

## TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, August 30, 2023

7:00 p.m. – Rye Town Hall

**Members Present:** John Mitchell, Chris Piela, Chair Shawn Crapo, Rob Patten, Sandra Chororos

**Also Present on behalf of the Town:** Planning/Zoning Administrator Kim Reed

### I. CALL TO ORDER

Chair Crapo introduced Board members, led the Pledge of Allegiance, and called the meeting to order. He outlined meeting procedures and explained that the public session was closed.

### II. APPLICATIONS

**1. Leigh & Darren D'Andrea** for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request variances from §190-2.4.C(1) for an overhang 23.66', chimney 21.86', deck stairs 15.84', and deck 14.80' from the rear boundary where 25' is required; from §190-2.4.C(3) for steps and a paver pad 17.5'; a bioretention pond +/- 0 ft (Jenness Avenue side) and +/- 1 ft (Surf Lane side) from the front yard boundary where 23.5' for Jenness Avenue and 8' for Surf Lane is required; from §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, overhang 4.50' house 5.73', steps 12.35', deck stairs 8.16', and driveway 20' from the wetland where 75' is required; from §190-3.4.E for 17% dwelling coverage where 15% is required; from §190-6.1.A and from §190-6.1.B(1)(2), (C) for a 9,998 square foot lot area with 200' of frontage on a nonconforming lot; and from §190-5.0C for 1 off-street parking space within the front setback where that is prohibited. Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06a-2023.

**Attorney Tim Phoenix**, representing the applicant, explained that the applicant couldn't attend the meeting but was hoping to join via Zoom. He introduced **Robbie Woodburn** and **Steve Riker** and explained that neither Jen Ramsey nor Mike Sievert could attend. Attorney Phoenix requested that the board reopen the public session for five minutes to present updated information.

Chair Crapo expressed that he didn't think it would be fair to reopen the public session, explaining that the public session had been officially closed at the prior meeting. While he did not rule out the possibility of opening to the public for matters of clarity, the variances have had their due course and the board doesn't need any further input. He explained that during the second application, the public session will be reopened, limited to discussion regarding the

special exception. Chair Crapo stated that he would read aloud the two basic questions that the board would use to analyze the special exception.

Chair Crapo explained that deliberation would be for the board to discuss, analyze, and decide on the rationale for their decisions. He explained that the board would consider and vote on each requested variance independently due to the complicated nature of the application.

Chair Crapo explained that anytime the board knows there will be conditions, they are discussed in advance so the board members are aware prior to the vote.

The board agreed that any motions made would contain the following conditions proposed by Jason Rucker:

1. The Applicants shall clean Town-owned stormwater drain inlet and pipe located along Jenness Avenue of debris and 'jet' the existing pipe to ensure hydraulic capacity is maintained.
2. The Applicants shall install a rip rap inlet improvement at the storm drain inlet to allow ease of observed inlet conditions and maintenance, also avoiding future vegetation growth from compromising the inlet capacity.
3. The Applicants shall provide legal maintenance easement to the Town of Rye for the storm drain inlet.
4. The Applicants shall submit to the Town of Rye an annual inspection and maintenance log of the drainage structures and systems in place on the property including, but not limited to, bioretention cell, pervious pavers, grass ditches, and other drainage structures.

Chair Crapo asked if there were any other conditions the board would like to discuss and stated that he would not read out the entire application as this is a continuation.

Member Piela asked if the RCC's letter included any conditions.

Member Chororos stated that they denied the application.

Member Mitchell stated that he has other concerns about the application. He stated that the four aforementioned conditions are important, but asked what ensures enforcement of those conditions.

Member Mitchell asked about water displacement. He stated that the board has engineer studies showing that water flow doesn't increase across the property, which has been corroborated by a second engineer, and Public Works doesn't see an issue. He stated that the plan hinges on the drainage culvert continuing to work correctly. He noted that it's uncertain where the culvert

drains and that the abutters unanimously don't agree with the application. He stated that there's not a water volume issue, but a displacement issue and discussed the concern of flooding for abutters on the north side of the property. He suggested a contingency placed to say if the plan fails or is not maintained, something has to be done to mitigate flooding.

Chair Crapo explained that the Town's counsel recommended the following condition:

"All such improvements shall be as set forth in the plan titled, 'Proposed Site Plan Prepared for Leigh and Darren D'Andrea of property located on Jenness Avenue & Surf Lane, Rye, Rockingham County, New Hampshire,' prepared by Horizons Engineering, dated August 1, 2022 and last revised July 17, 2023."

Chair Crapo suggested conditions that the planting plan be implemented as currently proposed and that the pervious patio be maintained to retain its pervious status.

Chair Crapo discussed a possible condition that all structures should be at least 25' from the existing wetland, noting that the proposed plans do not achieve that request by the RCC.

Member Piela noted that this lot relies upon the culvert in its water maintenance plan, and if that culvert were to fail and negatively affect the property, he wondered who would be liable for the damage and repair.

Chair Crapo explained that this lot owner would not be responsible for all damage or repair. He clarified that the board does know where the culvert goes, but is unaware of any crushes or breaks between the existing properties.

Member Piela pointed out that the town put the culvert in for the benefit of the neighborhood and no other property is independently reliant on the proper function of that culvert. He stated that it puts the onus on the town to maintain the culvert for the benefit of a single property owner.

Chair Crapo noted there was testimony that downstream the grates overflow which could be an argument that those lots benefit from drainage of the grates.

Member Patten noted that the stormwater management plan doesn't support the idea that the water problem is caused by this property. He explained his hesitation to approve an application that is heavily conditioned, the primary concern being enforcement.

