removed and the appendage will come off as well. The addition will be a three-car garage with a master bedroom, bath and storage area on the second floor. (He reviewed the proposal on the plan for the Board.) He noted the addition has been concentrated in the center of the main house and it is within the building parameters. The main house will be raised to comply with FEMA. The main structure is under 28'. It is just the addition that makes it 31' because of the ridge-way. The cupola goes up to about 34'.

Member Dibble asked the height of the cupola structure.

Mr. Tarantino replied 4'. He noted that there is an existing basement but that is getting filled in and it will be slab on grade for the garage addition. He also noted that flood gates are required for FEMA compliance for both the main house and the garage structure.

Mr. Ross explained that the home at 1 Cable Road has a crawl space. The way it is constructed, it is below the existing grade. When the main house is lifted, it will be filled in a little to bring it up to grade. There will still be crawl space but it will not be a full basement.

Mr. Tarantino noted the proposed structure and all mechanicals will all be above the FEMA line.

Attorney Phoenix reviewed the variances being requested and the criteria for granting those variances.

- The variance will not be contrary to the public interest and the spirit of the ordinance is observed. The test is whether granting the variance will unduly and to a marked degree conflict with the ordinance such that it violates the basic zoning objectives.
 - Lessen congestion in the streets – This will be going from two houses that require four parking spaces to one house that requires two. Two lots are being merged so there will be only one lot going forward.
 - Secure safety from fire, panic and other dangers – This will be code and floodplain compliant.
 - Promote health and the general welfare – This project does that, particularly, with flood compliance, which brings the entire structure up to code.
 - Promote adequate light and air – Most of the addition is upward to meet the setbacks. Adequate light and air are maintained.
 - Prevent the overcrowding of land – There will be roughly 15,000sf of combined lot, which is relatively large for the area.
 - Avoid undue concentration of population – It is a single-family home.
 - Facilitate transportation, waste, water, sewerage and recreation – Public water and sewer serve the home. There are two homes and it is going down to one.
 - Ensure proper use of natural resources – The overall lot coverage is being slightly reduced, which is a benefit for stormwater purposes.

Will granting the variances alter the essential character of the locality or threaten the public health, safety or welfare? Many of the smaller cottage lots, in the beach area, have been expanded, combined, torn down and rebuilt with larger homes. The project meets the essential character of the locality. The public health, safety and welfare will be benefited because it will be complying with FEMA and the overall lot coverage is being reduced.

- Granting the variances will not diminish surrounding property values. Many older seasonal beach cottages are being replaced, which is the case in this instance. The value of the combined lot will be increased. The proposal will enhance the value of the surrounding property values, not hurt them.
- Denial of the variances would result in an unnecessary hardship.
 - Special conditions exist that distinguish the property from others in the area. Although, the lots combined is a pretty good size lot for the area, it is much smaller than the 66,000sf that would be required if this were to start from scratch. The existing homes and the right-of-way for access dictates where work and additions can be done. This demonstrates that special conditions exist, in addition to the flood zone issues.
 - No fair and substantial relationship exists between the public purposes of the ordinance and its specific application in this instance. Height limitations are designed to prevent overcrowding of land and not fill up the neighborhood with excessive bulk. In this case,

the height is only to comply with the town and federal requirements for flood protection. Setback expansion restrictions are designed to provide for adequate air, space, separation from neighbors, and stormwater treatment. For the reasons stated, none of those will be violated here. Lot coverage is primarily for air, light, space and stormwater treatment. Essentially, this is just a connector between the main house and the cottage, while keeping the new structure under the height restrictions. This project demonstrates there is no reason to apply those strict requirements of the ordinance in all respects.

- The proposed use is reasonable. There are two single-family homes there today requiring four parking spaces and neither is flood compliant. There will be one flood compliant home requiring two parking spaces, so that is reasonable.
- Substantial justice will be done by granting the variances. If there is no benefit to the public that is outweighed by any hardship to the applicant, this factor is satisfied. Any loss to the applicant not outweighed by gain to the public is an injustice. The applicants have the right to reasonable use of their home and their property. Since they own both of these properties, and are willing to give up the right that two separate property owners would have by merging the lots and connecting the houses, is a reasonable request. The public is not harmed by granting any of these variances, given the site characteristics, restrictions and location of the existing home. To deny the variances, would deny the applicant to have this home being proposed for more enjoyable living.

