

## **RYE ZONING BOARD OF ADJUSTMENT**

**Wednesday, September 19, 2018**

**7:00 p.m. – Rye Town Hall**

*Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Rob Patten and Gregg Mikolaities*

### **I. Call to Order and Pledge of Allegiance**

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

### **II. Applications:**

- 1. Ocean View Trust, Timothy E. Sanborn, Trustee for property owned and located at 753 Ocean Blvd, Tax Map 23.1, Lot 16,** requests variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3B for addition 11.5' from the south side setback where 20' is required; and from 204.3C for an addition 16.2' from the front setback where 30' is required; from Section 204.3C for the septic in the front setback 8.5' from Ocean Blvd and 7' from Pollock Drive where 30' is required; and Building Code Relief from Section 7.9.7 and 7.9.6 for an Individual Sewage Disposal System Plan that shows a separation of 24" from seasonal highwater table where 48" is required. **Property is in the General Residence, Coastal Overlay Districts. Case #28-2018.**

Chair Weathersby noted that the application was continued for more information. The Board needed clarification on the exact relief that was being requested and also a stamped septic plan. At the last meeting, the applicant requested setback relief for the proposed additions and that led to a discussion about the septic, which became unclear.

**Tim Sanborn, applicant,** spoke to the Board. He noted that he also has item 11 on the agenda, which is an administrative appeal. He asked the Board if he could address that first.

Chair Weathersby asked what he is asking the Board for tonight.

Mr. Sanborn explained that he is asking for the Board to overturn the administrative decision, specifically the notice that the septic system was in failure. The Town's definition of failure is inaccurate based on information he will present from NH DES. This will prevent his occupancy permit from being revoked on his property. He is also asking for the relief as stated on the variance request for the setbacks for the new septic system. He noted that it is now late



September and this process started in May. His property has been vacant for five months. He thought that this would have been done well before this. He has had to postpone contractors repeatedly. At this time, he does not know when he is going to be able to get this system installed but the immediate need is for the return of the occupancy certificate.

Chair Weathersby asked if he is saying that he can continue to use the old system if the appeal is granted. She also asked if he is still planning on installing a replacement system.

Mr. Sanborn confirmed. He still has the application submitted and wants to receive the approvals for that. He noted that he cannot get on the contractor's schedule until he has a state approved design. He cannot get a state approved design until there is a town approved design.

Chair Weathersby pointed out that all the Board has for a request is a variance application that concerns the additions. The Board had requested more materials and information on the exact sections that were being requested for relief. She continued that someone helped with the notice because it is much clearer, although it is still missing one section. She explained that it is hard for the Board to give relief that has not been asked for.

Mr. Sanborn stated that as he read the notice, he thinks Mrs. Reed captured the variance relief being requested exactly.

Chair Weathersby stated that Mrs. Reed went back through the denial notice and the discussions of the Board to help put the notice together, anticipating that there would be more work and clarity on the application. The Board had said that it was incomplete.

Mr. Sanborn stated that he thinks it is complete. It specifically states what is being requested.

Reading from his application, Chair Weathersby noted that it does not mention the sections but it says that relief is being requested for 16.2' on the frontside setback, where 30' is required, and 12.5' and 13.2' on the side setback, where 30' is required. Speaking to Mr. Sanborn, she asked if that is all he is requesting for now.

Mr. Sanborn replied no. He stated he is not sure why this does not also address a variance for the water line and the 24" versus 48" high water table. That was also in there.

Chair Weathersby asked if an application was completed that included the relief for the septic system. She asked if a formal request was made for the setback and water table.

Mr. Sanborn stated that to the best of his knowledge he did.

Chair Weathersby explained this was not available at the last meeting. The Board requested clarification on what was being asked for and a stamped plan.



Mr. Sanborn noted that he has a stamped plan. He continued that he is at a loss. He thought this was covered since it is spelled out in the agenda.

Speaking to Mr. Sanborn, Planning Administrator Reed explained that she went to Alex Ross, (Ross Engineering), for additional information. She further explained that she asked him (Mr. Sanborn) what else he needed and the reply was "nothing".

Speaking to the Board, Chair Weathersby asked if they would like to deal with the request that is before them, which the Board decided not to do last time because a complete package was preferred. Does the Board send the applicant back again and help him figure out what request is needed? The applicant would still have the burden of proof of showing why each variance is needed. Or does the Board take up the administrative appeal? She commented that she is frustrated by the incomplete applications that come before the Board.

Mr. Sanborn stated that he understands. He is taken aback by this application not being complete because he has worked diligently thinking that everything had been completed as required.

Speaking to Mr. Sanborn, Vice-Chair Crapo asked if he ever amended the application. There is an email from June 12<sup>th</sup> acknowledging that the application does not state the sections of the zoning that relief is needed from. It was incomplete back then. He asked if it has been amended since then, otherwise it is still incomplete. He stated that if the neighbor notice went out and included all the relief that is needed, then the Board has said in the past that they can modify something. If the notice only had one section, and he needed three sections, then nobody would have known what was being asked for, which would be a definite continue in his mind. If the notice suffices for all the relief that is needed, he thinks the Board could perhaps proceed. If the notice is deficient at all, then the Board holds off. As far as the administrative appeal, if that were to be granted, he is sure it would be conditioned upon the installation of the new system because it can't be left open. In order to do that, the application would have to be addressed with an approval pending. He thinks they need to hold off on the appeal until they get through the application. If the discussion deems the existing system is not in failure, then the applicant will use it but somehow it is still in failure to the whole project and needs to be replaced. If an approval is not given, it is left open-ended and maybe a system will be put in at some later date. If he gets a CO back but no approvals to replace the system it would leave it too open-ended.

Chair Weathersby noted that 7.9.3.2 is not in the notice but it does concern the 24" to the seasonal high water, which is in the notice. This was listed in the denial letters.

Mr. Sanborn stated that it was his understanding that once he got the denial letter from the Building Inspector it was given to the Zoning Administrator and that is how the specific relief was figured out.

Chair Weathersby stated it may be what is needed, however, it has not been asked for in the application.



Mr. Sanborn respectfully requested the associated relief.

Member Patten stated that he would like to see the Board do whatever they can to process as much as possible and what cannot be done will have to wait until next time.

Vice-Chair Crapo commented that it seems all packaged together.

Member Mikolaities stated that since all the information is on the notice abutters would have read that so he is inclined to that. He thinks it is bad precedent to have the burden on Mrs. Reed to make sure the application is complete and all the information is there. It is bad precedent for town staff to be responsible for this. It is Mrs. Reed's job to say "yes" or "no" on whether it is complete. He continued he is okay tonight since it is properly noticed.

Speaking to Mrs. Reed, Chair Weathersby asked if this was the notice that was in the paper.

Mrs. Reed confirmed. She explained that after she got the information from Alex Ross she prepared this new notice that went out to all the abutters. Mr. Sanborn came in with a plan from Alex Ross and paid fees for a new abutters' and legal notice.

Chair Weathersby asked if the abutters received the new notice.

Mrs. Reed confirmed.

Member Dibble stated that he is inclined to agree with Member Mikolaities. If the public notice is clear and to the extent that abutters and other people have the opportunity to speak up on the full nature of the matter, he has some comfort. He commented that he has his notes from the previous meeting which talked about conditions regarding the septic system; so, he does not think that is new business before the Board. He has some sympathy for the applicant because he has come back. He also has sympathy for the Board because when they are having four meetings a month they should get this over with and move on.

Vice-Chair Crapo explained that if an applicant comes in and requests a building permit and the building department denies it for reasons A through E, there is no conceivable way to take that denial letter and say "here's my request". There may be some things the applicant doesn't really need or can reconfigure in his plan. It does require that the applicant ask for the relief. This is the Board of Appeals and the Board can only address what someone writes in an appeal. He pointed out that they have given some leeway when there is a clerical error on a section number. If it is the rest of the Board's determination that it moves forward, he does not have an issue as long as there is no relief that is needed that isn't in the notice. It appears that the building code number might be wrong; however, it does state that they are going to talk about a separation of 24" where 48" is required. At least the topic was addressed.

Chair Weathersby stated she is not sure they are legally entitled to give relief to things he hasn't applied for prior to this moment. She would be in favor of at least hearing the administrative



appeal so he has some certainty on whether the existing system can be used or not. He could then come back to the Board with an application that could be responded to.

Speaking to Chair Weathersby, Vice-Chair Crapo asked what she feels are missing from the relief notice.

Chair Weathersby stated that the only one that she believes is missing from the notice is 7.9.3.2., which is the 24" from the high-water table.

**Peter Rowell, Building Inspector**, stated that they have reviewed three different septic designs for this project. In looking at the design he has presented to the Board, that relief is not required. The test pits in the front of the house were quite a bit better than the ones in the back. He does not need the relief for the 2' separation. He has a 4' separation from bed bottom to seasonal high water on this plan (holding up the newest plan submitted). He pointed out that he still needs to two front setbacks because it does not meet the 10' setback for the septic.

Chair Weathersby asked if 7.9.7 and 7.9.6 is still needed.

Mr. Rowell replied yes that would be for new construction. If he gets the relief for the septic in the front, it will meet new construction standards because there are good test pits in the front. He noted that relief is needed from 7.9.2.5 for the septic setbacks.

The Board agreed to hear the application.

Chair Weathersby summarized the relief needed for the application; Section 603.1 for expansion of a non-conforming structure; from Section 204.3B for addition 11.5' from the south side setback where 20' is required; and from 204.3C for an addition 16.2' from the front setback where 30' is required; and Building Code Relief from Section 7.9.2.5 for setback of the septic 8.5' from Ocean Blvd and 7' from Pollock Drive where 10' is required. Speaking to Mr. Sanborn, she asked if he agrees with the summary of requested relief.