Chair Crapo, alluding to another similar application, clarified that there cannot be an increase in flow post-construction and if it's observed that the plan didn't work, then enforcement would be discussed. He stated that his job as chairman is to stick to zoning.

Member Piela suggested the board put a pin in the discussion, noting that they have four conditions from Mr. Rucker. He suggested the board discuss other requested variances. He also noted that the planting plan would have to be installed and maintained as presented in perpetuity as the planting plan as presented accounts for 50% of the water management plan.

Member Mitchell discussed the planting plan and stated that something has to replace the volume of water being taken up by the trees.

Chair Crapo and Member Piela discussed language for a condition regarding the planting plan.

Member Chororos stated that she does not feel that stormwater concerns are a basis for denial because there was agreement with peer review. She stated that she can't support this project on this property as this lot has, in her opinion, too many restrictions to be built upon and it is an attempt to place a non-conforming structure completely in a wetland. She stated that the request for multiple variances would not result in a slight encroachment but a significant override. Discussing all the variance requests, she stated that this is precedent-setting. She noted that Rye is over 60% wetlands and it is incumbent upon people who buy property to research what they're buying. She stated that Rye voted for the buffer rule and the ZBA is obligated to uphold that.

In response to Member Patten's question, Member Chororos clarified that the proposed structure would be in the wetland buffer.

Member Piela stated that he has a slightly different opinion: it's a buildable lot and has been taxed as such and thinks the board should allow potential new construction. He then discussed his opposition to some of the variance requests.

Member Piela described this application as a house of cards and stated that he's against 17% building coverage where 15% is required. He stated that he's seen no hardship articulated other than a desire to be closer to a certain point in Rye, and their family is a certain size. He stated that's not a hardship. He discussed prior applications where the board has been presented a "clean slate" lot and stated that it's incumbent on the applicant to build within the code as much as they can. He stated that he understood certain elements of their request, but stated that they could make the building smaller. He pointed out that if building coverage were reduced by 2%, it could allow for more trees to be planted, therefore further mitigating concerns regarding water uptake.

Member Piela explained why he's also against parking a vehicle on permeable pavers in a wetland buffer in the setback. He discussed a precedent from another application where the RCC stated if a vehicle has to be parked in a wetland buffer, they want it to be on an impervious surface.

Member Mitchell agreed with Member Piela regarding parking and noted that everything would drain into the wetland.

The board discussed the risks associated with a parking space on an impervious versus pervious surface in a wetland buffer.

Member Mitchell explained his consideration of how the building would affect the property and those of abutters in a big storm. He stated that it's the board's responsibility to listen to abutters

and there's a serious issue on this property with flooding. While the board can't redesign the property, things could be done to improve the plan. He stated that he's not concerned about an increase in water flow, but a redirection of water flow. He stated the town has a real problem regarding water and this application is potentially contributing to the issue.

Member Piela stated that he's not in support of the 2% overage in building coverage as no hardship has been presented showing that the house has to be 2% larger than what's allowed. He stated that the 2% would be better used to enlarge the bioretention pond or add trees to benefit the water management plan.

Member Piela suggested that the board go through the requested variances individually so the applicant knows, if they were to submit another plan, what the board would accept or not.

Member Piela explained that he wouldn't argue against the requested variances from §190-2.4.C(1) as other properties in the neighborhood are also built close to the street. He explained that he doesn't have an issue with the requested variances for setback issues related to §190-2.4.C(3). Regarding §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, his only concern is with the driveway 20' from the wetland where 75' is required and the permeable driveway in the wetland buffer. He restated that he doesn't support the variance from §190-3.4.E for an additional 2% dwelling coverage.

Chair Crapo stated that the special exception is regarding the driveway being located in the wetland buffer.

Member Piela stated he's not opposed to parking in the setback but to parking in the wetland buffer.

Chair Crapo explained that other people in the neighborhood do it but not necessarily a few feet from the wetland.

Members Chororos and Piela discussed parking in the wetland buffer and reliance on the RCC to counsel the applicant.

Chair Crapo described the construction of permeable pavers and what the board is aiming to protect the wetlands from.

Member Piela stated that he's reliant upon the RCC's testimony from the Holland Drive application when it was clearly articulated that parking on a pervious surface in the wetland buffer is not optimal. He stated this application has a clean slate design and there's an opportunity to convince the board that risks have been mitigated by meeting with the RCC.

Member Patten stated he agreed with Member Piela, but pointed out that the permeable surface of the driveway is being emphasized because there is already an existing issue with water.

Chair Crapo stated the board needs to make sure they're not lumping the town's fault on the applicant.

Member Patten stated that it's a buildable lot as far as the town is concerned. He expressed concern about the amount of conditions and wondered by what mechanism a future purchaser would find out about all the restrictions.

Member Piela stated that it shouldn't be the board's place to redesign the applicant's structure, but a structure could be built there.

Chair Crapo stated this application is asking for specific relief. He expressed that he struggles with the size of the lot and coverage drives everything else. He noted that peer review said the plan should work.

Member Piela noted there are differing opinions from two different experts: the applicant's arborist's testimony was that plantings would be considered "woods fair" on day one, while the RCC's arborist estimated years before the plantings mature and are a truly effective planting plan. Member Piela assumed from his own experience that it would take some time. He noted that the board hasn't seen evidence as to why the structure has to be 17% where 15% is required.

Chair Crapo asked the board if they would vote on §190-2.4.C(1) for dimensional relief together or separately.

Member Piela stated he's okay with doing them together.

Chair Crapo stated he would separate the driveway.

**Chair Crapo called for a vote on variances from §190-2.4.C(1) for an overhang 23.66', chimney 21.86', deck stairs 15.84', and deck 14.80' from the rear boundary where 25' is required:**

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

Rob Patten - Yes.

