

**TOWN OF RYE – BOARD of ADJUSTMENT
MEETING**

**Wednesday, April 4, 2018
7:00 p.m. – Rye Town Hall**

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Clerk Burt Dibble, Patrick Driscoll, Alternates Gregg Mikolaities and Charles Hoyt.**

***Others Present:* Planning Administrator Kimberly Reed**

I. Call to Order and Pledge of Allegiance

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

II. Approval of Minutes: March 14, 2018

- Tabled to the May meeting.

III. Applications:

Motion by Shawn Crapo to continue the application of Alice M Lavoie for 0 Richard Road to the May meeting. Seconded by Burt Dibble. All in favor.

Motion by Shawn Crapo to continue the application of Charles and Judith Sampson for 300 Pioneer Road to the May meeting. Seconded by Burt Dibble.

Vote: 4-0-1 Abstained: Patrick Driscoll

- 1. Lavoie Alice M Rev Trust, Alice M Lavoie Trustee of Epping, NH for property owned and located at 0 Richard Road, Tax Map 5.2, Lot 156, requests Variances from Section 601 to build on a non-conforming vacant lot; from Section 304.3 for construction in a non-conforming vacant lot in the Coastal District; from Section 204.3F for lot size of 8,395sf where 44,000sf is required and from Section 204.3C for a walkway within the 30' front yard setback. **Property in the General and Coastal Overlay Districts. Case #47-2017.****

- **Request continuance to May 2, 2018.**

Members Seated: Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Gregg Mikolaities

2. **Degnan Family Revocable Trust, Tom & Tracy Degnan for property owned and located at 41 Park Ridge Road, Tax Map 19.4, Lot 20,** request Variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3A for construction in the rear setback where 15.6' exists, 11.7' is proposed and 30' is required; from Section 204.3B for construction in the side setback where 17.9' exists, 12.09' is proposed and 20' is required; from Section 305.5 for dwelling coverage greater than 15% where 1241sf exists, 1273sf is proposed and 1267sf is allowed. **Property is in the General Residence, Coastal Overlay District. Case #06-2018.**

Tom Degnan, applicant, spoke to the Board about the expansion of the kitchen on a single story addition. The relief being requested is for the rear and side line setback for a 20sf section of the building. There is a doorway and deck with roof on the opposite side of the bump-out. The proposal is to fill that in to expand and square off the kitchen. (He reviewed the location of the addition on the plan for the Board.) He noted that he has reached out to all the abutters and they were in favor of the proposal.

Member Driscoll noted that on the notice it says 17.9 exists. He asked if it would be less than that.

Mr. Degnan explained the building is not square on the property.

Member Driscoll clarified that the closest point is 15.6, not 17.9.

Chair Weathersby asked what the setback will be on the side.

Mr. Degnan stated on the side it will be 12.09ft and on the rear it will be 11.7ft.

Chair Weathersby asked if the math was done for the dwelling coverage.

Mr. Degnan commented that he did not do the math.

Member Dibble noted that the percentage is 15.07.

Chair Weathersby opened to the public for comments or questions. Hearing none, she closed the public hearing at 7:32 p.m.

Member Crapo stated he does not think it is asking too much to square this off. Mr. Degnan submitted his rationale and criteria in the packet. He continued it is a modest addition and is not affecting too much on the ground.

The other members of the Board did not have any issues with the proposal.

Chair Weathersby called for a vote for variances to Sections 603.1, (expansion) 204.3A, (11.7ft rear setback) and 204.3B (12.09ft side setback), 305.5 (dwelling coverage 15.07%):

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Patrick Driscoll – 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
Patrick Driscoll – 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
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the relief as requested and presented, (11.7ft for the rear setback, 12.09ft for the side setback), with the modifications to the notice being 15.07% proposed lot coverage. Seconded by Patrick Driscoll. All in favor.

Note: Patrick Driscoll recused himself for the following case. Charles Hoyt was seated.

Members Seated: Patricia Weathersby, Shawn Crapo, Burt Dibble, Gregg Mikolaities and Patrick Driscoll.

3. **Scott & Amy Komisarek of 38 Fieldstone Lane, Candia NH for property owned and located at 80 Baker Ave, Tax Map 5.2, Lot 134, request Variances from Section 603.1 for expansion on non-conforming structure; from Section 204.3B for deck, pergola, AC unit and rinsing station in the side setback of 5' where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #08-2018.**

Scott Komisarek, applicant, presented the plan to expand the deck and build a patio with a rinsing station on the east end of the house. He pointed out the plan also shows an a/c unit that will be added.

Chair Weathersby noted the proposed lot coverage is 29.1%.

Vice-Chair Crapo clarified this is going to be a wraparound deck with a patio and a/c unit will be on pavers.

Mr. Komisarek confirmed.

Chair Weathersby asked about the surface of the patio.

Mr. Komisarek replied it will be stone.

Vice-Chair Crapo asked if the generator has to be a certain distance from the house.

Joe Tucker, resident, noted that there have been changes in the regulations because the new models do not require that distance.

Member Dibble noted that the building inspector's letter did not mention a distance for the generator from the side of the house. He did not call it out as requiring a 5ft space.

Chair Weathersby asked if there is a house on the lot that is closest to the proposed addition.

Mr. Komisarek confirmed. (He reviewed the location of the neighbor's house, along with the location of his additions on the plan for the Board.)

Chair Weathersby opened to the public for comments or questions.

Chair Weathersby asked if the rinsing station is in the side setback.