Mr. Sanborn replied "yes".

Chair Weathersby asked the Board if they would like to hear the administrative appeal first as requested by the applicant.

Mr. Sanborn commented that Vice-Chair Crapo made a valid point so he is fine with proceeding as proposed on the agenda.

Chair Weathersby noted that they will talk about the relief for the addition and the septic. She also noted that Mr. Sanborn gave a presentation at the August 1<sup>st</sup> meeting, which is part of the record.



Member Mikolaities requested a brief overview.

Mr. Sanborn summarized the criteria for granting the variances.

- The variance is not contrary to the public interest because the proposed deck and addition square off the house and they do not come any closer to abutting property lines or streets. It is already a non-conforming structure and it would not be making it any more non-conforming.
- The spirit of the ordinance is observed because no further encroachment is occurring. The same distance from abutters and the street will exist.
- Substantial justice is done because the property is located across the street from the ocean. The deck provides justice to the house and the addition will make the house more functional.
- The values of surrounding properties are not diminished because adding value to this property increases value to surrounding properties.
- There are special conditions of the property that distinguish it from other properties in that area because the property is located across the street from the ocean.
- 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 because the property is a single-family residence and the setback variance has no adverse impact.
- The proposed use is a reasonable one because the deck off the existing porch in front and addition in the rear provides reasonable functionality.
- Therefore, literal enforcement of the ordinance would result in unnecessary hardship because the property cannot be optimally or functionally used otherwise.

Speaking to Mr. Sanborn, Member Mikolaities asked which plan is the one that the Board is voting on at this meeting.

Mr. Sanborn stated that the plan is in the latest packet. The revision date is August 6, 2018. He noted that the prior plans had the leachfield in the backyard. The access into that yard is across his backyard, as he lives next door. That would be the egress. He continued that he tried to work with the town to do a replacement in-kind, as there is an existing leachfield already. It was concluded that it would be easier to do a new septic design than to try and do a replacement in-kind.

Speaking to the Building Inspector, Member Mikolaities asked if he has seen the latest plan.

Mr. Rowell confirmed.

Vice-Chair Crapo asked about the lot coverage with the new addition. He asked if the calculation was made for lot coverage.

Mr. Sanborn stated that the calculations based on the square footage show that it is under the 30%.



Chair Weathersby asked if the test pits for the septic were better in the front versus the back.

Mr. Sanborn confirmed. He pointed out that he does not need relief for the depth of the septic in the front; however, he still needs the setback relief.

Chair Weathersby asked if it is going to be a mounded system.

Mr. Sanborn stated that the property is up about 24" from the street level. If it is done right, it should be able to be sloped while still maintaining a decent look and meet all the requirements.

Vice-Chair Crapo asked if the existing system is roughly in the same location for the proposed system.

Mr. Sanborn confirmed.

Mr. Rowell explained that he would like to see this get done so the building can be used again. He noted that Mr. Sanborn was not told to completely vacate the building. He could've come to the building department with a pumping schedule to keep the tank pumped as needed and the building could've been occupied.

Chair Weathersby asked if he agrees that the proposed location is a better location for the septic.

Mr. Rowell confirmed. He stated that the area has much better soils and it will not impact anyone.

Chair Weathersby opened to the public for comments or questions.

**Charles Arcidiarmo, 52 Pollock Drive**, stated that his main concern is the safety of the building. He is not sure the construction is sound enough for any additions or decks being added to that building. He goes by the home everyday and there are cinderblocks on the roof. He is wondering if the building is structurally sound enough to take on any additions.

Chair Weathersby noted that this is not a zoning question. That would be something that would need to be discussed with the Building Inspector's office or Mr. Sanborn. She knows these concerns were raised last time but it is not something that the Board can address.

**Dick Guare, 45 Pollock Drive**, stated that at some point all the property owners in this area are going to deal with septic issues and water tables. If the design for the new septic system is advantageous then it seems like there is an advantage to completing that. The septic system is a way for the whole project to get done. If the condition of the building is one of the issues, potentially there is a way of improving the building by approving the septic. It is a better design than what was presented before and it seems to make sense. It sounds like it satisfies what is reasonable, as far as the town is concerned.



**Tony Costanzo, 21 Pollock Drive**, stated that his worry is about sea-level. The property is below sea-level. Referring to the septic plan, he asked where the state approved stamp is. He has seen the way the street floods. It is a dangerous precedent to set if there is not a state approved below sea-level septic system.

**John Murtagh, 33 Pollock Drive**, stated that he had a system designed awhile back. They started out by drawing the setbacks and then they looked to place the system. They didn't start by placing the system and then go looking for variances. He wonders if the system was moved to the back yard if the variances that are being requested get smaller. The system may be functional but is it in the right place? He continued that the plan also says that if the system fails in the future it gets put back in the same spot. He would think that two strikes ought to be enough to convince somebody that maybe it should go some place else.

**Paul Simbliaris, 10 Pollock Drive**, stated that he would like to know how Mr. Sanborn is going to contain the water on his property. He does not see water in the street. He would like to see this as a condition.

**Jeff Church, 51 Pollock Drive**, stated that a year ago this past January, there was a copious amount of lobster traps that came up over the wall. The water in front of Pollock Drive was impassable. People could not get onto Pollock Drive until the water receded. The concern that he has is that this plan does not address that. As the water rises, is this the right location for the septic in the front or should it be on the side to the left? Should it be in the back?

**Peter Rowell, Building Inspector**, stated that all the abutters on Pollock Drive raised valid concerns. He continued that the property is not in the flood zone so they do not have to start floodproofing everything. Granted the sea-level is going to rise but this should work. The plan has not been approved by the state because it has not been sent to the state. If the applicant gets the variances for the two setbacks, it will be forwarded to the state and they will review it. They will probably approve it because currently it is a failed system and the state is anxious to have those addressed. He would request that the Board make a condition that the system be installed as soon as possible. In regards to the maintenance of the building, he has spoken to Mr. Sanborn about the porch going into the building, which is need of repair. Mr. Sanborn has said that the repair is going to be part of this project. He noted that the porch does not need any variances but he would like to see the repair as part of the conditions. If the Board feels there may be any structural issues, there could be a condition that the building be reviewed by a structural engineer.

Vice-Chair Crapo stated that it is his understanding that Rye requires the 4' separation for the septic and the state only requires 2'. Rye is stricter than the state. The system in the back would fail under Rye's standards but the state might allow it. Years back, Rye voted to go to 4' which gives more separation. It is his understanding that if it can meet the Rye 4' it is actually protecting the groundwater and system better than a state approved septic. In other words, the state is more likely to approve the septic in the backyard that the town may not approve. There is



an extra 2' by putting it in the front yard, which is not required by the state. Rye's ordinance gives more protection with the system in the front.

Mr. Rowell agreed. He commented that Mr. Sanborn had a system approved for the back yard; however, it expired after 4 years for not having been installed. That one was approved because the building department can waive that 4' separation if it is for a replacement system and there are no changes to the building. The minute he wanted to do changes to the building, it threw it into new construction standards. He noted that Vice-Crapo is right. The town requires more separation than the state does in most cases.

Mr. Costanzo asked if the property is significantly lower than Pollock Drive. He reiterated that his concern is that the low water table has not been addressed.

Mr. Rowell stated that he understands the concern. The area of the lot where the system is going is elevated to 9', according to the survey plan. The flood elevation is typically 9'. In a perfect world, there would be a sewer system in this area to hook the properties up to but it is not there so it is not going to happen. This system is probably in as good a spot on the lot as could be located. Hopefully, if there are flood waters, they will drain off like they have in the past.

Chair Weathersby asked if there is 48" to the seasonal high-water table.

Mr. Rowell confirmed.

Mr. Sanborn stated that no septic system/leachfield is going to be installed that doesn't meet town and state approvals. The concern that someone raised about a precedent the town would set allowing for this system to be installed without state approval is not possible. He noted that he is requesting the variances. He will then get the town approval and will immediately go to the state for their approval.

Chair Weathersby asked if it is his intention to install this system as soon as possible.

Mr. Sanborn replied it is but he is now facing the issue of getting a contractor. He continued that at the meeting in July, people spoke in opposition to the variance to the extent that they had concerns about the perception of the building safety. He noted that he goes in and out of the building constantly and it is fine and other people have as well. The concern about the structure soundness will be addressed when the approval is received for the deck and the work is done. Continuing to oppose the variance request only continually delays the perception of changing the structural soundness.

Chairman Weathersby asked if he would be opposed to having the building inspected by an engineer.



Mr. Sanborn stated that he does not feel this is necessary. He questions why this would even arise. It is almost discriminatory. The town has a building inspector. He asked if that is their job to ensure that the building meets code and is safe.

Member Patten stated that clearly the neighbors do not like the appearance of the property. There is a long distance between not liking the cinderblock on the roof and coming to a meeting to claim it is structurally unsound without any proof. If they would like to prove it is structurally unsound, he would give that a great deal of consideration. However, he does not see any proof from the public that it is anything but unsightly, in their opinion. That does not have anything to do with the structural integrity of the building.

Speaking to Mr. Rowell, Vice-Chair Crapo asked if an inspection would be done on the work before he could get a certificate of occupancy. He asked at what level does the building department inspect.

Mr. Rowell explained they would inspect the addition very carefully throughout the work, which involves one corner of the house and the deck in the front. Mr. Sanborn has stated that the front entry porch will be replaced, as it needs to be upgraded. As far as the rest of the house, a hardwire smoke detector has been installed by an electrician who looked at the electrical panels as well. He has had an electrician in there recently. It is their responsibility also to point out things that may be wrong.