It was noted that the existing house is five bedrooms and will remain a five-bedroom home.

Member Hoyt asked the percentage of increase in volume.

Mr. Tarantino explained the existing is 7,496. In lifting the main structure, it brings it up to 1,538. However, when 840 is subtracted, it brings it up to 7,332cu.ft.

Member Hoyt asked if there is less volume because the part that was lifted is being subtracted out.

Mr. Tarantino explained the existing house has to be lifted, which creates more volume in the crawl space. That is not habitable space.

Vice-Chair Crapo asked for the volume for everything, excluding anything below the first finished floor.

Mr. Tarantino replied 7,302cu.ft., including the garage.

Chair Weathersby asked the square footage of living space.

Mr. Tarantino replied the existing is 2,311sf and the proposed is 3,152sf. He noted this includes the garage. It does not include the crawl space.

Attorney Phoenix noted a letter was sent by Rye Conservation Commission dated September 30th with recommendations.

Vice-Chair Crapo asked if they are comfortable with Attorney Donovan's suggested condition on the merged lots.

Chair Weathersby pointed out they have already offered to merge the lots.

Attorney Phoenix commented that if this goes forward, there could be a condition that the lots will be merged.

Chair Weathersby stated that she is going to express a frustration that she has with this project. It does not seem that much attempt has been made to make the property more conforming with zoning. The cottage and the main house have been filled in in-between. The shed was taken out; however, a second floor has been added and it has been expanded over the garage. It is even closer to the property line next door. She is not seeing any attempt to make it more conforming to zoning.

Vice-Chair Crapo stated he has the same reservation. Basically, this is going to look like one house “ate the other and dessert”.

Leonard Tierney, Applicant, explained there were three cottages on that one lot. The three Philbrick girls lived there. The Town of Rye decided they were going to subdivide the lot and make it three separate lots so one of the homes could be sold. The town made it non-conforming.

Chair Weathersby stated the project that is being proposed right now, does not seem to make the condition more conforming. It seems to make it less conforming. Volume is being put on top of a one-story house (the cottage), so it will be two-stories. It is very close to the people next door, who now see over that cottage. She reiterated that it does not seem that any attempts have been made to make this more conforming to Rye Zoning, as required.

Mr. Tarantino explained that they have actually pulled it away. It does not encroach any further towards the abutter's property.

Vice-Chair Crapo pointed out the request is for 3.6' from the overhang and 4.5' to the wall. He also noted that there is also a fence on top of the property line. There will be a building where a firefighter has 2' to get around, in the event of an emergency.

Mr. Tierney replied the fence has always been there.

Referring to the firefighters, Attorney Phoenix pointed out they are not going to stop at the property line. He continued that the change is de minimis. There are some things that are going to be better. A lot line is being eliminated that turns two non-conforming structures, with respect to the rear setback, into one. The overall impervious coverage is being slightly reduced. The floodplain requirements will be complied with. It is not unreasonable to connect the cottage up to the main house, so it can be used, and adding a second floor, when many homes in the area have second floors. He does not feel there are any violations of the goals of zoning because of the situation now; two homes on two non-conforming lots. The parking on site is also being reduced. He agrees the cottage is going up and there is in-filling. Most of the infill is permitted, in terms of height, volume and it is within the building envelope. In all of those ways, they are trying to respect the zoning ordinance. In some ways it gets better and in some ways it does not.

Member Hoyt stated the people who would be most egregiously affected are the neighbors. They are the ones that would be affected by the increased volume. He noted that he does not see any letters of opposition. He sees three letters of support.

Chair Weathersby pointed out there are people present who want to speak. She asked for clarification in regards to pervious pavers (new and existing) and the patio shown on the plans.

Mr. Ross gave clarification.

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

Dave Sullivan, 7 Cable Road, stated there is an easement on his property that provides a right-of-way for access for 1, 3 and 5 Cable Road. He did not know that the offset for parking of 10' from the boundary line even existed, until the notification of this meeting was received. He has a problem with parking on the easement, which would really affect his property value.

Member Hoyt asked for clarification on the easement.

Attorney Phoenix explained there is an easement to get from Cable Road to the lots. He understands and respects the concern but that is not being changed. The proposal does not affect the easement at all.