Mr. Komisarek replied no.

Chair Weathersby commented that it is a little in the rear setback, using Baker as the front.

There was discussion on corner lots.

Chair Weathersby suggested they give relief for both (side and rear setbacks) and sort out the wording in the ordinance with Attorney Donovan. Relief would be for 204.3 A and B.

Vice-Chair Crapo suggested referencing the boundary line and the allowed distance.

Chair Weathersby noted that Baker will be considered north.

Hearing no further comments or questions, Chair Weathersby closed the public hearing at 8:41 p.m.

Vice-Chair Crapo commented that the proposal is modest and reasonable.

Chair Weathersby stated it seems like the logical place to put it.

The other members did not have any issues with the proposal

Chair Weathersby called for a vote for variances to Sections 603.1, (expansion) 204.3A and/or 204.3B (deck with pergola, patio, a/c unit, generator and rising station for the south side setback. Rinsing station for the east side setback.):

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

Shawn Crapo - Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo - Yes
Charles Hoyt– Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo - Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Charles Hoyt – 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
Charles Hoyt – 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
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo - Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Charles Hoyt – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the relief to Scott and Amy Komisarek for property located at 80 Baker Avenue for variances to 603.1, expansion of a non-conforming structure; 204.3A and/or 204.3B for deck, pergola, A/C unit and rinsing station in the south side setback; and rinsing station in the east side setback. Seconded by Charles Hoyt. All in favor.

- 4. Charles & Judith Sampson of Portsmouth, NH for property owned and located at 300 Pioneer Road, Tax Map 24, Lot 11, request Variances from Section 301.8B (1) & (7) for a garage and breezeway 31' within tidal wetlands buffer where 100' is required and for a 12'x14' three season room deck with stairs within the 100' tidal wetlands buffer. Property is in the Single Residence District. Case #267-2017.**

• Request continuance to May 2, 2018

- 5. Carey & Giampa Realty Trust for property owned and located at 655 Wallis Road, Tax Map 16, Lot 22, request Waivers from the Building Code Section 7.9.2 to replace a septic system that does not comply with construction design criteria, from Section 7.9.3.1 for a system that does not meet the 6ft of separation from ledge to the bottom of the effluent; from Section 7.9.3.2 for a system that has a 2.5' separation from the seasonal high water table where 4' is required; and a Variance from Section 202.5 for system 11.1' in the side yard setback where 20' is required. Property is in the Single Residence District. Case #09-2018.**

Matt Cianella, Millennial engineering, presented to the Board. The site is the existing real estate office at 655 Wallis Road. After the lot was created in 1983, it was originally comprised of the Rye Post Office and a duplex residential unit. The lot was subdivided through the middle to create two lots. The Planning Board signed off on the two lots; however, the owner at that time neglected to go through the process of getting State subdivision approval. The property has changed hands several times since then. The current owner pulled a permit with the building department for a small addition off the back of the building. Once construction was started, they were told that they had to replace the septic because the existing system is on the abutting property and is shared between the two buildings currently; or it had to be shown that the system was sufficient in size for approval. The State has been contacted and they have no record of approving the plan for the existing septic. The Town is requiring a septic to be designed and installed. The owner authorized the process of designing a new septic. Dennis Plante, Town's

septic consultant, has witnessed the test pits. The septic design has been submitted to the Town. The Town has sent the project back to the ZBA for the waivers that are being requested. In addition, the Town has said that because subdivision approval was never granted, the owner has to go through the subdivision process as well. The subdivision plans have been submitted to NH DES. They are ready to approve the subdivision but would like to approve the septic system plans at the same time. He continued that the septic is going to be built up in the back of the property just off the edge of the pavement. If the system is raised any higher than it is shown on the design plans, to accommodate the Town's separation to ledge, the system would be about 4.5 to 5ft out of the ground. The fill extension would spill out onto the edge of the pavement where there is currently parking. One of the issues is that there are parking spaces in the back and that is the only place the septic can go. They do not want to lose more pavement because the parking will become even more of an issue. They are looking to keep the system down so they do not have to disrupt the paved parking in the rear. He noted that the ground is currently 37" down to ledge. The system is proposed to be 2.5ft above the water table, which is at ledge.

Mr. Cianella reviewed the design for the proposed septic system.

Member Mikolaities asked if there was any way to make the leachfield smaller to get it 2ft above the ground without impacting the pavement.

Mr. Cianella stated that they never oversize a system, unless they are specifically instructed to. In this case, it is designed for exactly 300 gallons. There is really no way to reduce the width of the field. He noted they may be able to reduce the field by 1.5ft in width; however, that would increase the length and further impact the setbacks on the sides. The first rendition of the plan showed a retaining wall along the edge of the pavement to maximize the use of the field. NH DES does not allow retaining walls when there is another option. DES requested that the field be slightly moved back to eliminate the wall. (He pointed out on the plan the location of the ledge in the rear.)

Chair Weathersby asked if they considered systems that can be located under pavement and driven on so it could go in the front.

Mr. Cianella noted that in the subdivision process it has to be proved that there is a 4,000sf area for a potential replacement area. Test pits were done and witnessed by DES. The test pits in that area were barely passable. The consensus from the State was that if this was submitted in 1983 it would have passed. That is how they were able to justify the approval now. He noted that the system could be designed to go under pavement. It would require an additional 6 to 12 inches of fill material and a fabric on top to spread the weight. The whole parking lot would have to be raised. He also noted that they looked at possibly locating the system in the front but the ledge in that area is too shallow.