Chair Weathersby asked if a stormwater management plan will be required for this project.

Mr. Rowell confirmed.

Mr. Sanborn noted there will be infiltration trenches around both additions to the structure.

Vice-Chair Crapo asked if he would have an issue with the Board conditioning the front porch repair as part of the project.

Mr. Sanborn stated that on the building permit application he wrote to repair and replace as necessary. To the extent that the deck is going to abut the existing porch, it may be necessary to do some replacement of that wooden structure. That is the way the building permit already reads.

Member Dibble asked if the entryway is going to be fixed so it is safe.

Mr. Sanborn replied yes.

Member Dibble asked if he is confident the septic installation can be completed by the end of 2018.

Mr. Sanborn stated that he intends to do this as quickly as possible, after the state approval is received. A contractor can't start until the state approval is received.



Chair Weathersby commented that it was said that it is going to be expedited. She is concerned that he is dragging his feet.

Mr. Sanborn explained that he needs relief to use the building. He stated that he will not drag his feet.

Chair Weathersby asked if he will proceed as quickly as he can towards this goal if he receives approval at this meeting.

Mr. Rowell explained that if approval is received tonight, Dennis Plante (town's septic consultant) will stamp the plan within a couple of days and it can then be sent to the state. The state turns these around now in two days. It is a failed system, it will come back quickly and they can then install it.

Chair Weathersby asked if he has 90 days to install the system once the approval is given from the state.

Mr. Rowell explained it is a 90 day approval because it is a failed septic system. The state will renew it one time, at that point the town would take action. He noted that this could be a condition of approval.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:12 p.m.

Member Mikolaities stated that the Board should just be sure they have the correct date of the plan in any motion because there were four plans. He also suggested a condition of a stormwater plan approved by the building department, installed per state regulations for failed systems and something saying that it will be seeded in a timely manner (Spring).

Member Dibble stated that he was sensitive to the runoff question. If there is an as-built that addresses the stormwater matter, that would resolve the issue. There were many questions about whether it would be in the front or back yard. It appears that if the system meets the town and state regulations, it meets the town and state regulations. He knows they are all sensitive to the rising water issue; however, the property is not in the floodplain. He thinks the owner of the property has demonstrated a willingness to comply with the regulations by putting in a system that the town and state requires. He is satisfied that the front entryway situation will be addressed. As to the process of the credibility of the safety of the building, if someone has a question they can go to the town and say there is a danger. The town has the authority to take a look. Barring other evidence that there is something structurally wrong with the building, he does not have a lot of concern about the safety of the structure itself. He commented that he goes by the building and knows it is not attractive. He would like it to be more attractive; however, he has some faith that this will happen.

Vice-Chair Crapo commented that in regards to the system meeting the regulations, it meets the height but it needs the setback relief in order to it being considered meeting the requirements.



Member Dibble stated he is inclined to give the setback relief because it is clear in his mind that it is going to meet the height.

Vice-Chair Crapo stated that he is sensitive to the neighbors' perception of the appearance of the building. His gut tells him that maintenance has been lackluster and then it hits a snag of the septic failing so now there is no rental revenue. Now there will be renovations and a septic, he hopes it will make sense to get the property cleaned up. People who are renting will pay more for a better-looking place so there is that incentive. The history seems in odds with that but hopefully that is going to change with the new project. Meeting the town's regulation of 4' makes the system higher out of the flood waters but it is still at risk.

Member Patten stated that he respects everything and agrees with the way the Board perceives the matter, including the issues brought by the neighbors. However, the longer the applicant is prevented from doing things, the longer it takes. He would like to see something happen on the property. If he truly intends to improve the property, it can only get better than what it is today. He does not think the Board has the authority to say this is how they would like to see it. The property "is what it is" and the applicant is making one step towards something better. He reiterated that he would like to see it happen.

Chair Weathersby stated she agrees with what has been said. She thinks that the septic is clearly better. It is clearly in the best spot on the lot from an environmental point of view. A stormwater management plan has to be done for the septic and new addition, which will have to show that there is not additional runoff onto neighbors' properties, onto Pollock Drive or Ocean Blvd. Also, the fact that the system has to be installed within 90 days is important. She continued that she does not have a problem with the additions. This was discussed more at the last meeting. They are relatively minor. It is a small lot. Every time something is done it is going to affect a setback. She would be in favor of the conditions that were discussed; (1) state approved system; (2) stormwater management plan; (3) proceed with reseeded as weather permits; and (4) porch repaired or replaced as part of the project. In regards to the repair of the porch, she stated that she does not want to get into how that should be done or what it should look like. She thinks a lot of the tension from the neighbors is because the property deteriorates more and more and things have not been maintained in such a way that it is in good shape. It will be important that the front entry, which is certainly unsightly, is repaired or replaced as part of the project. Other than that, she is in favor of the relief being requested.

Vice-Chair Crapo asked if it would be fair to add "to building code" on the front repair.

**Chuck Marsden, Deputy Building Inspector**, explained that it would have to be made safe. If there is nothing there that can be repaired, it will be taken down and built to code. If there is something there that can be repaired without it being rebuilt, the code would be dropped. It is not a bad caveat to have.

Member Mikolaities stated that the septic system has to be installed within 90 days. There is a porch and building addition that does not need to happen in 90 days.



Vice-Chair Crapo commented that his understanding is that the additions cannot be done until the septic is in.

Member Mikolaities pointed out that whatever motion is made should have clarification.

Chair Weathersby stated the septic should be within 90 days. She was envisioning that the repairs to the front porch would be made when the carpenter is there to do the addition.

Vice-Chair Crapo commented the septic could be this fall and construction for the additions in the spring.

Mr. Marsden stated that the conflict with the timing between the additions, the repairs and the septic system being installed really all revolves around occupancy. The place will not be occupied until all these things are completed to the town's satisfaction.

Chair Weathersby reviewed the conditions proposed;

- (1) Septic system (August 6, 2018 plan) gets state approval and is installed in accordance within 90 days of that approval;
- (2) Stormwater management plan is submitted to and approved by the building department;
- (3) The disturbed areas as part of the septic installation are reseeded as soon as weather permits; and
- (4) The front porch is repaired or replaced in accordance with the Rye Building Code in concurrence with the construction of the additions.

Chair Weathersby called for a vote for relief to *603.1, 204.3B and 204.3C*:

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes



**3. Substantial justice is done?**

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

Chair Weathersby called for a vote to *Building Code Section 7.9.2.5*:

- Would enforcement of 7.9.2.5, concerning septic setbacks, do manifest injustice and would be contrary to the spirit and purpose of the building code and the public interest?

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the application of Timothy Sanborn, for property owned and located at 753 Ocean Blvd, for variances to Sections 603.1, 204.3 B, 204.3 C and to Rye Building Code 7.9.2.5, for construction of a deck and addition to the property conditioned on;**

- (1) Completion of repairs to the front entryway, in accordance with the Rye Building Code, concurrent with construction on the property;**
- (2) The establishment of a stormwater management plan, which will be approved by the Building Inspector; and**
- (1) Completion of the septic installation within ninety (90) days with reseeding of the disturbed area to happen as soon as possible, weather permitting.**

**Seconded by Rob Patten. All in favor.**

**Motion by Shawn Crapo to take the administrative appeal request filed by Timothy Sanborn out of posted agenda order. Seconded by Burt Dibble. All in favor.**

- **Ocean View Trust, Timothy E. Sanborn, Trustee for property owned and located at 753 Ocean Blvd, Tax Map 23.1, Lot 16, requests an Administrative Appeal from the building inspector's email dated August 7, 2018. Property is in the General Residence, Coastal Overlay Districts. Case #38-2018.**

Vice-Chair Crapo stated that Peter Rowell mentioned, and it's mentioned in the inspector's email, that he could submit a pump-out schedule contracted with a qualified company. It does not seem there is a prohibition. The applicant may want to withdraw this request based on that matter and submit his pump-out plan to the building department.



**Timothy Sanborn, applicant**, stated that he hired a septic evaluator who noted in a letter that the system is still able to distribute water effectively. He continued that what is an issue here is the lack of a definition of septic failure. He noted that the state has a definition right on their website; *"The condition produced when a subsurface sewage or waste disposal system does not properly contain or treat sewage or causes or threatens to cause the discharge of the sewage on the ground or into adjacent surface or ground waters"*. He stated that there was a clogged distribution pipe that caused the overflow from the septic tank. This was a condition that needed to be addressed. He talked to the State Department of Environmental Services Subsurface Systems Bureau. He asked if the situation meets the definition of failure. Their reply was "no, just repair". He thinks the Building Inspector is saying that this system can't be repaired because there is no operational approval on file. When this septic system was installed, there was no operational approval required to be on file, which is part of the problem. He asked if any system that has a clogged pipe or a backup, where there is no operational approval on file, is going to be classified as a failure with a new system being installed required? That would be precedent setting for the town. For anyone who does not have an operational approval of file, if there is a problem with the septic, the building inspector should send the same notice of violation and revoke the occupancy permit. How many people will leave their property because they can no longer legally occupy it? He pointed out that the definition of failure is not met and the town did not allow for a repair based on a situation that the state did. Therefore, he questions whether the building inspector erred and respectfully ask that the Board overturn the administrative decision.

Chair Weathersby asked the building department if they would like to respond.