Sandra Chororos - No, because it violates the ordinance's basic zoning objectives.

John Mitchell - No.

Chris Piela - No, the number of variances requested is dictated by the size of the structure.

Shawn Crapo - No, because all the dimensions are driven by the structure which, if it were smaller, wouldn't require as much relief.

**2. The spirit of the ordinance is observed:**

Rob Patten - Yes.

Sandra Chororos - No, there will be virtually no open space on this lot, it's overburdening it with the large structure, is not promoting adequate light and air, and it's crowding the land.

John Mitchell - No, for the reasons Member Chororos presented.

Chris Piela - No, for the reasons Member Chororos presented.

Shawn Crapo - No, the spirit of the ordinance is to have a smaller structure to provide what Member Chororos articulated regarding the objectives of the ordinance.

**3. Substantial justice is done:**

Rob Patten - Yes.

Sandra Chororos - No, the requested variances are for a major setback and the project is too big for the lot.

John Mitchell - No, because of the dimensions of the property.

Chris Piela - No, because of the dimensions of a structure of this size would be better used for additional water mitigation.

Shawn Crapo - No, some relief is appropriate for any proposal on this lot, but this proposal pushes things too far.

**4. The values of surrounding properties are not diminished:**

Rob Patten - Yes.

Sandra Chororos - No, the neighbors aren't protected by adequate setbacks, so this compromises the abutters' property value by taking up an entire lot.

John Mitchell - No.

Chris Piela - No, because having a structure that diminishes the light and space between homes would potentially diminish the value of surrounding properties, particularly regarding the deck in back.

Shawn Crapo - No, because of the neighbor's concern that the placement of the deck would be closer to the property line.

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

Rob Patten - Yes.

Sandra Chororos - No, all properties in this neighborhood are similar and are burdened by some kind of wetland restriction as it relates to these variances and all are small lots.

John Mitchell - No.

Chris Piela - No, there are unique conditions of this property that would suggest this structure should be smaller to meet the setback requirements due to the size of the lot.

Shawn Crapo - Yes, because the wetland is on the property which somewhat determines the placement of the structure, whereas some of the abutters do not have that; however, the size of the structure is causing the need for this particular relief.

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

Rob Patten - Yes.

Sandra Chororos - No, because the property cannot be in conformance with multiple ordinances (overhang, chimney, deck, and stairs).

John Mitchell - No, there is no fair and substantial relationship, that's the whole point in going through this variance.

Chris Piela - No, the reason for that zoning is to promote space between properties.

While there are special conditions dictating the place for this structure, if the structure were smaller, it wouldn't need this particular variance.

Shawn Crapo - No, the size of the structure is not out of necessity.

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

Rob Patten - Yes.

Sandra Chororos - No, the distinct features of this small lot make it unsuitable for anything but a significantly smaller house.

John Mitchell - No, it didn't have to be done this way.

Chris Piela - No, due to the size of the structure being proposed.

Shawn Crapo - No, for the reasons stated by Members Chororos and Piela.

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

Rob Patten - Yes.

Sandra Chororos - No, this is not unnecessary hardship, this property is overburdened and needs something smaller.

John Mitchell - No, our vote could result in hardship but not unnecessary hardship.

Chris Piela - No, this is a clean sheet design so enforcing that particular ordinance causes no hardship.

Shawn Crapo - No, in agreement with Member Piela.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-2.4.C(1) for an overhang 23.66', chimney 21.86', deck stairs 15.84', and deck 14.80' from the rear boundary where 25' is required for Case #06a-2023. Seconded by Sandra Chororos.**

**Vote: 4-1-0** (S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor, R.Patten opposed)

**Chair Crapo called for a vote on variances from §190-2.4.C(3) for steps and a paver pad 17.5'; a bioretention pond +/- 0 ft (Jeness Avenue side) and +/- 1 ft (Surf Lane side) from the front yard boundary where 23.5' for Jenness Avenue and 8' for Surf Lane is required.**

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

Rob Patten - Yes.

Sandra Chororos - No, there's no open space, it's overburdening the lot, the bioretention basin is only -2' from Jenness and 4' from Surf, it does not promote adequate light and air and is overcrowding the land.

John Mitchell - No, because it's obtrusive in the property and could result in issues from the placement and location.

Chris Piela - No, for the reasons Member Chororos articulated and as previously mentioned, those items are located due to the size of the structure.

Shawn Crapo - No, noting that the measurements are from the lot line which is a little farther from the road.

**2. The spirit of the ordinance is observed:**

Rob Patten - Yes.

Sandra Chororos - No, the applicant is looking for approval of things that are not slight encroachment but significant; specifically, the bioretention basin is too close to the road.

John Mitchell - No, because of the design of the property.

Chris Piela - No, for the reasons articulated regarding its proximity to the boundary and the size of the structure is dictating the position of the pavers and location of the bioretention pond.

Shawn Crapo - No, in agreement with Member Piela's reasoning.

**3. Substantial justice is done:**

Rob Patten - Yes.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No, for reasons previously stated.

**4. The values of surrounding properties are not diminished:**

Rob Patten - Yes.

Sandra Chororos - No, there's no question that values would be diminished based on everything being so tight up against the corner. Taking everything, including snow removal into consideration, it would potentially be an issue and affect surrounding properties.

John Mitchell - No, for the same reasons. To have all that in the corner area, so close to the boundary, is going to change the area.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - Yes.

Sandra Chororos - No, everybody is on a small lot with lots of restrictions, which makes it really hard to place these things on that property, but it's really not different than other properties.

John Mitchell - No, because it's the same as any property in that neighborhood because the flooding is so bad.

Chris Piela - No, while there are unique features to this property, it's the structure's size that's dictating the placement of those objects so close to the boundary, not the special conditions of the property itself.