Vice-Chair Crapo asked if they are allowed to remove ledge.

Mr. Cianella explained that they are not allowed if it is for the purposes of creating separation. If it is to get a septic tank in they can. The State requires a minimum of 18 inches of natural soil. They want 36 inches, which is what Rye is looking for in its regulations. If there is only 18 inches, DES will allow another 18 inches of fill. In this case, there is 37 inches so fill does not have to be brought in; however, in the front there is shallow ledge and everything has to be raised. In the proposed location, it is being raised up 2.5ft over the existing ground. He pointed out that raising the entire parking lot would create a significant grade change and drainage patterns would change. It would impact the way the parking lot would function.

Member Driscoll pointed out that when he visited the site he noticed that there was no signage stating that the property was going before the ZBA, which is required. Also, there is no indication of where the proposed septic is going. He could not even find the test pits.

Mr. Cianella explained the field is not staked that way. The test pits should have been noticeable because it was pretty well disturbed in that area.

Member Driscoll asked if the field would be located behind the initial row of pines.

Mr. Cianella confirmed. The field will be located right on the edge of the pavement.

Member Driscoll asked if the field is going to be raised 2.5ft from the top of grade.

Mr. Cianella confirmed. He noted that the high point going towards the driveway is about 2.5ft. At the driveway, it is about 3.5 to 4ft.

Member Driscoll asked if there was any consideration of drainage coming off the high point to the abutters' lots on either side. Have there been any thoughts on where that water is going to go, especially, with the large ledge outcroppings?

Mr. Cianella stated there are not ledge outcroppings sticking out on the sides of the ground in that location. There is a large 20ft strip on each side of grass that would allow any runoff to soak into the ground. The entire site is loamed and seeded with grass so water should not be running off of it in any excessive amount.

Vice-Chair Crapo asked what is required from the neighbor. The southwest property shares the existing septic system. He asked if that system will now have to come out.

Mr. Cianella explained this will extend the life of that system because it will receive no more flow from this property. That system should function longer than if it were to remain tied to this property. The ramifications are that the neighboring lot does not have subdivision approval and they will have the same issue when they upgrade their septic sometime in the future. He further explained the pipes will be severed and capped at the property line to that system.

Vice-Chair Crapo asked if the State is essentially only approving half of the subdivision at this time.

Mr. Cianella confirmed. DES is not requiring the abutting property to do anything at this time. They will deal with that property at a later date when they go in for septic approval.

Member Mikolaities stated that this is a four bedroom septic design for 195 gallons. He asked if this is going to be converted someday to a four bedroom house with a septic system that is 2ft above ledge. He commented that he is looking at a design that is oversized.

Mr. Cianella explained that the applicant is not putting this in because he wants to. He is being forced to do this. The applicant has no intentions, at this point, of converting it to residential. It is a commercial office. He cannot speak to the future if the building ever gets sold. At this time, the property is a commercial use. The size of the system is based on State minimum standards.

Member Mikolaities asked if they can get a waiver to that standard.

Mr. Cianella replied no. The State makes them do this under a max feasible compliance if it can be shown that it will fit.

Vice-Chair Crapo asked what drives the count for 13 employees.

Mr. Cianella explained that there are rarely 13 employees there at any given time. The count is calculated by the number of desks in offices contained in the building.

Chair Weathersby commented that if this were to be approved there could be a condition that it remain commercial. If they wanted to change it to residential, they would have to go before the Board again.

Mr. Cianella explained the leachfield design.

Vice-Chair Crapo asked if the Geomat system would be an option for this property to not drive up the height.

Mr. Cianella replied that all they save with that is the thickness of the pipes. The system still needs to be pretty low in order to keep the fill out. Also, that leachfield cannot be used without incorporating pre-treatment, which requires the Advanced Onsite Solutions tank and this is \$20,000 more than a normal tank. The waste that leaves the tank and is sent to the leachfield is basically clean drinking water quality. It goes through a treatment process in the tank before it is sent to the field. With the proposed leachfield, it has been shown that the cleaning process does not need to take place in the tank to get that same quality.

Chair Weathersby asked if the Advanced Onsite Solutions System, with Geomat, would be a safer system for this property with it being so close to the edge.

Mr. Cianella replied no. That treatment takes place in the field with geomatt. For Advanced Onsite Solutions all treatment takes place within the tank and the field itself is just a way to disperse the clean fluid that has been treated. The sizing of the field and number of pipes is based on the flow based on what is needed for that treatment to take place. In a situation where there is a silty clay soil, there would be the exact number of pipes but a much bigger field because it takes longer for the water to seep into the ground.

Vice-Chair Crapo pointed out that clay soil will allow infiltration better than ledge.

Mr. Cianella explained they are not talking about ledge being the restrictive feature because the State allows a system to be that close to ledge. It goes down and hits the ledge, travels along the ledge and through the soil that sits on the ledge. Whereas with clay, it is creating a bathtub where the water cannot travel horizontally.

Member Mikolaities stated that he is fine with 195 gallons; however, maybe something will be put in later that is going to use that entire capacity. The Board gives an inch and maybe six months from now it turns into something else. He commented that everything is oversized. He questions why they would do that for 195 gallons per day.

Mr. Cianella noted that the property will be cut off from the old septic system that is currently in the ground; closer to the ledge. What is being proposed is an improvement over that situation. It will take the flow from this site out of that old system and put it into a better system that provides better treatment and bring it more into compliance.