**Peter Rowell, Building Inspector**, explained that the department was called to the property by the tenant who was in the property at the time. The tenant sent a picture of black "stuff" around the propane tank. He went out to inspect it. The tenant ran a little bit of water and it started running out from underneath the porch onto the ground. It was definitely coming out of the septic tank. It wasn't draining, the septic tank was full, and it was staying in the ground. One of the conditions of failure is the condition of leaching onto the surface of the ground. Hence, the letter was written that there was a failure. The town's ordinance clearly says that every dwelling needs to be connected to a functional disposal system. That was not functioning. It was running out onto the ground. Subsequently, Mr. Sanborn invited them out to the property again. Mr. Sanborn stated that the pipe was plugged and it had been snaked. He noted that they went to the property and the tank had been drained because it had been pumped out. There was a cast iron pipe that had been dug up, which was coming out of the tank. The pipe was in a hole, there was a space with no pipe and then there was chimney tile with the cast iron pipe through it. Beyond that, there was a pile of stone with roof shingles over the top of it. That is what was there for the leachfield. Mr. Sanborn had said that it was plugged up, it had all been cleaned out and it is going to work fine. He told Mr. Sanborn that he saw it in failure and to install the system that was approved. Mr. Sanborn had an approved system already to go into the ground. All that needed to be done was to have it installed. Mr. Sanborn was told that it was going to expire in another month and it should be put in. He noted that he told Mr. Sanborn a number of times that he would issue a permit to repair the porch and put the septic system in anytime he walked into the office with the fee. It was all approved and ready to go.



Chair Weathersby asked if he is saying that in his opinion there was no leachfield.

Mr. Rowell replied that he did not see a leachfield. There was chimney tile with a hole, there was some stone that looked like beach stone and there were roof shingles on top. (He submitted a photo showing the substance around the propane tank.)

Mr. Sanborn stated that there is no dispute that the septic tank overflowed. He continued that he immediately addressed it. He called a local septic service company who came out and diagnosed it. They said to move the propane tank, which was done immediately. They dug down and vacuumed out the distribution pipe that was clogged and causing the water to overflow. The town defined it as a failure and the state defines it as a repair.

Vice-Chair Crapo stated that the receipt from the septic company says "tried to snake line but was all plugged up. Cleaned out as best we could with vac." It does not say it was successfully cleaned out. He asked how they would know that it was cleaned out to a fashion that restored flow.

Mr. Sanborn stated that he hired Kent Septic who said that they ran water through the pipe and it was distributing water effectively.

Vice-Chair Crapo asked how they would know if it is getting into the leachfield and the leachfield is functioning.

Mr. Sanborn explained the water was run for over half an hour and it distributed effectively.

Chair Weathersby noted that the letter says "*what we were able to determine by running water through the cracked pipe the system is still able to distribute water effectively. By performing this inspection, we are able to determine the general condition of the septic system but we are not able to determine how long the system will continue to work*".

Mr. Sanborn commented that he said he puts that qualifier in every letter that he does.

Chair Weathersby asked if there has ever been a full inspection to know what the system is. She asked if there is a leach area.

Mr. Sanborn replied there is a leachfield. Back when the system was installed, a repair and replace could be done in-kind. It did not need the approvals that are required today. In 2012, the laws were changed.

Chair Weathersby asked if there is a description of the system that was installed.

Mr. Sanborn stated there is no actual description. There is a hand drawn design of the leachfield and where it was installed. (He submitted a copy of the administrative rules from 2000, when the existing system was installed.)



Speaking to Mr. Sanborn, Member Patten asked if there is any reason he is opposed to getting on a pumping schedule. If the system is ultimately going to be replaced, it will bridge the gap.

Mr. Sanborn stated it would be unfortunate if the Board did not want to address this appeal because there is an avenue for a pumping schedule. Pumping schedules often become ambiguous; how often based on who's living there. How many people and what is the usage amount? It becomes an encumbrance when the property is rented. He noted that he had it repaired. A company was hired to vacuum out the pipe and a septic evaluator was hired to document the fact that it distributed water effectively. The town has still said that the property cannot be occupied.

Member Mikolaities stated that he has three problems on this. Chrisco stated that they did the best they could but there is no answer there. There is a statement from Kent that basically says water flows. He commented that water can flow into sand. He has seen so many failed and non-existent septic systems that have been working for the last 20 or 30 years. The letter from Kent does nothing for him. The third thing that does nothing for him, is on the septic system plan that has been submitted, it says "existing subsurface disposal system size and location unknown". There is nothing. It needs to be shown what is out there. So far, there are three pieces of paper that have been submitted that say nothing. He commented that he is even against pumping if he does not know what is out there to even pump. He asked what assurance there is that if this appeal is approved, that if a tenant goes in the building tomorrow, they can keep flushing the toilet for the next 18 years.

Mr. Sanborn stated that he could provide a copy of the receipt for when the leachfield was installed in 2000.

Vice-Chair Crapo stated that before the Board is not whether the septic can be used or not. What is before the Board is whether the letter was an error or not. The letter was dated May 4, 2018. The conditions then may be different than what was done after some remedial efforts. Then there is the outlet of the pumping. He understands that a lot of people's systems were replaced in-kind 15 years ago but because they did not have the right paperwork, if it was to fail or an addition was proposed, it would get caught. The letter from DES says that the homeowner can dig it up and replace it. He asked if this is still the case.

Mr. Rowell explained that the state has been approving septic systems since the late 70's in the seacoast. The building department has plans for systems from the 70's; however, there is no plan for Mr. Sanborn's system. In the past, the state would allow the system to be repaired if there was a plan. Now, if there is no plan, a new design for a system by a designer is required. Basically, a new system has to be designed and installed. That changed in 2012. A homeowner cannot repair and replace a system anymore.

Mr. Sanborn noted that DES says that this applies to both rental units and privately-owned homes. They don't make that distinction according to their website.



Chair Weathersby opened to anyone who wished to speak in support of the administrative appeal. She opened to anyone who wished to speak in opposition. Hearing no comments, she closed the public hearing at 8:54 p.m.

Chair Weathersby noted that the Board will discuss the building inspector's notice of violation dated May 4, 2018. She is also going to loop into that the August 7, 2018 decision of the building inspector that repair of the existing system is not an option. She thinks this can be interpreted that both of those are being appealed.

Mr. Sanborn confirmed.

Speaking to Mr. Sanborn, Member Dibble asked if he knows where the current septic tank is located.

Chair Weathersby opened up the public session.

Mr. Sanborn confirmed.

Member Dibble asked how big the tank is.

Mr. Sanborn replied that he believes it is either a 500 or 600 gallon tank.

Chair Weathersby asked when the last time the tank was pumped.

Mr. Sanborn stated that the last time was the end of April when it was identified that there was a problem with a clogged pipe. Prior to that, it was the tenant's responsibility so he does not really know the answer to the frequency but suspect it was a couple of times per year based on usage.

Vice-Chair Crapo stated that it seems kind of moot because if a new system is going to be installed within 90 days, someone can't be living there when the system is disconnected and being done. He asked if the building is currently vacant.

Mr. Sanborn confirmed.

Speaking to Mr. Rowell, Vice-Chair Crapo stated that if they assume that the field is not functioning properly but the house is properly connected to a non-cracked pipe to the tank, in his mind this would now be a holding tank.

Chair Weathersby stated that the answer is whether there was a violation with the letter; yes or no.

Member Patten clarified that the issue is not whether or not the septic can be used. It is whether or not Mr. Rowell was in error.

Chair Weathersby confirmed.



Chair Weathersby reclosed the public hearing at 8:58 p.m.

Vice-Chair Crapo stated that on May 4<sup>th</sup> he believes the system was in failure. He does not see that there was an error in the letter. Per the rules, there is remedy to that with pumping. The letter stands with a possible caveat. The homeowner has a remedy to potentially use the system. Whether it has been repaired in the meantime or not is a separate issue. All that can technically be appealed is whether the letter was in error. The letter that says it cannot be repaired would be a separate issue. As far as the May 4<sup>th</sup> letter, he does not see an error.

Chair Weathersby stated that it is clear the system was in failure. Failure is when the system does not properly contain or distribute solute or causes the discharge of sewage on the ground surface or surface waters. Both of those were satisfied in the May 4<sup>th</sup> letter. Clearly the septic system was in failure, in her opinion. She does not feel the May 4<sup>th</sup> letter was issued in error. The August 7<sup>th</sup> letter is a little more tricky that the repair of the system is not an option. As she understands it, that was issued because there was no state approved system on file. Without understanding the nature of what is in the ground, and Mr. Sanborn has been unable to produce any specifics concerning the system, it is unknown what is there and the condition of the system. Without that information, she thinks it is reasonable for Mr. Rowell to say that repair of the system is not an option and that it needed to be replaced. She does not feel that either of the letters were issued in error.

Member Dibble agreed.

Member Mikolaities agreed.

Member Patten agreed.

**Motion by Burt Dibble to deny the administrative appeal. Seconded by Patricia Weathersby. All in favor.**

- 2. William & Beverly MacLeod of 77 Sunset Rock Rd., Andover, MA, for property owned and located at 1174 Ocean Blvd, Tax Map 19.4, Lot 94, request variances from Section 603.1 for expansion of a non-conforming structure on a non-conforming lot and from Section 204.3B for a deck in side setback where 19' exists, 13' is proposed and where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #31-2018.**

William MacLeod, Applicant spoke to the Board. He noted that in 1995 an older home was replaced, along with the existing deck in the same location it is now. Over that time to now, the family has grown and the deck is somewhat small. The family's access to the beach is through that deck. He continued that the request is to take one bay and add it on the south side and create a platform on the landing that goes down to the beach. He noted that the answers to why they feel the proposal meets the requirements for a variance are in the package he submitted to the Board with his application. He also noted the file has letters from the direct abutters (north and south) and the abutters to the abutters (north and



south). The abutters are in favor of the project as proposed. The project was explained to the neighbors and none of them have any objections. The Conservation Commission did a site visit and were going to submit a letter to the Board. The proposal still has to go to DES if the Board grants the variances as applied for. The Conservation Commission requested that additional shrubs be planted along the slope and that was agreed to. He stated that they believe they are not going against the intent of the zoning by-law because the deck is not going to obstruct anyone's view, will not impinge upon light and air or encroach upon the neighbors on either side.