Shawn Crapo - No, because they are getting the benefit of the abutting properties causing the setback to be less, so there's not a distinction and they're asking to encroach further; there's no special condition.

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

Rob Patten - Yes.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - Yes.

Sandra Chororos - No, the distinct features of this very small lot make it unsuitable for everything attempted to be placed upon it; most specifically the bioretention basin, but all of it including steps and pavers.

John Mitchell - No, I agree that this is considered by the town to be a buildable lot, but considering the current design and what's required to do it, I have to say no.

Chris Piela - No, it's a benefit of a smaller front yard setback requirement, and placing a structure that encroaches is unreasonable.

Shawn Crapo - No, in agreement with Member Piela.

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

Rob Patten - Yes.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, it's a necessary hardship, not unnecessary.

Chris Piela - No, it's a clean-sheet design, there's not unnecessary hardship.

Shawn Crapo - No, in agreement with Member Piela.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-2.4.C(3) for steps and a paver pad 17.5'; a bioretention pond +/- 0 ft (Jeness Avenue side) and +/- 1 ft (Surf Lane side) from the front yard boundary where 23.5' for Jeness Avenue and 8' for Surf Lane is required. Case #06a-2023. Seconded by Sandra Chororos.**

**Vote: 4-1-0** (S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor, R.Patten opposed)

**Chair Crapo called for a vote on variances from §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, overhang 4.50', house 5.73', steps 12.35', deck stairs 8.16' from the**

**wetland where 75' is required.**

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

Rob Patten - No, for reasons previously discussed. Although it's a buildable lot, the close proximity to the wetlands is not great, especially when there's not adequate drainage.

Sandra Chororos - No, the property is entirely in the wetland buffer and is very contrary.

John Mitchell - No, 5' where there is a 75' buffer is too close.

Chris Piela - No, specifically where the house is so close to the actual wetland.

Shawn Crapo - No, similar to Member Patten's reasons, the entire structure is within the wetland buffer.

**2. The spirit of the ordinance is observed:**

Rob Patten - No, for similar reasons, I'd rather see the rear and front sidelines smaller and the wetland buffer longer. It's incredibly close.

Sandra Chororos - No, this is an attempt to place a nonconforming structure in prohibited wetland buffer.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, for reasons articulated by Member Patten.

Shawn Crapo - No, for reasons articulated by Member Patten.

**3. Substantial justice is done:**

Rob Patten - No.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No, for reasons previously stated.

**4. The values of surrounding properties are not diminished:**

Rob Patten - Yes, I don't see the values being affected much by that particular aspect.

Sandra Chororos - No, this project is overburdening the land and does not provide adequate light and air.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, because a structure so close to the wetland could negatively impact the neighbors' property values.

Shawn Crapo - No, because a wetland serves a function and if it's disturbed you could potentially affect the abutting properties and marshes.

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

Rob Patten - No, you could look next door and see a similar situation, it's not unique.

Sandra Chororos - No, all properties in this area have some wetlands to deal with. It doesn't distinguish it.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, nothing suggests the structure has to be 5' from the wetland.

Shawn Crapo - No, there's nothing special that would require it to be this close.

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

Rob Patten - No, I don't think it's justified that it's needed.

Sandra Chororos - No.

John Mitchell - No.

Chris Piela - No, for reasons articulated by Member Patten.

Shawn Crapo - No, the wetland protection applies to any property with a wetland, there's no special condition here that's different than any other property as it applies to the wetland.

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

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, these variances are significant overrides, not slight encroachments, and all are entirely in the wetland buffer.

John Mitchell - No, it's not proven that this specific design is required. It's not reasonable and has a lot of requirements.

Chris Piela - No, it's not reasonable to have a house 5.73' from the wetland.

Shawn Crapo - No, having a house and drip line that close to the wetland is not reasonable.

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

Rob Patten - No.

Sandra Chororos - No.

John Mitchell - No.

Chris Piela - No.

Shawn Crapo - No.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, overhang 4.50' house 5.73', steps 12.35', deck stairs 8.16' from the wetland where 75' is required. Case #06a-2023. Seconded by Rob Patten.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

**Chair Crapo called for a vote on variances from §190-3.1.F, H(2)(a)(e)(f)(g) for a driveway 20' from the wetland where 75' is required.**

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

Rob Patten - No, it's a matter of preference where the driveway is placed not a necessity and while it's a buildable lot, it doesn't have to be right next to the wetland.

Sandra Chororos - No, in agreement with Member Patten that it's too close to the wetland.

John Mitchell - No, it's too close and within the buffer.

Chris Piela - No, echoing Member Patten.

Shawn Crapo - No, the placement is somewhat dictated by sightlines, but there have been enough people arguing for alternate placements, the chosen placement is not in a good spot.

**2. The spirit of the ordinance is observed:**

Rob Patten - No.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No.

**3. Substantial justice is done:**

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, they would be putting this in a prohibited wetland area.

John Mitchell - No.

Chris Piela - No, the risk of a car leak in that area is too great.

Shawn Crapo - No, permeable or pervious is the same in the wetland buffer.

**4. The values of surrounding properties are not diminished:**

Rob Patten - No, the wetland could possibly shift and affect someone else's property.

Sandra Chororos - No, for reasons stated by Member Patten.

John Mitchell - No, for reasons previously stated. Going back to the engineering reports, we're not increasing the amount of water on the site but redirecting it. If the driveway is so close to the wetland buffer, it's not fully known what could happen.

Chris Piela - No, because wetland buffers serve a purpose to filter and protect the wetlands themselves and a driveway 20' from the wetland could cause environmental damage to the wetland which might diminish the property value of the neighbors' homes.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - No.