Vice-Chair Crapo pointed out the existing system is twenty plus years old.

Chair Weathersby clarified that the new system is being installed and they are disconnecting from the old system.

Mr. Cianella confirmed. This is being required by DES as a condition of the subdivision approval, as well as a requirement by the Town.

Chair Weathersby opened to the public in support of the application. Hearing no comments, she opened to the public in opposition.

Chris Korth, 24 Tehias Street, stated that his property is directly behind Carey and Giampa. He noted that he is concerned that there is a request to have the field closer to his property line by 9ft. The Rye Ordinance talks about 20ft and they are requesting 11ft. The area for the proposed location is heavily travelled by his children and the neighborhood's children. His concern is that if it is a low flow that perhaps there would be a future seepage issue. In the event

it does become a residential property and it increases to 300 gallons per day, the seepage may become an issue and the children would become exposed to it. He noted that the reason it is being asked to be 9ft from the property line is because the mound would be impeding upon the parking spaces. From what he understands those spaces are not going to be utilized to their full capacity anyways. It is being asked to put the seepage closer to the property line to provide more parking spaces. He is opposed to that.

Mike Flynn, 651 Wallis Road, stated he did not see the test pits, anything marked out or this advertised in front of the property. He asked how many vents are going to be in this system and where they will be located. He asked how far from his property the system will be located. (His property is to the right looking at the face of the real estate building.)

Referring to Mr. Korth's property, Mr. M explained that the system is significantly further back than 9ft. The system is not proposed to be 9ft from the lot line. It is roughly 35 to 40ft back from the rear lot line.

Mr. Korth asked where the distance is for the variance request from 202.5, where there is an encroachment onto the property line of 9ft.

Vice-Chair Crapo explained it is a side setback.

Mr. Cianella explained that none of the septic is within the side setback.

Chair Weathersby explained the system is not within 20ft of any setback line.

Mr. Cianella stated that the building inspector's letter is not correct. The original plan that was submitted showed a tank that was within the side yard setback. The building inspector indicated that this was technically part of the building and he asked for it to be moved. The revised plan, which is the base of the application, shows the tanks under the existing pavement; 20.5ft from the lot line. No side setback relief is needed. (He pointed out the location of the vents on the plan for the abutters.)

Vice-Chair Crapo noted that the proposed location for the system is wooded and will need to be cleared with grass put on top. There will be an obligation to keep the tank and field area mowed.

Mr. Cianella explained that is why they have the 5ft over dig on the field. It will help to remove any roots and they will not be required to put in any plantings, except grass. It will have to be maintained and mowed. He noted that the area that the system is going to be located is not a new clearing. It was approved for clearing by the Planning Board for parking spaces. For the small addition on the back, the Planning Board wanted parking spaces in the back. Based on the ledge probes and the other characteristics of the property, there is no other place for the leachfield. There will be striped parking in the front and there will be non-striped parking along the edge of

the curbing that will make up the number of spaces required. He commented that the impervious surface will not be increasing.

Member Driscoll asked if the Planning Board has seen the change.

Mr. Cianella replied that the building Inspector has seen it. They are in the process of filing with the Planning Board to make that change. The plan has to go back to the Planning Board to get the approval for the revised parking spaces.

Chair Weathersby asked if the system has pumps and if there will be a generator.

Mr. Cianella replied there would not be a generator. The end chambers have enough capacity that when there is a power loss there are multiple days worth of storage.

Member Driscoll asked how many trees are being taken down.

Mr. Cianella replied that he does not have an exact count. It will be in the ballpark of about 10 trees.

Speaking to the abutters, Member Driscoll asked for their feedback now that it has been explained that it will not be encroaching into the side or rear setback.

Mr. Korth stated there is going to be a visible mound. There will be a lack of trees and some of the privacy will go away. He thinks this will detract from the overall value of his property. He reiterated that the neighborhood children walk through there a lot. It is a nice thing for them to have. He continued that he has no confidence that this is going to remain commercial. If it does become a private residence the flow will increase. While it is still a ways from the property line, there is still a concern about 300 gallons being pumped through there on a daily basis.

Chair Weathersby asked if there is a legal right established for the pathway.

Mr. Flynn noted that having grown up in this area he knows that this was the main cut through to the post office for everyone that was in the Talton Woods neighborhood. He asked what their recourse will be if there is a problem with the system.

Mr. Cianella explained the system is currently oversized for the intended use and the applicants do not have any intentions of changing it. If the variances are not granted, the field would have to be raised. The amount of fill would be increased. The number of trees that would be taken down would be increased and it would impact the driveway. The variances that are being requested actually minimize tree removal by keeping the field as low as possible and keeping the fill down. There is an existing structure on the property. They are entitled to have a system that functions and this is the only place that it could go. The question is really what the septic will look like.

Speaking to Planning Administrator Reed, Vice-Chair Crapo asked if the property is in the commercial district.

Planning Administrator Reed pointed out that in looking at the tax card it is listed as commercial.

Chair Weathersby asked if the property was posted for the ZBA meeting.

Jim Giampa, applicant, noted that they did not receive a sign from the building department or they would have posted.

Hearing no further comments from the public, Chair Weathersby closed the public hearing at 8:43 p.m.

After reviewing the ordinance, Chair Weathersby noted that if they were going to use the property as a residence, they would have to get a variance to use it as residential from the ZBA. She pointed out this is in Section 211.1, requirements in the Commercial District. It says that single-family dwellings and two-family dwellings are not permitted.