Member Patten asked if there is enough room to move the deck to the left so it is within 20' of the side setback. It is only going 6' to the right. There would be more square footage if it went to the left and its more conforming.

Mr. MacLeod explained that two-thirds of the entire deck is in the shade in the afternoon. If everything is put on the left side, it would split up the use of the deck. He noted that they are trying to get more of the deck in the sunlight.

Member Dibble asked if the walkway from the stairs will be straight through the new addition.

Mr. MacLeod replied that the stairs are going to stay in place in that landing.

Member Dibble asked if they are at a different level than the proposed addition.

Mr. MacLeod explained the addition on the north side and the addition on the south side will be the same elevation as the deck is now. There is a platform at the top of the stairs, which is one step.

Member Dibble commented that it looks like someone could go from the platform straight into the house so they would not have to go through the existing deck.

Mr. MacLeod reiterated that the whole idea is to get a major portion of the deck into the sun.

Chair Weathersby opened to the public for comments. No comments were heard. She noted that the Board received letters in support of the proposal from:

- John Fleming, 1178 Ocean Blvd
- Edward Mallen, 1170 Ocean Blvd
- Jack & Barbara Panopoulos, 1180 Ocean Blvd
- Mark & Marla Lemos, 1164 Ocean Blvd

Chair Weathersby read a letter from the Rye Conservation Commission stating they had no objections to the proposal.

Chair Weathersby closed the public hearing at 9:16 p.m.



Member Dibble stated that he has no problems with the project.

Vice-Chair Crapo commented that it is reasonable. Most of the disturbance is already there and the bushes will take care of some of the disturbance.

Chair Weathersby called for a vote on Sections 603.1 and 204.3B:

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the request of William and Beverly MacLeod for property owned and located at 1174 Ocean Boulevard for variances to Sections 603.1 and 204.3 B, as advertised with the condition that appropriate vegetative restoration be accomplished in accordance with the Rye Conservation Commission's recommendation. Seconded by Rob Patten. All in favor.**

3. **Chris Stafford for property owned by Elizabeth Hoffman and located at 17 Brackett Road, Tax Map 22, Lot 17, requests a variance from Section 301.8B (1) for fill within the 100' wetlands setback. Property is in the Single Residence District. Case #32-2018.**

**Chris Stafford, representing Elizabeth Hoffman**, presented to the Board. He explained that they submitted a non-building land development permit application to the building department, which was denied. The application was to put in some fill to level a portion of the backyard within the 100' buffer of the water setback. He continued that they went to the Conservation Commission and worked with Mark West from West Environmental to come up with a plan, which was presented to the commission. The commission held a



site walk at the property. A letter was submitted to the BOA documenting the site walk, which was dated August 1<sup>st</sup>. The proposal is for around 900 to 1000sf of disturbance. The recommended plan also showed a buffer by the water of 3000sf of plantings, which was reviewed with the Conservation Commission. The commission had no objections to the project as presented. They did make some recommendations about silt fencing and normal protection for the project.

Chair Weathersby asked if the only machinery that will be used is a Bobcat.

Mr. Hoffman confirmed.

Chair Weathersby asked if he agrees with the recommendations from the Conservation Commission, as far as plantings, the grading of the slope, etc.

Mr. Hoffman confirmed.

Chair Weathersby opened to the public. Hearing no comments, she closed the public hearing at 9:25 p.m.

Chair Weathersby stated that it seems reasonable and everything presented appears to be in accordance with the RCC letter.

The Board agreed.

Chair Weathersby noted that the condition would be adherence to the requirements set forth in the August 1, 2018 Conservation Commission letter.

Chair Weathersby called for a vote to Section 308 B(1):

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes



**3. Substantial justice is done?**

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to grant the application of Chris Stafford for property owned by Elizabeth Hoffman and located at 17 Brackett Road for variance to Section 301.8 B(1) for fill and excavation within the 100' wetland setback with restoration of the property in accordance with the Rye Conservation Commission's recommendations set forth in their letter of August 1, 2018. Seconded by Shawn Crapo. All in favor.**

Brian Putnam requested that the Parolisi and Theobold cases are heard next. The Board agreed.

**4. Ed & Beth Parolisi for property owned and located at 24 Concord Point, Tax Map 17.4, Lot 47, request a variance from Section 204.3B for a generator 13.5' from the side setback where 20' is required. Property is in the Single Residence, Coastal Overlay and SHFA, Zone AO. Case #34-2018.**

**Ed Parolisi, Applicant**, presented his request for a variance to install an automatic generator on the side of his house, where 20' is required. He is looking for an approval to go 13.5'. He noted that he has a corrected picture because of a miscalculation. The picture shows that the generator will be moved closer to the house to meet the 13.5'. He noted that in the original pictures the generator was actually 8'. All the neighbors approved that. There are notes from all the abutters saying that they approve of the project. Now the generator is closer. As it can be seen, it is very close to the air conditioner. In order to complete the project one air conditioner is going to have to move forward. The generator would meet the distance to the air conditioner, distance to the house and distance to the propane tank. He reiterated that the neighbors all approve. He noted that he has been working with the Conservation Commission. They held a site walk and have submitted a letter of their approval to the Board. The location is the highest point on the property. He has owned the property since 1994 and it is the only part of the property where water has not gone through during storms.

Chair Weathersby asked if the generator is going to be bolted down.

Mr. Parolisi replied yes. He pointed out the Conservation Commission wants a pad. He will put a pad in and stake it down so it will not move. He reiterated that this is the highest point on the property. On the creek side, the water comes over the creek so it could not be located on that side. On the other side of the home, the water comes down from Concord Point on an angle. This is the best spot or he would've put it on the other side of the house. He would've needed a variance for that as well because the lot lines are so



close. He stated that he has been working with DES and has completed all the documents that are needed. The application will be submitted to DES once he receives approval.

Chair Weathersby stated the Rye Conservation Commission's letter asks the Board to consider the height of the generator, not having it ground level because of the storm surge. They also want the generator fastened to the space. She asked the height of the pad.

Mr. Para replied that he was going to have the pad 5 or 6" above the ground level. He continued that he talked with the commission about this but they did not specify a height.

Chair Weathersby opened to the public. Hearing no comments, she closed the public hearing at 9:35 p.m.

Chair Weathersby commented that it seems like the best location. It will be at ground level and fastened. The applicant has talked to the neighbors.

Referring to the Conservation Commission's letter, Vice-Chair Crapo noted that they stated they did not have any objections to the project as proposed (letter dated September 19<sup>th</sup>).

The Board had no objections to the proposal.

Chair Weathersby called for a vote to Section 204.3 B:

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes



Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes



**Motion by Burt Dibble to approve the application of Ed and Beth Parolisi for property owned and located at 24 Concord Point Road for a variance to Section 204.3 B for a generator as advertised. Seconded by Gregg Mikolaities. All in favor.**

- 5. Edward & Donna Theobald for property owned and located at 20 Brackett Road, Tax Map 22, Lot 87, request a variance from Section 301.8B (1) & (7) to build a 12'x12' gazebo 40 within the tidal buffer where 100' is required. Property is in the Single Residence District. Case #35-2018.**

**Edward Theobald, Applicant**, stated that he is seeking approval for a gazebo on ledge which is within 40' of the buffer zone. The Rye Conservation Commission did a site visit to the property. They were to submit a letter recommending the proposal.

Chair Weathersby noted that the letter was received September 19<sup>th</sup>.

Mr. Theobald stated that the wooden gazebo will be 12x12. There will not be any trees coming down for the project.

Chair Weathersby asked why that is the best location for the gazebo.

Mr. Theobald explained this location has the best view of the river. It is hardly seen from the road, even in the winter.

Member Dibble commented that a building on ledge does not disturb the ground.

Vice-Chair Crapo commented that it will not change the runoff to any other properties.

The Board reviewed the gazebo design.

Chair Weathersby opened to the public for comments.

Peter Rowell, Building Inspector, noted that this area is in the AO1 Flood Zone. The gazebo should be fastened down so it won't float away during a flood event.

Mr. Theobald confirmed that it will be fastened to the ledge.

Member Mikolaities noted that he is a little concerned about the height. The motion can cover that.

Vice-Chair Crapo noted that the Conservation Commission stated "on supports and tied to the concrete footings as required".

Member Patten stated that there is nothing that specifies that it will be fastened. Maybe that should be considered for a condition.

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



Chair Weathersby called for a vote to Section 301.8 B(1) and (7):

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Rob Patten - Yes  
Gregg Mikolaities – 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  
Gregg Mikolaities – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to approve the application of Edward and Donna Theobald for Variances to Section 301.8 B(1) and (7) with the condition that the gazebo be fastened to the ground. Seconded by Shawn Crapo. All in favor.**

6. **Brian Putnam for property owned and located at 2 Park Ridge Ave, Tax Map 17.3, Lot 17, requests an Administrative Appeal to the Building Inspector's June 18, 2018 denial for a septic system per Building Code Section 7.9.6. Property is in the General Residence, Coastal Overlay District. Case #33-2018.**

The Board discussed whether to move forward with hearing the application at this meeting or continuing to October.

Mr. Putnam explained there is going to be a lot of discussion. First, the Board has to go back in history to determine whether the cottage was existing and was okay'd by the BOA back in 2004. Then they have to go forward and discuss the septic system and all the code requirements.