Sandra Chororos - No.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No.

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

Rob Patten - No, they haven't established that they have to put it there and that's not a hardship.

Sandra Chororos - No, for reasons stated by Member Patten.

John Mitchell - No, if you're going for that variance or special exception for the location of the driveway then you have to do it anywhere on the property, not necessarily so close to the wetland.

Chris Piela - No, because wetland buffers serve a purpose and 20' is far too close.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - No.

Sandra Chororos - No, this property is not burdened in a manner that is distinct and certainly as it relates to the driveway, there is an opportunity to move that away from the wetland.

John Mitchell - No.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-3.1.F, H(2)(a)(e)(f)(g) for a driveway 20' from the wetland where 75' is required. Case #06a-2023. Seconded by Sandra Chororos.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

**Chair Crapo called for a vote on variances from §190-3.4.E for 17% dwelling coverage where 15% is required.**

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

Rob Patten - No, this could have easily been 15% dwelling coverage, it's not a hardship but a choice that was made.

Sandra Chororos - No, for reasons stated by Member Patten. This is a very burdened lot and dwelling coverage at a minimum could have been obtained.

John Mitchell - No, Member Piela made good points about dwelling coverage.

Chris Piela - No, public interest is for maximizing light, air, all boundaries, and sensitivity to water and public interest is not served by giving an additional 2% coverage.

Shawn Crapo - No, we have other lots where we've granted variances to the 15% but I can't recall anything with so many other requests regarding light, air, safety, and runoff on this delicate lot.

**2. The spirit of the ordinance is observed:**

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, there's an attempt to place a nonconforming structure in a prohibited wetland buffer. The structure is too big and non-compliant.

John Mitchell - No.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No.

**3. Substantial justice is done:**

Rob Patten - No, they had a blank slate and could have made it work and this is why the ordinance is there.

Sandra Chororos - No, for reasons previously stated by Member Patten.

John Mitchell - No, it hasn't been shown that it's justified.

Chris Piela - No, for reasons previously stated by Member Patten.

Shawn Crapo - No

**4. The values of surrounding properties are not diminished:**

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, the dwelling should be reduced due to water displacement.

John Mitchell - No.

Chris Piela - No, for reasons previously stated regarding light and water mitigation.

Shawn Crapo - No.

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

Rob Patten - No, we're taking lot coverage as a whole as opposed to carving anything out for wetlands.

Sandra Chororos - No.

John Mitchell - No.

Chris Piela - No, it's a dwelling coverage variance and there are no special conditions of the lot that would move me to grant a larger dwelling coverage than what's permitted by zoning.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - No.

Sandra Chororos - No.

John Mitchell - No, for reasons previously stated.

Chris Piela - No, for reasons previously stated.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - No.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, for reasons previously stated.

Chris Piela - No to granting an overly large structure close to the wetland, it's not reasonable to grant the excessive coverage.

Shawn Crapo - No, for reasons previously stated.

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

Rob Patten - No.

Sandra Chororos - No.

John Mitchell - No.

Chris Piela - No, this is a clean sheet design.

Shawn Crapo - No, as discussed.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-3.4.E for 17% dwelling coverage where 15% is required. Case #06a-2023. Seconded by Sandra Chororos.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

Chair Crapo discussed the vote as it related to the exact proposal with this plan. The board discussed whether to consider whether something could be built on this lot versus this specific plan on this lot.

Chair Crapo read aloud the ordinance sections for the board.

**For the record, the board clarified that their vote on the following section relates to the plan as proposed.**

**Chair Crapo called for a vote on variances from §190-6.1.A and from §190-6.1.B(1)(2), (C) for a 9,998 square foot lot area with 200' of frontage on a nonconforming lot.**

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

Rob Patten - No, because of the way the plan has been presented, it's too big.

Sandra Chororos - No, the proposed plan does not meet the requirements for frontage and it violates the ordinance's basic zoning objectives.

John Mitchell - No, although the lot may be deemed buildable sometime in the future, we're voting on this plan specifically.

Chris Piela - No, per the proposed plan, this is contrary to the public interest.

Shawn Crapo - No, because the proposed plan in its other relief is due to the size of the lot and the nonconforming of it. It all relates back to the frontage. The reason zoning is in place and sizes are required is derivative of the rest.

**2. The spirit of the ordinance is observed:**

Rob Patten - No, for reasons previously stated. This particular plan doesn't protect the interests of the public about safety and welfare.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, for this particular plan.

Chris Piela - Per the plans presented, no, for the reasons Chair Crapo articulated.

Shawn Crapo - No.

**3. Substantial justice is done:**

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, for reasons previously stated by Chair Crapo.

John Mitchell - No for these particular plans.

Chris Piela - Per this plan, no, for reasons previously stated by Chair Crapo.

Shawn Crapo - No, for reasons I previously articulated.

**4. The values of surrounding properties are not diminished:**

Rob Patten - No, as presented I don't believe that to be true.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, for all reasons that have been stated.

Chris Piela - Per the plan presented, no, for the reasons Chair Crapo articulated.

Shawn Crapo - No.

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

Rob Patten - No.

Sandra Chororos - No.

John Mitchell - No.

Chris Piela - As presented, no, for the reasons Chair Crapo articulated.

Shawn Crapo - No.

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

Rob Patten - No.

Sandra Chororos - No, this property can't be done in any kind of conformance of the ordinance.

John Mitchell - No.

Chris Piela - Per the presentation, no, for the reasons Chair Crapo articulated.

Shawn Crapo - No.

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

Rob Patten - No, for reasons previously stated.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No.

Chris Piela - Per this presentation, no, for reasons previously articulated.

Shawn Crapo - As Member Piela said, no.