The Board discussed a possible condition to limit the use on the septic system.

Chair Weathersby stated it is a well designed system. It seems to be in the best location for what has been presented.

Member Driscoll stated that he does not think the applicant is malicious in anything they are doing. It seems like everything they are doing is exactly in line with what they need to do to make this site work. He understands the concerns of the abutters and where the system is located. Raising the system and putting a big mound in the middle that people are going to have to drive up on to park on is going to be a nightmare and does not make any sense at all. The Board's concerns are valid that these people might not use it as residential but another owner might be. It seems that if there is a condition, it would be a straightforward case that is well thought out. He is in favor of granting the application, as long as that protection is on it.

Chair Weathersby stated her concern is the distance to the ledge. That is what is driving the condition for her; to help protect that situation from having too much flow with that small amount of separation.

Member Mikolaities agreed with Member Driscoll. It is a good design. He is just thinking about a year from now.

Chair Weathersby asked if the Board would like to consider a condition that the property remain for offices.

Chair Weathersby opened to Mr. Giampa to speak to the Board.

Mr. Giampa stated that he has no intention of changing the use of the property. No one will be able to get a house permit there without having to go before the Board. He is fine with that condition.

Vice-Chair Crapo commented that if they were not doing the addition it would not have triggered this whole thing. They would have continued to share the system with the building next door. The building next door is two rental units with two families. That old system is probably at its max. The situation is definitely going to improve with this.

Planning Administrator Reed noted that there were two letters from the Building Inspector. The 30th letter trumps the 24th. The 30th takes out 7.9.6, as well as the zoning ordinance 202.5. The application only calls for 7.9.3.1 and 7.9.3.2. She noted that the application is in line with the building inspectors January 30th letter.

Chairman Weathersby called for a vote for Building Code relief to 7.9.3.1 and 7.9.3.2:

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

Shawn Crapo – Yes

Patrick Driscoll – Yes

Gregg Mikolaities – Yes

Burt Dibble – Yes

Patricia Weathersby – Yes

Motion by Burt Dibble to grant relief from the Rye Building Code, as applied for, to Section 7.9.3.1 and 7.9.3.2 with the condition that it remain a professional office. Seconded by Shawn Crapo. All in favor.

- 6. Stephen & Michele Smith of Hollis, NH for property owned and located at 166 Perkins Road, Tax Map 5.2, Lot 189, requests Variances from Section 603.1 to build onto a non-conforming structure; from Section 203.3 for a deck and pergola in the side yard setback where 25' exists, 19' is proposed and 20' is required; and from Section 304.5 for coverage greater than 30%. Property is in the General Residence, Coastal Overlay District. Case 310-2018.**

Stephen Smith, applicant, presented his proposal to the Board for a deck off the back of the house 18ft wide by 16ft out towards the back yard with a freestanding pergola on top that is 16x16'. The pergola will not be attached to the house. It will just be attached to the deck. There will be some slight excavation that will take place for the footings for the deck. (He reviewed the

proposal on the plan for the Board.) He noted that the abutters are in favor of the project. The lot is 10,265sf. A 30% coverage would be 3,079sf. With the deck, the total impervious square footage would be at approximately 3,096sf, which is over the 30% of the 10,265sf. It is about 31%.

Member Driscoll noted there are some plantings in the setback, in between the fence and the house in the back. He asked if those will remain.

Mr. Smith confirmed. He explained those are on the property line and act as a buffer. He and the abutters are both in agreement that the vegetation will stay.

The Board reviewed the proposal.

Mr. Smith summarized that it will be an improvement and will enhance the property.

Chair Weathersby opened to the public in favor of the application. No comments were heard. She opened to the public in opposition to the application. Hearing no comments, she closed the public hearing at 9:12 p.m.

Member Mikolaities asked the percentage of the coverage.

Chair Weathersby noted that they calculated it at 30.2%.

Member Driscoll stated it is well done and well thought out. He commends the applicant and the abutters for talking about the project and coming to a decent conclusion before coming to the Board. He thinks it will be a really nice addition to the lot.

Vice-Chair Crapo stated he is familiar with the lot. The back part is really the only place that a family can enjoy. The front yard is subject to traffic. There would not be peace or enjoyment on the front patio. He noted the neighbors are real tight and they are working together.

Chair Weathersby agreed. She thinks it is reasonable and modest. She called for a vote on three variances to Sections 603.1, expansion of a non-conforming structure, 203.3 (A or B- It was agreed that the chair would clarify with town counsel and put the correct variance in the Notice of Decision.), for the deck and pergola in the side setback, (there was discussion on whether the lot has two side yards and two fronts or if it is considered to have two rear yards, which would require 30ft. The members agreed that whether it is a side or rear yard it would not affect their vote on the proposal.), and 304.5, for coverage greater than 30%:

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

Shawn Crapo - Yes

Patrick Driscoll – Yes

Gregg Mikolaities – Yes

Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Patrick Driscoll – 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
Patrick Driscoll – 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
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to grant the requested variance relief to Section 603.1, 203.3 and 304.5 to Stephen and Michele Smith as requested. Seconded by Shawn Crapo. All in favor.

7. Samuel J. Demarco of 961 Washington Road, Tax Map 11, Lot 1, request Variances from Section 203.1A and Section 202.9B to permit multi-dwelling/apartment house on a lot in the Single Residence District and from a Waiver from Building Code Section 7.9.6.7 for use of a septic system until a new septic system is installed. Property is in the Single Residence District. Case #11-2018.