Chair Weathersby asked if the other issues go away if the first issue is resolved.



Vice-Chair Crapo asked if there will be a change in the way this is presented if this is presented next month.

Mr. Putnam replied yes because he received new information today. He has not really gotten any professional advice on it.

Chair Weathersby clarified it is about the cottage and whether it was part of the plan when the house was built.

Mr. Putnam confirmed.

Speaking to Mr. Rowell, Chair Weathersby asked if he agrees that if it is determined that the cottage is not allowed to stay, he would not be able to use the cottage and the septic issue goes away. If the Board decides that the cottage is allowed to stay, it would be overturning the letter and the applicant would need to have a state approved septic system for the cottage.

Mr. Rowell confirmed. He pointed out that Mr. Putnam does have a state approved plan.

Chair Weathersby asked if the Board's issue to determine at this meeting is whether the cottage can stay.

Mr. Rowell confirmed. He continued there were some notices of violation that were never appealed from last fall, stating that the cottage was not allowed.

Member Dibble asked on what basis was the cottage not allowed.

Mr. Rowell replied that it was not connected to an approved septic system. He does not believe the Board in 2004 was very clear about the use of the cottage. They were clear about the one in the back. They wanted it taken out and turned into a storage unit, which did not happen. The cottage was found to be occupied. It has been occupied since 2004 to current.

Mr. Putnam explained the cottage that is in question is Cottage #6 and is right near Wallis Road. That has been occupied and always has been.

Vice-Chair Crapo stated that he is in favor of proceeding because they have a heavy case load next month.

Mr. Putnam stated that major issue is whether this is an approved cottage or not.

Chair Weathersby asked Mr. Putnam to present his case.

**Mr. Putnam, 2 Park Ridge Ave**, stated that he has two cottages out back; Cottage #6, which is closest to Wallis Road, and Cottage #4, which is used as storage. The building inspector is saying that the cottage was supposed to be removed from two first septic



designs that were presented, which was approved by the state at that time. He noted that he lives on the corner of Wallis and Park Ridge. Referring to the design for the septic, it shows the house in the back yard and it overlapped the cottage in question. The design states "cottage to be removed". This plan is from 2002.

Vice-Chair Crapo pointed out that both cottages are labelled "to be removed".

Mr. Putnam noted that the original two bedroom cottage in front was removed so he could build his house. The other cottage (4) remained for use as storage.

Member Patten asked if there were three or four cottages on the property.

Mr. Putnam replied there were three on the property and there still is. He continued the first plan is from 2002. He never wanted a cottage back there and did not want the septic in the front yard. Exhibit #2 shows where his home is located and the septic is in the back yard. When the plan was made, the "to be removed" was never removed. This is an old design from February of 2003.

Chair Weathersby asked why the note changed from "to be removed" to "one bedroom cottage to be removed". She pointed out that he didn't actually forget about it. He changed that note.

Mr. Putnam replied that is a good question.

Member Patten pointed out that both are changed to one bedroom.

Mr. Putnam continued it is a one bedroom seasonal cottage and the note was left in "to be removed". It was probably an oversight. Exhibit #3 is from almost a year later; March 23, 2004. There is correspondence between Susan Whittaker (then building inspector) and Jim Falcone, DES. In the second sentence, DES said there is no reason why the back cottage could not be kept and continue to be rented but unfortunately there was a note on the approved plan that must be adhered to. He continued that Susan Whitaker said "yes the cottage could remain" and she asked that another drawing be prepared and sent to the state and town.

Chair Weathersby asked which cottage this was for.

Mr. Putnam replied Cottage #6, which is in the southwest corner closest to Wallis Road.

Vice-Chair Crapo asked if the tenant was year-round.

Mr. Putnam confirmed. He continued that Jeb Sheppard, septic designer, designed the septic years ago, which was state-of-the-art 14 years ago. On April 26<sup>th</sup> he sent the amended plan noting that it is a seasonal cottage. It was sent to Dennis Plante and the town. The state and the town said that the cottage could remain. There is also proof from April 26<sup>th</sup> that Jeb Sheppard sent that to the state. (He showed the plan that was sent to the



state.) He pointed out that it no longer says "cottage to be removed" and it is a one bedroom cottage. The plan is dated 4/26/04. That is the plan that Jeb Sheppard sent to the state and it's the plan that was presented to the BOA to get the variances to build a house.

Member Mikolaities asked how many bedrooms the plan was approved for.

Mr. Putnam replied two.

Member Mikolaities asked how many bedrooms are in the house.

Mr. Putnam replied that there are two bedrooms in the house and one bedroom in the cottage.

Member Mikolaities asked where the septic system is for the cottage.

Mr. Putnam stated that is a good question.

Member Mikolaities clarified that DES approved a system for two bedrooms and there are three.

Mr. Putnam confirmed.

Member Mikolaities asked where the septic is for the third bedroom.

Mr. Putnam stated that this is why he is before the Board now. He continued that he has the minutes from the 2004 BOA meeting and the seasonal cottage was brought up and also Cottage #4. He stated that his house was approved August 4, 2004 by the BOA. (He presented the drawing that the approval for the house was based on.) What is very important is that when he went to the archives in Concord he was looking for the 4/26/04 plan but they don't have it. They have this plan (8/4/04). He noted that the plan is approved by the town and approved by the state. It says right on the plan "amended plans 4/26/04". That is significant in that the state has received 4/26/04, which was presented to the BOA and was approved. The state even recognizes it right on this plan.

Member Mikolaities stated that the state approved a two bedroom 300 gallon per day system.

Mr. Putnam reiterated that on 4/26/04 Jeb Sheppard sent it to the town and the state. Referring to the plan in front of him (8/4/04), he stated that everything that exists right now is approved in this plan; the septic, the cottages and everything. Right here it says "existing one bedroom seasonal cottage".

Chair Weathersby asked if this all came about because now a new septic system is being proposed for the seasonal cottage. The one for the house, from 2004, is for the house only and a new system will go in for the cottage. Mr. Rowell is saying that cottage is not allowed to be there. She asked if she is understanding this correctly.



Mr. Putnam confirmed. He continued the septic is going to be improved. An entirely new leachfield is going to be put in. A new three chamber system is being put in for the one bedroom seasonal cottage. His septic system (system for the house) is going to be dug up and modernized. It will be even better than it was 14 years ago.

Vice-Chair Crapo stated the word that keeps kicking around is "seasonal" but it is occupied year-round.

Mr. Putnam explained that it was but is not anymore. It will be used as a seasonal cottage. He continued that there can be a pre-approved replacement of a failed septic system if it can be proved that the cottage was in existence in 1967 or sooner. The state has requirements for that and he met all the requirements. He stated that he has two neighbors that were there in 1952 and 1947 who said that it has always been a cottage. A person that has been living in this neighborhood for 75 years visited the person who lived at that cottage prior to 1967. The woman had a letter notarized stating this, which was sent to the state. The state recognizes that cottage as a one bedroom seasonal cottage that was existing, which makes it grandfathered. If it is grandfathered and existing, it is recognized by the state as a one bedroom seasonal cottage.

Chair Weathersby asked if they are still talking about the cottage in the front near Wallis Road.

Mr. Putnam confirmed.

Chair Weathersby asked if he is saying that if that cottage has been there, since before zoning, then it is grandfathered.

Mr. Putnam confirmed. He stated that according to the state requirements, in order to replace or repair a failed system, it has to be proved the cottage was there in 1967. The State of NH DES, recognizes that cottage as a one bedroom existing cottage. If it is an existing one bedroom seasonal cottage with a cesspool that is not acceptable. The septic system has to be repaired or replaced.

Referring to Exhibit #7, Member Dibble stated that he does not see the new system for the one bedroom seasonal cottage.

Mr. Putnam pointed out the location on the plan.

Chair Weathersby asked if the plan for the home that was approved included Cottage #6.

Mr. Putnam replied yes.

Chair Weathersby stated that this is the real issue, not whether it was there before 1967. For the Board's purposes, the ZBA in 2004 looked at this property with three cottages on it and approved a plan to take one cottage down and build a new house. She asked if the



ZBA understood the one bedroom seasonal cottage in the front, near Wallis Road, was going to be remaining.

Mr. Putnam explained that the plan that was presented to the BOA definitely had a one bedroom seasonal cottage. It shows it was discussed in the minutes. Also, on March 23<sup>rd</sup> the town and the state already approved that one bedroom seasonal cottage. He pointed out that he had to get Jeb Sheppard to do another design, send it to the state and the town. That was what was presented to the BOA. (He read from the minutes of 2004.)

Vice-Chair Crapo asked him to read the motion for approval (from the 2004 minutes).

Chair Weathersby noted that she made the motion *"to approve the variances for a one and half story house with the condition that the small building in the northwest corner of the property, currently used as storage, not be used for dwelling purposes"*. There was nothing said about the cottage in the motion.

Mr. Putnam stated that the variances were for the main house. The cottage out back was already rented and the other one was for storage. There was very little discussion about it because it was already a cottage and already a renter in there. The other cottage was for storage. It was designated on the plan that it was a one bedroom seasonal cottage. There are notes from the building department and the state and also from Jeb Sheppard sending the plan to everyone.

Chair Weathersby asked if the cottage that was torn down in order to build the house had its own cesspool septic system at the time.

Mr. Putnam replied it did.

Chair Weathersby asked if the cottage that is in question today had its own cesspool septic system at that time.

Mr. Putnam replied yes. All three of the cottages did.

Referring to the motion of 2004, Member Dibble stated that the Board does not necessarily condition a permission, they condition a restriction. If the cottage was there, he would not have expected that the motion would have a condition of continued use of the seasonal cottage.