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

Rob Patten - No, as the plans presented, that would not be true.

Sandra Chororos - No, for reasons previously stated.

John Mitchell - No, not with this particular plan.

Chris Piela - Per this presentation, no, for reasons previously articulated.

Shawn Crapo - As the plan dictates, no.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-6.1.A and from §190-6.1.B(1)(2), (C) for a 9,998 square foot lot area with 200' of frontage on a nonconforming lot. Case #06a-2023. Seconded by Sandra Chororos.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

**Chair Crapo called for a vote on variances from §190-5.0C for 1 off-street parking space within the front setback where that is prohibited.**

**The board agreed the following vote is related to this plan as proposed.**

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

Rob Patten - No, per the plans submitted, it is contrary to the public interest.

Sandra Chororos - No.

John Mitchell - No, as the plans are presented.

Chris Piela - No, per the plans presented, that location is too close to the wetland.

Shawn Crapo - No.

**2. The spirit of the ordinance is observed:**

Rob Patten - No.

Sandra Chororos - No, it's encroachment.

John Mitchell - No.

Chris Piela - No, per plans submitted.

Shawn Crapo - No.

**3. Substantial justice is done:**

Rob Patten - No, per plans submitted.

Sandra Chororos - No, per plans submitted.

John Mitchell - No, per plans submitted.

Chris Piela - No, per plans submitted because it's a potential danger to the wetland.

Shawn Crapo - No.

**4. The values of surrounding properties are not diminished:**

Rob Patten - No, per plans submitted.

Sandra Chororos - No.

John Mitchell - No.

Chris Piela - No, per plans submitted because the potential danger to the wetland could diminish surrounding property values.

Shawn Crapo - No.

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

Rob Patten - No, per plans submitted.

Sandra Chororos - No, per plans submitted.

John Mitchell - No, per plans submitted.

Chris Piela - No, per plans submitted; the conditions of this property would dictate a different location for that driveway.

Shawn Crapo - No, in agreement with Member Piela.

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

Rob Patten - No, per plans submitted.

Sandra Chororos - No, per plans submitted.

John Mitchell - No, per plans submitted.

Chris Piela - No, per plans submitted and for all reasons previously articulated.

Shawn Crapo - No, per plans submitted and for all reasons previously articulated.

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

Rob Patten - No, per plans submitted.

Sandra Chororos - No, per plans submitted.

John Mitchell - No, per plans submitted.

Chris Piela - No, per plans submitted, that location is not reasonable because of its relation to the wetland.

Shawn Crapo - No, because of the way the lot is structured and the placement of the property.

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

Rob Patten - No, the driveway didn't have to be placed there, it was a poor choice. Per the plans submitted, no.

Sandra Chororos - No, in agreement with Member Patten.

John Mitchell - No.

Chris Piela - No, for the reasons Member Patten articulated.

Shawn Crapo - No, echoing the reasons previously articulated.

**Motion by Chris Piela to deny the application for a variance filed by Leigh and Darren D'Andrea from §190-5.0C for 1 off-street parking space within the front setback where that is prohibited as presented and submitted. Case #06a-2023. Seconded by Sandra Chororos.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

**2. Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request special exceptions pursuant to §190-3.1.G(2) for a driveway located in the wetland buffer; and §190-3.4.C to develop a vacant coastal lot in accordance with Criteria §190-3.4.C(1)-C(8). Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06b-2023.**

Chair Crapo explained to the applicant, who joined via Zoom, that the board would review the special exception and the meeting is now in a public hearing format.

**Attorney Tim Phoenix**, representing the applicant, introduced himself and **Elle D'Andrea** who joined the meeting via Zoom. He introduced **Steve Riker**, a Wetland Scientist, and **Robbie Woodburn**, a Landscape Architect.

Attorney Phoenix, addressing the Special Exception requirements, explained that the requirements are a bit odd as the ordinance is amended to include special exceptions for things like driveways. He explained that they didn't want to miss one so they requested both.

Attorney Phoenix addressed comments made regarding choices for the placement of the garage and driveway. He explained that when the lot was purchased and they applied for this relief, there was no requirement to be any distance from the wetland; so, proper investigation was done

by the family when they bought it. He asked the board to consider that all plans were made before zoning changes.

Chair Crapo explained that the board's town counsel advised it's not vested.

Attorney Phoenix explained that there are two reasons they need a special exception: one is specific to the driveway in the wetland buffer. He explained there is no way to have a house with a driveway that doesn't go into the wetland buffer. He named the coastal overlay district requirements as the second reason for needing a special exception.

Attorney Phoenix stated he respects but disagrees with the board's decision on the variances. Reading special exception requirements, he stated they feel strongly that they've addressed concerns about water on and off this property. He stated that the size of the lot and coverage are consistent with lots and dwelling coverage throughout the neighborhood. He pointed out that this is a low-functioning value wetland and stated they feel strongly that what's proposed is not injurious or detrimental to the neighborhood.

Regarding the second criteria for special exception, Attorney Phoenix explained that this was two lots when they applied and no setback from any wetland was required. He pointed out that neighbors are in similar proximity to wetlands. Regarding specific requirements for the driveway, he explained that he doesn't think there is an alternative route as any other route would go through the wetland. He stated that Steve Riker could demonstrate construction would have the least possible detrimental impact on the wetland. He also stated he'd like to investigate the concept of a porous driveway with a car on it being worse for a wetland than a paved driveway in an area where water runs from across the street and from other properties.

Attorney Phoenix stated he doesn't believe they're crossing or altering a wetland. He added that economics is an issue; if the applicant isn't allowed to build, they'll be taxed on \$700,000 that they may not be able to build on. He stated they have the right to build on the property that they purchased.