Attorney Monica Kiezer, representing the applicant, spoke to the Board. She stated that she has brought some photos of the property. There are some abutters present and she has allowed them to review the narrative.

Vice-Chair Crapo noted that he has been plowing and mowing for the applicant's property. He may or may not take on mowing accounts this summer. He does not feel that any decision he makes on the application would have any bearing based on that relationship.

Chair Weathersby asked if he feels he can be fair and impartial.

Vice-Chair Crapo replied that he does.

Chair Weathersby asked the Board if they would like to discuss whether Vice-Chair Crapo should recuse himself.

No comments from the Board were heard.

Vice-Chair Crapo noted that he discussed this with the applicant's counsel. If they had felt strongly that they wanted him to recuse himself he would but he believes this has been discussed.

Attorney Kiezer confirmed that they are fine with him sitting. She continued that the first photo is a photo she found at the Rye Historical Society, which shows the house. It looks to be rather old. The second set of pictures is from a photo album when Mr. Demarco purchased the house in 1989. The second page gives an idea of what the front of the property looked like in 1989. At the bottom of the page shows a building that they call the "carriage house". The third page is the rear of the property from 1989. The next few pages give an idea of some of the work that was undertaken in 1989. The last page is what the property looks like today.

Attorney Kiezer stated that the way the application was worded, it may have seemed like the applicant was looking to build a new structure. That is not the intention. This is another scenario of cleaning up old business and applying for an after-the-fact variance for what is already there at the direction of the building inspector. There is an affidavit in the packet from Mr. Demarco that sets out, under oath, the history. To summarize, Mr. Demarco purchased the house in 1989. He executed a purchase and sale agreement contingent upon the addition of an apartment. Mr. Demarco then got a building permit for an addition of an apartment. There were some plans submitted at that time from Architect Richard Corell. She noted that the plans and the building permit are in the packets. At the time Mr. Demarco bought the property, there was a 1975 septic in place. There were a number of bedrooms in the main house (1773 house). There was an in-law apartment in the main house that was there when he purchased the home. The carriage house had a couple of bedrooms in it and then there was the barn. Mr. Demarco was intending to add an apartment to the carriage house and that is where the initial work took shape. During the time that Mr. Demarco engaged in renovating to add the apartment, he also removed some bedrooms from the main house. The main work was done in 1989 to 1990. There was a renewal of the building permit in 1990 and 1991. The building inspector at that time, Mr. Jenness, went to the property and inspected what had been done. In looking at the property, around the back is a whole other level; a walkout. That is the same for the barn, the carriage house and the 1773 house. Mr. Demarco relayed that Mr. Jenness said there was a plan with the initial permits that they were going to have garage parking on the first floor of the carriage house. When they undertook these extensive renovations to the barn, they realized there was actually ample room in the barn underneath. Mr. Demarco's affidavit explains that Mr. Jenness said that the cars could be relocated to the barn and the first floor of the carriage house could be finished off as living space, instead of being used as the garage. Mr. Demarco went forward with that. To clarify, there was the original house with the in-law apartment, there was a permit for the additional apartment, which was going to be on the second floor of the carriage house and then there was the idea of putting some living space on the first floor of the carriage house. In 1995, there was an addition in the rear of the carriage house. She noted that Mr. Demarco's affidavit spells out those approvals. The one that was at the suggestion of Mr. Jenness may not have involved any paper. Other permits were obtained by Mr. Demarco but they are not available now. He attributes that to the age of the file and the fact that there has been some computerization of things since.

Attorney Kiezer stated that one of the things that Mr. Demarco remembers specifically was the issue of bed and board. There appears to have been some type of occupation occurring in the carriage house and there were bedrooms above. When Mr. Demarco met with Mr. Jenness in

1989 there was some discussion that seemed to suggest that a building permit could be granted without any relief at that time. She noted that a single person lives in each apartment. There are some memos in the file so this was an issue that the Town was aware of as early as 1989, 1991 and 1995, when the work was done. There was some concern that was documented by Susan Labrie in 2001. There is some additional correspondence from her in 2009, where she wants to inspect the property and visit the property with the fire department to make sure it is safe. There has been a similar process, every five years from 1995 that happened as well. She pointed out there was a similar conversation with Peter Rowell when he became involved, which was the result of a tenant complaint to the building department. Mr. Rowell has drawn Mr. Demarco's attention to this matter over the last couple of years. Mr. Demarco has been addressing at Mr. Rowell's direction throughout. There have been efforts to make some upgrades, which are described in the affidavit. She continued that Mr. Demarco has commissioned the design of a new septic even though there is nothing wrong with the one that is there. The septic plan that is before the Board is designed to accommodate what is on the property now. The Board has an existing condition plan showing what currently exists. She stated the septic that is currently there has two tanks. There is a dry well that was there for either the in-law apartment or the original house. The septic is serviced by Philbrick's, now Chrisco Septic, and is maintained regularly. She reiterated the septic is old and Mr. Demarco is going to install the new plan at the Board's direction.

She stated that although the property is non-conforming, as it exists now, it evolved in a way that was not Mr. Demarco's fault and to revert it would create a considerable hardship. There is housing available there for five people. Mr. Demarco is a really good and responsible manager of his property. He is there often and his grandson is there to help. This farm has been a real source of pride for them. Mr. Demarco's daughter used to ride horses and there was a riding school there at one time. Mr. Demarco was granted a special exception in the 70's for the riding school but he did not continue the school. She noted that Mr. Demarco does not run any business on the farm; however, there are people who have boarded their horses there in the past.