Mr. Sullivan stated he does not want them to be able to park on his property.

Attorney Phoenix replied they cannot park on Mr. Sullivan's property. The relief that has been requested is for setback of buildings and for the location of the parking spaces. Parking cannot be in the front yard and has to be 10' from any lot line. Parking for two cars has been provided and is nowhere near Mr. Sullivan's property.

Chair Weathersby asked what the boundary is 10' from.

Attorney Phoenix stated he does not think it is needed because they meet that requirement.

Hearing no further comments in opposition, Chair Weathersby asked for comments from the public in support of the project.

Chair Weathersby read the letter from the Rye Conservation Commission, dated September 30, 2019, noting their recommendations for the project. Letters in support were received from the following:

- Bernard Gamache, 6 & 8 Cable Road, August 27, 2019;
- John & Joanna Doykos, 2 Cable Road, August 25, 2019; and
- Claire & Kevin Condron, 2170 Ocean Blvd.

Chair Weathersby asked if the applicant has spoken to the Keanes (5 Cable Road) about this project.

Mr. Tierney replied "yes". They were going to send a letter.

Hearing no further questions, Chair Weathersby closed the public hearing at 9:45 p.m. and opened to the Board for deliberation.

There was discussion about conditions of approval. It was agreed the proposal, if approved, should be conditioned upon the recommendations as stated in the Rye Conservation Commission's letter and the lots being voluntarily merged prior to building permit.

Chair Weathersby commented that her concerns have been heard about the lack of attempt to make it more conforming. The house next door is awfully close. The proposal is for a three-car garage, instead

of a two-car garage. The space above is a master over a two-car garage and over the third bay is a storage area.

Member Dibble asked if the use of the footprint of the cottage is grandfathered.

Chair Weathersby commented if they wanted to leave it there, they could.

Member Dibble stated he understood that they were fundamentally staying on the footprint.

Vice-Chair Crapo stated they are using it for benefit on both sides. They are using it on the far lot line and filling in the middle.

Member Dibble commented that people do not come before the Board for variances to do less. The Board hardly ever sees something constructed that has less bulk.

Member Hoyt stated he knows the neighborhood very well. It is a neighborhood of fine homes with significant volume. He thinks the applicant and his team have tastefully combined the two structures. He would have more concern if there were abutters who were opposed to the view corridors closing in and the volume being too great.

Chair Weathersby commented that hearing the Keanes are not opposed to what is being proposed, does give her some pause as to what she is saying because they are the most effected. The volume is coming very close to them. She continued that she is a little concerned about fire, safety, light and air. She is really concerned about the 48% lot coverage, especially when there is so much reliance on the pervious pavers. More could have been done to reduce lot coverage.

Referring to the lot coverage and side setback, Vice-Chair Crapo stated he would rather see them attempt to go two-car wide with the garage and do something front to back, if there needs to be three spaces. He does not see a hardship for even two, let alone a third. He cannot support the side setback, which is driving part of the coverage.

Chair Weathersby continued she is okay with the height. She is struggling with the side setback.

Vice-Chair Crapo noted that the intent of 603.1 is to make an attempt to be more conforming. The cottage is being torn down and they are not using its foundation.

Chair Weathersby stated she would be okay with taking that volume and pushing it over the house but they are filling in in-between. A lot more could've been done to satisfy the criteria of the ordinance.

It was agreed that 500.3 for parking was not needed. It was also agreed that the height variance for the cupola did not need to be addressed, as it is not part of the main roof.

Chair Weathersby called for a vote for a variance to Section 304.4 for a ridge height of 31.09':

1. Granting the variance is not contrary to the public interest?

Shawn Crapo – Yes

Rob Patten – Yes

Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote on variances to Section 203.3 C for porch to be 22.6' from front boundary:

1. Granting the variance is not contrary to the public interest?

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote for variances to Section 203.3 A for garage 3.6' from the left boundary:

1. Granting the variance is not contrary to the public interest?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

2. The spirit of the ordinance is observed?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

3. Substantial justice is done?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

4. The values of surrounding properties are not diminished?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

Chair Weathersby called for a vote for variances to Section 304.5 for dwelling coverage of 21.1% and lot coverage of 48.1%:

- 1. Granting the variances is not contrary to the public interest?**

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

- 2. The spirit of the ordinance is observed?**

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

3. Substantial justice is done?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

4. The values of surrounding properties are not diminished?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby – No

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

7. The proposed use is a reasonable one?

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

Chair Weathersby called for a vote on a variance to Section 603.1 for the main house:

1. Granting the variance is not contrary to the public interest?

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

Shawn Crapo – Yes
Rob Patten – Yes
Charles Hoyt - Yes

Burt Dibble – Yes
Patricia Weathersby - Yes

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

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

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

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

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Burt Dibble – Yes
Patricia Weathersby - Yes

Chair Weathersby called for a vote on a variance to Section 603.2 for the cottage:

- 1. Granting the variance is not contrary to the public interest?**

Shawn Crapo – No
Rob Patten – Yes
Burt Dibble – Yes
Charles Hoyt - Yes
Patricia Weathersby - No

- 2. The spirit of the ordinance is observed?**

Shawn Crapo -- No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

3. Substantial justice is done?

**Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No**

4. The values of surrounding properties are not diminished?

**Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No**

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

**Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - Yes**

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

**Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No**

7. The proposed use is a reasonable one?

**Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No**

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

Shawn Crapo – No
Rob Patten – Yes
Charles Hoyt - Yes
Burt Dibble – Yes
Patricia Weathersby - No

Motion by Patricia Weathersby to grant the variances to LL & MR Tierney Revocable Trust, for property located at 1 and 3 Cable Road, for variances to 603.1 and 603.2 to expand and replace a non-conforming structure; 203.3 A for the garage 3.6' from the rear boundary; 203.3 C for a porch 22.6' from the front boundary; 304.4 for a height of 31.09'; and 304.5 for dwelling coverage of 21.1% and lot coverage of 48.1%; with the conditions that the lots be voluntarily merged, the pervious paver area be installed and maintained per manufacturer's instructions so they remain pervious, native plantings to be added to the existing landscape border along the ocean side soon to be one lot with native salt resistant plantings to a depth of 3', and the RCC can visit the property to review the project was completed. Seconded by Charles Hoyt.

Vote: 3-2 Opposed: Patricia Weathersby and Shawn Crapo.

The Board agreed to continue with applications until 11:00 p.m.

Motion by Burt Dibble to continue the revision of Rules of Procedure to the December meeting. Seconded by Charles Hoyt. All in favor.

- 3. Keith Trefethen for property owned by Ralph Trefethen and located at 161 Clark Road, Tax Map 19, Lot 75, requests variances from Section 603.2 for an addition to a nonconforming structure and from Section 203.3B for an addition 18'2" in the side setback where 20' is required. Property is in the General Residence, Coastal Overlay Districts. Case #41-2019.**

Keith Trefethen, representing the applicants, spoke to the Board on behalf of his parents requesting variances to Section 603.2, for an addition to a non-conforming structure, and from Section 203.3 B, for the addition to be 18.2' in the side setback. The intent is to renovate the attached garage with an addition to the rear in order to meet the requirements for an accessory dwelling unit. He noted that he will be occupying the accessory dwelling in order to take care of his parents in their retirement years. He also noted that the abutter to the rear is in favor of the proposal.

Chair Weathersby stated that a few years back there was a request before the Board to make an accessory dwelling unit in the garage itself. That was denied because there was not enough square footage. She asked if it is their position is that this project is materially different than the previous application.

Mr. Trefethen noted it is very different because they are adding to the back side of the garage to gain square footage. The addition is 15x18 and is two-stories. He explained the garage will become living space with the addition and the second floor of the addition. The space that is currently over the garage, on the second floor, will remain as living space for the main house.

The Board agreed that the application is materially different. It was noted that the accessory dwelling has received approval from the Planning Board. There was a contingency from the Planning Board to install a new septic system, which has already been completed.

Chair Weathersby opened to the public for comments. None were heard. She noted that emails of support were received from:

- Pat Quinn, 158 Clark; and
- Stephanie & Patrick Driscoll, 141 Clark

There were no members of the public present with concerns on the application. Chair Weathersby closed the public hearing at 10:20 p.m. The Board had no concerns with the proposal.

Chair Weathersby called for a vote for variances to Sections 603.2 and 203.3 B:

1. Granting the variances is not contrary to the public interest?

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

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

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

Motion by Burt Dibble to approve the application petitioned by Keith Trefethen for property owned by Ralph Trefethen located at 161 Clark Road as advertised. Seconded by Charles Hoyt. All in favor.