Attorney Phoenix explained that, regarding specific requirements for overall development, the submission discussed the average size of lots, and this lot is smaller than average. He added that they're not creating drainage problems.

Chair Crapo asked for clarification regarding the unique features of two lots versus three lots.

Attorney Phoenix explained that it was comprised of three lots when it was originally subdivided.

Regarding enforcement of drainage pipes, Attorney Phoenix stated that, in his opinion, once it's off-site, it's a town issue and responsibility.

Attorney Phoenix discussed the remaining special exception criteria as they relate to this application.

Member Piela wondered if the board should consider these absent of the plans submitted or per plans submitted.

Attorney Phoenix stated that all zoning boards in all New Hampshire communities rule on the plans specifically before them, not a later plan. He stated his appreciation for the board's clarifying that it's specific to this plan. He asked the board to consider making the same statement in advance so that it's clear the decision is for this specific plan.

Chair Crapo stated he couldn't think of a past situation where someone made this request in isolation. He clarified that the board's vote would be on the application as presented tonight, per these plans, and the board intends that some other plan might be considered.

Chair Crapo read the criteria for special exception for the public.

Chair Crapo opened to the public at 10:09 PM.

**Susan Ray** of 45 Jenness Road explained that she spoke at the previous meeting about drainage and its effect on her driveway. She stated that the lot in question is important for the flow of water, and she and her neighbors are fighting for their right to enjoy their property and home. She expressed concerns regarding flooding, water damage, mold, hazardous air quality, and the impassibility of Jenness Ave. and Ocean Boulevard during flooding. She stated that allowing this lot to be developed is injurious to the neighborhood and the town as it will set a precedent.

Chair Crapo read the criteria for section 5.7 aloud to the public.

**Ted Bouchard** of upstate, New York, who is neither an abutter nor resident, explained that his interest is in the town of his forebearers, who contributed to the development of this town. He explained that the property is meaningful to him and he's been coming to Rye for over 65 years. He explained that when he was a kid, the property was a mosquito-infested marsh. He pointed out that the town's Coastal Overlay District describes this area as a marsh. He explained that, in his architectural opinion, the property would be cleared of trees and no attention was given to setback limits, bulk, or the number of parking spaces. He stated that its design can't possibly be in general conformity with the ordinance or in the spirit of the ordinance. He stated that it's non-compliant and that even if someone could make the drainage issue go away, the structure would be similar to that behind Hampton Beach. He stated that it's the wrong house on the wrong site.

**Sharon Ashworth** of 45 Surf Lane on behalf of Mary Alice Patten stated that she went through meetings with the wetland commission, had two site visits, and spent a long time with them. She asked that the board take what they had to say into consideration. She pointed out that the driveway was supposed to be circulating.

Chair Crapo and Ms. Ashworth discussed the requirements for parking spaces.

**Heidi Milardo** of 42 Surf Lane read aloud a statement that she submitted to the board.

Chair Crapo explained that, per law, the board can't deny something just because a variance was requested. He clarified that the board is not allowed to look at ownership and whether someone will own, live in, or rent, a property; they only look at zoning.

Ms. Milardo asked how the board would enforce the conditions recommended by Jason Rucker.

Chair Crapo explained they all become part of the file, not a part of the deed, and all zoning is subject to peer review and other mechanisms for enforcement.

**Steve Wentzell** of 12 Surf Lane stated that the applicants are a nice family with a nice home for which this lot is not suited. He thanked the board for having the courage to do what they did in assessing the current plan and current lot. He stated that the board had educated him and thanked them for their excellent work.

**John Milardo** of 42 Surf Lane stated that he came before the board at the previous meeting to discuss the bioretention pond. He discussed the reason there aren't three anymore because two of the three test pits failed.

Attorney Phoenix presented his rebuttal. He explained that he was relying on the submitted testimony of experts from the last meeting. He stated that the underlying issues for special exceptions are essentially the same as the variances. He stated that the opinions and submissions from 3 experts have been unrefuted and Mike Sievert's work has been peer reviewed. He stated that they've dealt with water and house size issues, and are in keeping with sizes in the area. Just as they believe the variances should be granted, they believe the special exception should also be granted.

Chair Crapo asked for clarification regarding the process of the bioretention pond's function.

**Steve Riker** of Ambit Engineering explained that he's not an engineer but a wetland scientist working for an engineering firm. He explained that Mike Sievert works for a separate engineering firm and the stormwater management structures proposed are very commonly designed and proposed for projects. He explained that rainstorm events would fill the bioretention pond to a certain level and then flow out underneath the driveway, as designed; but smaller rainstorm events would be contained within the bioretention area until it's infiltrated into the ground. He explained it's not an uncommon practice.

Member Piela asked for clarification of the duct valve at the end of the pipe and what would happen in a significant rain event. He discussed the pressure system and water flow and stated he doesn't think the lot creates water, but water flows into this lot; it's in a tough spot.

Chair Crapo explained the board is charged with looking at stormwater, rainfall, and the rate post-construction, which can't be higher than pre-construction. He stated the rule is that post-project can't increase the flow and volume.

Member Patten read aloud the expert opinion from Eric Maher's letter and stated he's not comfortable going against that.

Member Piela stated he doesn't disagree with that and that stormwater management is not a reason he would have for approving or disapproving.

Ms. Ashworth discussed drainage and noted that water would drain onto her mother's lot.

Member Piela stated that's his concern about liability: if the drainage plan as presented pushes water into the wetland and something happens to the pipe, water will go into the abutter's lot. He noted that because drainage is reliant on a town-owned entity, he suspects there will be liability for damage if that goes afoot.

Attorney Pheonix discussed his perspective regarding liability.