Member Mikolaities asked what the discrepancy is between what Bill Jenness signed off on and what Mr. Demarco thinks happened.

Attorney Kiezer explained that Mr. Demarco had two units when he first bought the place; the main house and the in-law apartment. There was a permit granted in 1989 by Bill Jenness that appear to be associated with the plans by Richard Corell, which called for two bedrooms on the second floor of the carriage house. It appears that what was approved by Mr. Jenness was a third living space with two bedrooms. Ultimately, that space got finished that makes it more like a one bedroom and an office. Then Mr. Jenness inspected the property and suggested that the first floor of the carriage house be finished off as living space, so that would make it four units (overall). Originally, that space was for Mr. Demarco's daughter. His daughter was living on the first floor and it was open to the apartment upstairs. Once his daughter left home the apartment was closed off from the apartment upstairs and it became four separate living spaces, which was before 1995. She continued that in 1995 they finished the rear walkout under the carriage house, making it five units (overall).

Chair Weathersby asked if there are any permits for the fifth unit.

Attorney Kiezer stated that Mr. Demarco has said that he got that one approved; however, they cannot find any evidence of that.

Chair Weathersby asked about permits for the fourth unit.

Attorney Kiezer noted that Mr. Demarco has said that Mr. Jenness just told him that it would be a good idea. It was just a verbal agreement that it could be done.

Referring to the letter from Susan Zarlengo-Labrie (building inspector at that time) from 2002, Member Mikolaities noted that it states the property was a three bedroom house with three apartments. He asked if there is a house plus five apartments.

Attorney Kiezer clarified that there is a house and four apartments.

Chair Weathersby explained that the main house has an apartment in it and there are three apartments in the carriage house.

Attorney Kiezer reiterated that Mr. Demarco maintains and stays at the property. The second floor of the carriage house is for him and his wife. Only one person lives in each of the other units.

Referring to the septic, Member Dibble asked the location of the current tanks.

Attorney Kiezer noted they are on the septic plan. (She reviewed the locations of the dry well and the two existing tanks on the plan for the Board.)

Sam Demarco, applicant, noted that once a year the septic is checked and pumped.

Attorney Kiezer pointed out that three tanks are pumped.

Chair Weathersby clarified that they are agreeable to replacing the system.

Attorney Kiezer confirmed.

Member Dibble commented that it looks like the applicant is applying to use the current system.

Attorney Kiezer explained she felt that needed to be applied for because it is there right now and no one is coming to put in the new system tomorrow.

Member Dibble asked if they could get certification that the current system is operating correctly.

Mr. Demarco explained the system was checked and is running fine. There is no sign of any backup of effluent. Mr. Philbrick built and installed the system himself. In order to meet all the new codes, Mr. Rowell (current building inspector) wants a new system installed and that has been agreed to.

Member Dibble asked when the new system will be installed.

Mr. Demarco replied within the next six months.

Member Dibble asked if it would be troublesome to get a written report from Mr. Philbrick stating that he thinks the system is operating properly.

Mr. Demarco replied that he will have him pump and check the system within the week.

Speaking to Mr. Demarco, Attorney Kiezer asked if it is fair to say that Mr. Philbrick does not want to write a report because he is not comfortable.

Mr. Demarco commented that he is not comfortable putting something in writing because of the age of the system.

Chair Weathersby asked if they are planning to replace the system this construction season.

Attorney Kiezer replied yes. If it is required as a condition of approval to be done in six months then it will be done. Mr. Demarco has the financial ability to do it. It is a matter of making sure it is done at the right time and the contractor is available.

Vice-Chair Crapo asked if everything is in place such that the right number of bedrooms have been accounted for. He wants to make sure that whatever system is approved and installed is the right number of bedrooms that the building inspector is interpreting is in all the units.

Attorney Kiezer stated the plan and the leachbed requirement is for 1 two-bedroom dwelling, which is the main house; 1 two-bedroom in-law; and 3 one-bedroom in-laws.

Chair Weathersby asked if there is a difference in the loading for a one-bedroom apartment versus a one-bedroom in-law.

Attorney Kiezer commented that this is just what the septic designer called them. She noted that the State approval has the approved flow of 1275 gallons per day, which matches up with the 1275 gallons per day on the Landry Septic Plan.

Chair Weathersby asked if the plan is ready to be submitted for a permit.

Attorney Kiezer confirmed.

Chair Weathersby pointed out that there is a note on the plan that the property is not condominium units and all units are under single ownership.