4. **Daniel Bousquin for property owned and located at 8 Holland Drive, Tax Map 20.2, Lot 24, request a variance from Section 204.3 A for a shed 6' from the rear boundary where 30' is required. Property is in the General Residence, Coastal Overlay Districts. Case #41-2019.**

Daniel Bousquin, Applicant, presented his application for a shed 6' from the rear boundary to be used as storage. The home is relatively small with a crawl space that is only 4' high. The garage is already being used for some storage but additional space is needed. The shed will be in the rear of the property and will be out of sight for most of the abutters, except for the neighbors to the rear. There is a tree line that separates the two property so the shed would barely be seen. The abutters have no objections to the proposal. He noted that the abutters to the rear at 121 Parsons suggested that the shed be located on the

side; however, that is not a good location because when it rains the area becomes very wet. The area that is being proposed is a flat area and will be easy to get to, plus it will not be able to be seen from the road.

The Board reviewed the distance of the proposed location of the shed to the house located at 121 Parsons Road (property to the rear).

Chair Weathersby read a letter of support from Jeffery and Susan Swain, 15 Holland Drive. Hearing no other public comments, the public hearing was closed at 10:25 p.m. The Board did not have any concerns with the request.

Chair Weathersby called for a vote on variances to Section 204.3 A for a shed 6' from the rear boundary:

1. Granting the variance is not contrary to the public interest?

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to approve the application of Daniel Bousquin for a variance to 204.3 A for a shed 6' from the rear property boundary. Seconded by Rob Patten. All in favor.

5. Communication

- Above

Adjournment

Motion by Burt Dibble to adjourn at 10:40 p.m. Seconded by Charles Hoyt. All in favor.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

LL & MR Tierney Revocable Trust, Leonard & Mary Tierney,
Trustees of National Engineering 72 Mirona Road, Suite 4,
Portsmouth NH

Property:

1 Cable Road, Tax Map 5.2, Lot 43
3 Cable Road, Tax Map 5.3, Lot 44
Properties are in the Single Residence, Coastal Overlay and
SFHA, Zone AO +1

Application case:

Case #37-2019

Date of decision:

November 6, 2019

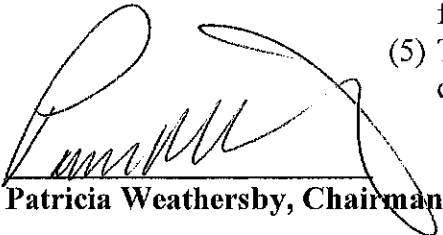
Decision:

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

- Section 304.5 for building height of 31.09';
- Section 203.3 C for a porch addition 22.6' from the front boundary;
- Section 203.3A for building 3.6' from the rear (left) boundary;
- Section 304.5 for a dwelling coverage of 21.1% and a lot coverage of 48.1%;
- Section 603.1 for renovations to the non-conforming main house; and
- Section 603.2 to tear down the non-conforming cottage and rebuild with an attached garage with living space above

Each variance was granted upon the following conditions:

- (1) the applicant merge the two lots prior to construction;
- (2) The pervious pavers be installed and maintained such that they remain pervious;
- (3) Native plantings are to be added to the existing landscape border along the ocean side of both lots 43 and 44. The northeast corner of Lot 44 is to be planted with native, salt resistant plantings to a depth of three (3) feet to tie in with the existing grasses.
- (4) Existing lawn to be fertilized only with low nitrogen fertilizer if fertilization is necessary.
- (5) The Rye Conservation Commission may revisit the site to verify compliance with conditions.



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: Keith Trefethen for Ralph Trefethen

Property: 161 Clark Road, Tax Map 19, Lot 75
Property is in the Singe Residence District

Application case: Case #40-2019

Date of decision: November 6, 2019

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

- Section 603.2 for an addition to a non-conforming structure; and
- Section 203.3 B for an addition 18.2' 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: Daniel Bousquin

Property: 8 Holland Drive, Tax Map 20.2, Lot 24
Property is in the General Residence and Coastal Overlay Districts

Application case: Case #41-2019

Date of decision: November 6, 2019

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

- Section 204.3 for a shed 6' from the rear 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.