Chair Crapo explained that, in the event this leads to approval, Mr. Rucker's conditions need to flow with this special exception.

Member Piela asked if the board can condition special exceptions, and if the answer is yes, he would suggest the same conditions articulated for variances: the four from Jason Rucker and his draft condition regarding maintaining the planting plan.

Chair Crapo stated that as he questioned the board on §190-5.7C, consider what has been put forward and the burden on the owner.

Having no other comments, Chair Crapo closed the public session at 10:51 PM.

Chair Crapo reminded the board of the two questions they would use to vote on the special exception.

Member Piela discussed the first question as to whether it is injurious or detrimental to the neighborhood and stated yes, per the plans submitted. A driveway 20' from the wetlands is potentially injurious to the neighborhood if the wetland is polluted or damaged. He noted a driveway could have been put on Surf Lane, which is more than 40' from the wetland.

Member Patten stated it's hard to disagree with that, given the conclusions the board made for the variances.

In response to the second question, Is it in harmony with the general purpose and intent of the zoning ordinance and is it in accordance with the general or specific rules contained therein, Member Piela responded no because the general intent of the ordinance is to protect the wetland. He clarified that he's just talking about a driveway as it's proposed in its current location. He noted that any development will require a driveway, just not on top of a wetland.

**Chair Crapo called for a vote on §190-3.1.G(2) for a driveway located in the wetland buffer.**

**1. Is it injurious or detrimental to the neighborhood?**

Chris Piela - Yes, for the reasons previously articulated.

John Mitchell - Yes, for this specified location and design.

Sandra Chororos - Yes, for the reasons stated by Members Piela and Mitchell.

Rob Patten - Yes, for all of the prior discussions, reasons, and conclusions.

Shawn Crapo - Yes.

**2. Is it in harmony with the general purpose and intent of the zoning ordinance and is it in accordance with the general or specific rules contained therein?**

Chris Piela - Yes, for the reasons previously articulated: the general purpose of the zoning ordinance is to protect the wetlands buffer, and putting the driveway in that proposed location, where there is an alternative location, is not in harmony with the general purpose of the intent of the zoning ordinances.

John Mitchell - No.

Sandra Chororos - No, emphasizing that these are significant overrides to the zoning ordinances, not slight encroachment.

Rob Patten - No, for the reasons articulated by Member Piela.

Shawn Crapo - No.

**Motion by Chris Piela to deny the application for a special exception filed by Leigh and Darren D'Andrea from §190-3.1.G(2) for a driveway located in the wetland buffer for the reasons stated. Case #06b-2023. Seconded by Sandra Chororos.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

**Chair Crapo called for a vote on §190-3.4.C to develop a vacant coastal lot in accordance with Criteria §190-3.4.C(1)-C(8).**

The board discussed the criteria for the vote and Chair Crapo clarified that the board is voting on the plans submitted in order to redevelop this lot.

**3.4.C(1) Substantial justice will be done:**

Sandra Chororos - No.

Rob Patten - No.

Chris Piela - No.

John Mitchell - No.

Shawn Crapo - No.

**3.4.C(2) The values of surrounding properties will not be diminished:**

Sandra Chororos - No.

Rob Patten - No.

Chris Piela - No.

John Mitchell - No.

Shawn Crapo - No.

**3.4.C(3) Literal enforcement in the provisions of this section would result in an unnecessary hardship:**

Sandra Chororos - No.

Rob Patten - No.

Chris Piela - No.

John Mitchell - No.

Shawn Crapo - No.

**3.4.C(4) For lots 7,000 square feet in area or larger, the lot shall not be materially smaller than developed lots in the surrounding area. In making this determination, the Board shall first consider developed abutting lots. If there are an insufficient number of such lots to make a determination, the Board shall then consider the size of developed lots within the same block. If there still are an insufficient number of developed lots, the Board shall consider the size of developed lots in the neighborhood.**

Satisfied.

**3.4.C(5) Development of the lot shall not create drainage problems for adjacent properties and streets and shall not worsen existing drainage problems and shall comply with the provisions of §190-5.7.**

Satisfied, if Mr. Rucker's recommendations are applied and peer review backs up the engineering study.

**3.4.C(6) The lot shall have frontage on a street.**

Satisfied.

**3.4.C(7) Sufficient sewage treatment capacity shall be available for lots within the Town's sewer service area. For other lots, a state-approved on-site waste disposal system shall be required.**

Satisfied.

**3.4.C(8) This provision shall not permit the creation of a new nonconforming lot by subdivision, nor permit the creation of a lot less than 7,000 square feet, or the development on a lot that is less than 7,000 square feet [Amended 3-014-2000, Amended 3-14-2023 and renumbered]**

Satisfied.

**3. Is it neither injurious nor detrimental to the neighborhood?**

Chris Piela - No.

John Mitchell - No.

Sandra Chororos - No.

Rob Patten - No.

Shawn Crapo - No.

**4. Is it in harmony with the general purpose and intent of the zoning ordinance and is it in accordance with the general or specific rules contained therein?**

Chris Piela - No.

John Mitchell - No.

Sandra Chororos - No.

Rob Patten - No.

Shawn Crapo - No.

**Motion by Chris Piela to deny the special exception filed by Leigh and Darren D'Andrea from §190-3.4.C to develop a vacant coastal lot in accordance with Criteria §190-3.4.C(1)-C(8) as presented by the applicant for Case #06b-2023. Seconded by Sandra Chororos.**

**Vote: 5-0-0** (R.Patten, S. Chororos, J. Mitchell, C. Piela, S. Crapo in favor)

**Motion by Chris Piela to adjourn at 11:10 PM. Seconded by Shawn Crapo. All in favor.**

Respectfully Submitted,  
Emilie Durgin