Chair Weathersby agreed.

Vice-Chair Crapo noted that there is a certificate of occupancy in the packets. His observation is that it is a year after the variance meeting and it says "for main house". To him that contemplates that there is still another structure in use. It was delineating that the variances were for the main house. If the intent was that those were going away, it would just be the house.



Chair Weathersby stated that it was always intended that the back cottage, away from Wallis, would stay but it would only be for storage. It could not be rented.

Vice-Chair Crapo asked if the proposal is for one septic shared by the one bedroom cottage and the two bedroom house.

Mr. Putnam explained that there will be one septic in the back yard.

Mr. Rowell stated that this came up early last summer. It was discovered that the two buildings in the back were occupied. There was a subsequent inspection brought on by the pump-out ordinance, which showed the storage building was occupied and was draining into a tank with no leachfield behind it. The cottage in question in the front was also occupied and draining into a cesspool that is relatively close to the marsh. He continued that he wrote a letter to Mr. Putnam and sent two notices of violation about a month apart. Each one of those letters said that the cottages were to be vacated. Mr. Putnam did eventually vacate them the first of November. He continued that his exhibit #3, the email between the building inspector and DES, looks like the building inspector was working to keep that cottage there when it was felt that the cottage was going to be removed. The building inspector was going out of her way to keep the cottage. Mr. Falcon (DES) wrote back saying that they could keep the cottage. The building inspector is supposed to be enforcing the town's ordinances. The town ordinance clearly said at that time, that every building needed to be hooked up to a septic system. That cottage didn't have an approved septic system. The cottage had a cesspool and everyone knew it at the time. The building inspector's job at that time, should have been to either get the cottage hooked up to a septic system or removed like the original plan was, which was presented to DES. The plan that was presented to DES said "to remove" on it. The plan that finally got approved had some notes on it but none of those notes mentioned the cottage. It mentioned a change in elevation and new survey data but it doesn't mention anything about the cottage. It was a radical change from a cottage that was going to be removed to a cottage that is going to remain. The cottage that was going to remain wasn't even hooked up to a septic system. Those amended plans are typically done for making minor changes on site between the time the plan was approved to the time it was installed. There was a note on the approval for operation that says the change was made due to the fact that the elevation of the building was raised and the pump chamber was not going to be made. That was the type of changes that was made, not changes in use of the property. He noted that this is why the plan ended in "A". It means that it is an amended plan that was done on the site to make a minor change to the septic. He has never seen an amended plan with a radical change, such as use of a building. The Zoning Board's Notice of Decision did not mention the cottage at all. The minutes are very vague on that cottage, which leads him to believe that the cottage was to be removed. Hence, the septic design was not approved but the state does not care about the town's approval. They just went right by the town and approved it anyways, which happened in the last couple of weeks. If the plan is submitted as a failed system, the town does not have to sign off on it but the state also says that the state plan cannot waive any of the town's requirements. He is looking for the Board to clarify the use of that building. If the Board clarifies that the building was there and was used as a seasonal use, he can approve the septic for installation meeting the town's



requirements. The Board needs to determine if the cottage was allowed to stay on the property or whether in 2004 it was supposed to be removed like some of the plans show. The notices of violations had not been appealed and those should have been appealed in a timely manner.

Chair Weathersby asked if there is a copy of the August 21, 2017 notice of violation. Speaking to Mr. Putnam, Chair Weathersby asked if it is correct that the notices were not appealed.

Mr. Putnam replied that he did not know the process. He wasn't given any help with the process from the building department. He noted that he was in the process of going to Attorney Brown and getting more information.

Mr. Rowell submitted copies of the notices of violation to the Board.

Reading the notices of violation, Chair Weathersby stated that the notices do not actually say that the building is in violation of the Zoning Board's order. She asked Mr. Rowell if he had any further comments for the Board.

Mr. Rowell replied that he is all set.

Mr. Putnam stated that he hopes this will solve the issue of whether this is a one bedroom seasonal cottage and they can go on from there.

Chair Weathersby stated that the issue tonight is whether that cottage is allowed to stay.

Vice-Chair Crapo stated that on June 18<sup>th</sup> there is a reference that says the letters were never appealed so it would stand that the decision made a permit was issued and then it implies that action will be taken to have the dwelling removed. In the other two letters it does not say that the dwelling has to be removed. It just says it cannot be occupied until they are connected to an approved septic. It doesn't require the removal. He noted that the letter says if he is unsuccessful in his appeal, the town is going to take action to remove the building, which was not indicated in the other two letters. Speaking to Mr. Rowell, he stated that in terms of the word "seasonal" what is the difference between a cottage and a cabin.

Mr. Rowell explained that the town has always had a cabin licensing requirement. Most of the cabins used seasonally are licensed by the town. These are "tourist" cabins. They are quickly going away but there are still three or four that licenses are issued to.

Member Dibble asked if they have bathrooms.

Mr. Rowell replied yes.

Chair Weathersby asked the timeframe for seasonal.



Mr. Rowell replied it is April 15<sup>th</sup> to October 15<sup>th</sup>.

Vice-Chair Crapo asked if all of them are connected to modern functioning septic.

Mr. Rowell explained they are working on it little by little. He noted that when he goes out to inspect them he wants to see some type of operating septic system.

Referring to the August and July's notices of violation, Member Dibble noted that it does not say anything about tearing down the structure. It says that it has to be vacated until it is connected to a septic.

Mr. Rowell agreed.

Member Dibble stated this implies that the existence of the structure was accepted.

Mr. Rowell explained the cabin was there and occupied. He wanted it vacated because it wasn't hooked up to a septic system.

Member Dibble stated the question is whether it needs to be torn down.

Mr. Rowell stated the question tonight is whether the Board feels that cabin is allowed and can remain. If it can remain, Mr. Putnam is going to hook it up to an approved septic system, which is a very good system.

Mr. Putnam stated the seasonal cottages were addressed by the Board of Adjustment. He has the septic design by Jeb. The Board addressed it as a one bedroom seasonal cottage. The town and the state approved the cottage and approved it as an existing cottage.

Vice-Chair Crapo asked if he is comfortable with the condition, if this moves forward, that the northern most cabin not end up being bedroom 4 on this system.

Chair Weathersby opened to the public for comments. Hearing none, she closed the public hearing at 10:40 p.m.

Chair Weathersby stated that she was there in August of 2004. She remembers Mr. Putnam coming in requesting a tear down to build a house. She remembers the other cottages were there but she honestly does not remember what the plan had on it. She continued that as she read through the minutes it became more clear that there are things



in the minutes, in her opinion, would not have been in there or would not have been said if that cottage was not staying. She read from the minutes;

*Mr. Putnam states that the existing cesspool will be replaced by a state-of-the-art three bedroom septic system.*

*He discusses the floor plan for house, seasonal cottage and setback.*

*He states that the back (back cottage) is no longer be rented and will be storage.*

*He states they are removing the cesspool.*

*Mr. Putnam states the request will not be contrary to the public interest since they are eliminating a cesspool and eliminating a two bedroom cottage (which is now the house).*

*Weathersby discusses the septic system. She ascertains that it is only for the main house. The cottage has its own functioning system. She questions the septic setbacks.*

Chair Weathersby noted that she would not have talked about the cottage septic system if the cottage was going.

*Weathersby states they could put the storage building condition in the approval.*

Chair Weathersby noted that the only condition that was added was concerning the north building (#4). She continued that having been there and knowing the players and some of the things that were said, particularly the line about the cottage having its own functioning system, leads her to believe that it was intended that the cottage in the front (#6) remained. She suspects that the plan that was before the BOA, given what Mr. Putnam has presented, was the 4/26/04 plan that talks about the existing one bedroom seasonal cottage with the other one labelled as a storage cottage.

Vice-Chair Crapo commented that the occupancy permit references the "main house", which leads someone to believe there is a difference. On page 3, Drake states "*there will no more rental of the garage*". The last sentence in that paragraph says "*the cottage still exists*". It sounds like he differentiated that the garage will be discontinued as a rental but the cottage was there.

Chair Weathersby stated she is a little frustrated that it was represented to the BOA that the cesspool would be eliminated and it would be a three bedroom septic system.

Vice-Chair Crapo noted that will be remedied now.

Member Patten stated that it sounds like the intent back then was to keep the cottage. Even Nadeau makes a comment that "*the condition on the rental was not needed*". He is recognizing that it was a rental.

Member Dibble commented it is pretty clear that it was recognized.

Vice-Chair Crapo stated that it sounds like they are all of the opinion that the cottage existed and was not going to be torn down. Procedurally, Mr. Putnam is appealing the Building Inspector's letter. He asked if they need to find there was an error in the letter.



Member Mikolaities asked if there was no plan that went to the Zoning Board meeting that night.

Chair Weathersby explained there is nothing in the file. There is a question of which of the plans was presented. The building inspector thought that it might be the plan that said "to be removed". She noted that the one that is closest to the August 2004 date is probably the plan that would've been presented, which is the April 26, 2004 plan that says "existing one bedroom seasonal cottage".

Referring to the building inspector's June 18<sup>th</sup> letter, Member Dibble stated that it says if the owner is not successful in receiving the variance required to convert the seasonal cottage into a dwelling unit, action will be taken to have it removed.

Chair Weathersby stated that the one that is being appealed is point #1, *seasonal cottage should have been removed as part of the August 2004 zoning variance. The use of the building as a dwelling has been lost due to the August 2004 zoning decision.*

Vice-Chair Crapo commented #3 as well.

Chair Weathersby pointed out that he has said he is going to keep it seasonal.

Vice-Chair Crapo asked if this gets them around the variance that would be required to have two dwelling units on one lot.

Chair Weathersby noted that it is grandfathered. The issue has not been raised.

Vice-Chair Crapo stated that in order to vote in favor of the applicant the Board must find that the letter was in error.

Chair Weathersby stated that she thinks the errors are in paragraph 1 and paragraph 4. She stated that the question is whether there has been an error concerning the use of the building in the front (#6) has been lost due to the August 2004 Zoning Board decision. The issue is whether the seasonal cottage is allowed to stay or whether the August 2004 decision by the Zoning Board requires the cottage to be removed.

Chair Weathersby called for a vote on whether Mr. Rowell's decision that the use of the #6 one bedroom seasonal cottage (closest to Wallis Road) was lost due to the 2004 zoning decision. Has there been an error in the June 18, 2018 order by an administrative official in enforcement of the zoning ordinance adopted RSA 674:16.

Shawn Crapo – Yes  
Rob Patten – Yes

Member Mikolaities stated that based on the information that Mr. Rowell has, he made the right decision. He continued that on the backside he is okay with a seasonal cottage with a new 2018 septic system. He is just not sure how to get there.



Vice-Chair Crapo stated that Mr. Rowell's interpretation was that the building was obsolesced by the 2004 decision. The evidence before in the discussion tonight seems that the Board finds that with the new information that decision was not just.

Speaking to Member Mikolaities, Member Patten stated that he agrees with him 100 percent. However, Mr. Rowell has even said that he would be okay if the septic was brought up to date. He is not demanding that the cottage get torn down.

Member Mikolaities stated that #4 and 5 says that a variance is needed.

Chair Weathersby stated that they are deciding if the decision by Mr. Rowell that the use of that building as a dwelling was lost as a result of the 2004 Zoning Board of Adjustment decision. He made the determination that the building could no longer stay. It went away based on the 2004 process. She noted that it has nothing to do with septic or variances. Is the cottage legally still there or did its existence and its right to be continued to be used get lost in 2004?

Member Patten stated that it could easily be said that at the time, with the information that was available, Mr. Rowell was right. Now, it has been presented that it might have been the wrong plan to look at.

Chairman Weathersby called for a vote on whether there has been an error in any order, requirement, decision or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16:

Shawn Crapo – Yes  
Rob Patten – Yes  
Gregg Mikolaities – No

Member Dibble stated that he still thinks they are not voting on the right question. However, he accepts the chair's rule about what the question is going to be. On the question before us, he will vote "yes".

Burt Dibble – Yes  
Patricia Weathersby – Yes

Chair Weathersby asked what he thinks they should vote on.

Member Dibble stated they should vote on the question that is advertised in the agenda. He does not think the words "septic system" will be in the motion.

Speaking to Mr. Rowell, Chair Weathersby asked if the Board has addressed the issue.

Mr. Rowell replied that he feels they have. The cottage can remain. The building department will see that Mr. Putnam installs an appropriate septic system to service the cottage, which he has agreed to do.



**Motion by Shawn Crapo to grant the administrative appeal of Mr. Putnam.**

**Seconded by Rob Patten.**

**Vote: 4-1 Opposed: Gregg Mikolaities**

- 7. John Samonas, Trustee, Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, requests the following variances to allow for the tear down of the main building and tourist cabins and replace them with four (4) new buildings; Section 304.4 for height where less than 29' exists, 36.0'-36.5' is proposed for each of the replacement buildings and 28' is required; from Section 204.4C for dwellings in the Ocean Blvd front setback where 8.5' exists, 9' is proposed and 9.5' is required; from Section 301.5A for removal of existing structures within the buffer and for a porous driveway 24' from the marsh where 50+ is required; and from Section 301.8B (1), Section 301.8B (2) and Section 301.8B (7) for removal of existing structures within the buffer and for building (#1) within 64' of the buffer, building (#2) within 80' of the buffer, building (#3) within 82' of the buffer and building (#4) within 84' of the buffer where 75' is required and replacement of existing septic with the 100' buffer. Property is in the General Residence, Coastal Overlay District. Case #36-2018.**

- **Request a continuance to the next scheduled meeting.**

- 8. John Samonas, Trustee, Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, requests a special exception from Section 301.7B and 301.8B for a driveway inside the 75' and 100' wetlands buffer. Property is in the General Residence, Coastal Overlay District. Case #37-2018. Request a continuance to the next scheduled meeting.**

- 9. Ocean View Trust, Timothy E. Sanborn, Trustee for property owned and located at 753 Ocean Blvd, Tax Map 23.1, Lot 16, requests an Administrative Appeal from the building inspector's email dated August 7, 2018. Property is in the General Residence, Coastal Overlay Districts. Case #38-2018.**

- **Addressed with application 1 above.**

- **Other Business**

Chair Weathersby asked if there has been any progress with the Board's amendment to the Rules of Procedure.

Planning/Zoning Administrator Reed noted that Attorney Donovan has stated that he will have something for the October meeting.



Referring to the building inspector's letter, Mr. Putnam stated that #2, 3, 4 and 5 do not apply anymore. That wasn't addressed at this meeting.

Vice-Chair Crapo asked if the Board's ruling saying there was an error basically undoes the whole letter. It acts as if the letter was not issued? He further explained that the Board just found an error. The Board's vote, 4 to 1, basically nullifies the June 18<sup>th</sup> letter but procedure wise, the applicant could walk back in, reapply and the building department will re-review the application. If they still find that some of these things are still in error they will issue a new notice of decision. If the applicant has an issue with that notice then that would be appealed.

- The Board discussed communications and emails received regarding meetings and how members would like to be contacted.

### **Adjournment**

**Motion by Patricia Weathersby to adjourn at 11:20 p.m. Seconded by Shawn Crapo. All in favor.**

***\*All corresponding files and documents may be viewed at the Building Department, Rye Town Hall.***

Respectfully Submitted,  
Dyana F. Ledger



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/Owner:** William & Beverly MacLeod of 77 Sunset Rock Rd., Andover MA

**Property:** 1174 Ocean Blvd, Tax Map 19.4, lot 94

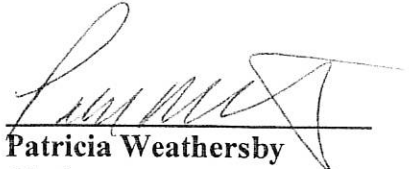
**Application case:** Case # 31-2018

**Date of decision:** September 19, 2018

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

- Section 603.1 for expansion of a non-conforming structure; and
- Section 204.3 for a deck 13' from the side property line.

Each variance was granted upon continued compliance with the conditions set forth in the letter of the Rye Conservation Commission dated September 19, 2018 (attached hereto).



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:**

Ed & Beth Parolisi

**Property:**

24 Concord Point, Tax Map 17.4, Lot 47  
Single Residence District, Coastal Overlay and SHFA, Zone AO

**Application case:**

Case # 34-2018

**Date of decision:**

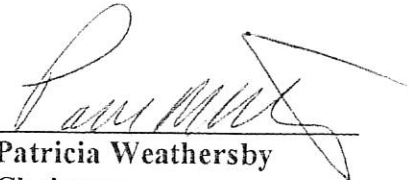
September 19, 2018

**Decision:**

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

- Section 204.3 B for a generator 13.5' from the side boundary.

The variance was granted conditioned upon the fastening down of the generator and continued compliance with the letter of the Rye Conservation Commission dated September 19, 2018 (attached hereto).

  
**Patricia Weathersby**  
**Chairman**

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



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

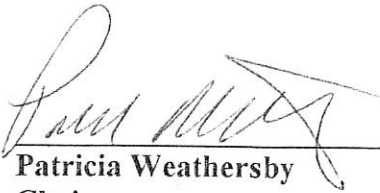
**Applicant/ Owner:** Brian Putnam

**Property:** 2 Park Ridge Ave, Tax Map 17.3, Lot 17  
General Residence District, Coastal Overlay

**Application case:** Case # 33-2018

**Date of decision:** September 19, 2018

**Decision:** The Board voted 4-1 to grant the administrative appeal.



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:**

John Samonas, Trustee, Samonas, Realty Trust  
111 Bow Street, Portsmouth NH

**Property:**

1215 Ocean Blvd, Tax Map 17.3, Lot 6  
Business and General Districts and Coastal Overlay

**Application case:**


Cases # 36-2018 and 37-2018

**Date of decision:**

September 5, 2018

**Decision:**

The Board voted 5-0 to continue the applications to October 3, 2018.

  
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:** Chris Stafford

**Owner:** Elizabeth Hoffman

**Property:** 17 Brackett Road, Tax Map 22, lot 17

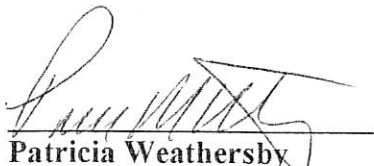
**Application case:** Case # 32-2018

**Date of decision:** September 19, 2018

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

- Section 301.8 B (1) for fill within the 100' wetlands setback

The variance was granted upon continued compliance with the letter of the Rye Conservation Commission dated August 1, 2018 (attached hereto).

  
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:** Edward & Donna Theobald

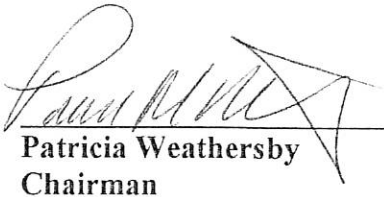
**Property:** 20 Brackett Road, Tax Map 22, Lot 87

**Application case:** Case # 35-2018

**Date of decision:** September 19, 2018

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

- Section 301.8B(1) & (7) for a one-story 12' x 12' gazebo



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.*