Attorney Kiezer noted that DES requires a separate application for condominiums. Mr. Demarco has no intentions of converting the units to condominiums. She stated that she defers to her narrative regarding the five criteria. She has reviewed the Rye Master Plan. It talks a lot about housing opportunities, affordable housing and having older people be able to maintain their homes. This is a way that Mr. Demarco and his family can keep this in their ownership. In terms of it meeting the spirit of the ordinance, it does. The master plan says there are these older non-conforming situations that the Town has. It is not great to have non-conforming things but if they are lost there would be more limited opportunities for people to live affordably. In terms of the other criteria, the narrative addresses that on page 4; congestion, secure from safety, promoting health and general welfare. Specifically addressing congestion, there is this very large circular driveway and there is not a clogging of cars. Despite the fact that there are four tenants living there, it is not readily apparent that this is the case. The safety, panic and other dangers has been addressed by the fire inspections every five years since 1995, as well as the fire and other upgrades that Mr. Rowell directed Mr. Demarco to make. Adequate light and air, there is not going to be a change to the exterior, prevent overcrowding of the land; it is not going to increase the footprint. It is a 10 acre lot. Avoid undue concentration of population; there will not be a jamming of people onto the lot. Adequate provision of transportation, solid waste, sewerage; this has been addressed with the septic plan. Proper use of the natural resources; there is a 10 acre lot all in the back and none of that will be touched. She continued that there will not be any diminution of property values. The place looks great. It looks like the old farmhouse that it was. The way it has been taken care of it has not diminished the property values. Any concerns about some future owner could be addressed with some conditions. Special conditions exist. Mr. Demarco is in this situation because of the history that has been outlined. No fair and substantial relationship exists because all the bases are being covered for the purposes of the ordinance and everything is being made safe. It is a reasonable use, particularly with the way that Mr. Demarco has maintained the property and he is not running any businesses out of the property. Substantial justice will be done. Back to the safety piece, the new septic is going to be a good thing. Because of the extra care that Mr. Demarco has taken and his willingness to address the Board's concerns, she would say that denial wouldn't do a great benefit to the public but it would do significant hardship to Mr. Demarco and his family.

Chair Weathersby suspended the meeting so the Board could discuss whether the next application will be heard.

Motion by Burt Dibble to proceed with the meeting until 11:00 p.m. Seconded by Shawn Crapo. All in favor.

Continuing with the application for Samuel Demarco, Chair Weathersby opened to the public in favor of the application.

Laura Brown, 943 Washington Road, stated that Mr. Demarco is a great neighbor, is quiet and keeps the place immaculate. She just wants to know that if the variances are approved that going forward nothing is going to change and nothing can be added. She asked if someone could add on more apartments or build more buildings if the variances are passed.

Chair Weathersby opened to anyone in opposition.

Ben Brown, former owner of 935 Washington Road, (currently his son owns 935 Washington Rd), stated that he is not necessarily opposed. He stated that he is a landlord and knows that it can't be said that they will only rent to one person. He continued that Mr. Demarco is a great landlord and great neighbor. However, there is nothing to say that once this is approved that there will be more than one camel sitting in the tent. He wonders what kind of precedent is being set here tonight.

Chair Weathersby noted that the Board can condition approvals, if they so desire, that says the apartments will be for one or two persons.

Robert Brown, 935 Washington Road, stated that he grew up next door. He never knew there were five apartments next door so that must be saying something.

Joe Tucker, 960 Washington Road, stated that Mr. Demarco is a great neighbor and the place is quiet as a mouse. The only reservation that he has is if Sam or his heirs ever sold it. This happens all the time in the community. As it stands now, he does not have any opposition to Sam having the units there. He would like to have a restriction that if it changed hands it would revert back to a number that had actually been approved or that it could not be converted to condos or expanded. He commented that with five units there could be a lot more people than what is there now. The way it is now is fine but his concern is what it could expand into in the future.

Attorney Kiezer stated that these are all valid concerns. Mr. Demarco lives at the property at least part of the time and because he is so involved this is what makes it work. She is open to a discussion that Mr. Demarco will maintain the apartment for him and his family so there is an interest there.

Mr. Demarco noted there has never been any intention of having condos. It is for his grandson and granddaughter to have horses and enjoy the place. He has run the place for 29 years like it is. This is being done to conform to the Town and all the paperwork that has been lost.

Speaking to Mr. Demarco, Attorney Kiezer asked if he is amenable to a requirement that he will continue to have an owner-occupied unit.

Mr. Demarco agreed.

Attorney Kiezer commented that if the Board feels this would satisfy their concerns and the concerns of the neighbors this could be done.

Chair Weathersby pointed out that there was some discussion on limiting occupancy. Right now, the units have only one person in each; however, it sounds like some may be able to accommodate more than one person.

Attorney Kiezer stated that she did not know that the Board could do that. She commented that they would be open to that. In terms of the income supplementation, it has worked for him to have one person. She pointed out that there could be a couple or two people with a baby. There are certainly scenarios that could emerge. One of the apartments in the carriage house is definitely a two bedroom. That is accounted for with the current septic plan. One bedroom could be two people.

Chair Weathersby stated there was one condition mentioned that as long as the property was owned by the family the apartments are approved but once that changes the apartments go away.

Attorney Kiezer stated that she is not in favor of that.

Vice-Chair Crapo stated that as possible conditions, under Section 506.3 there are some sections that might apply.

- B – Each accessory dwelling unit shall be limited to a maximum occupancy of three persons. One bedroom units shall not have more than two occupants.
- C – Two additional off-street parking spaces shall be provided for the accessory dwelling unit.
- G – An approval obtained from DES relative to the adequacy of the on-site waste disposal system.
- L – If a dwelling unit is rented, it shall be for a term greater than 3 months.
- F – Property owner shall reside on the property.

Chair Weathersby asked if Mr. Demarco lives at the property.

Mr. Demarco replied that he is there two to three days per week. He noted that the fire department went to the property in October and set the location for the new carbon monoxide detectors for the entire complex and all were put in place. There is also ADT, heat and smoke sensor, for the entire farm. There is a sprinkler system for the barn and all units in the carriage house. Rye Water District checks the pressure and does a backflow test twice per year.

Chair Weathersby closed the public hearing at 10:32 p.m.

Member Dibble pointed out that there are parts of the accessory dwelling ordinance that do not apply to this situation.

Vice-Chair Crapo explained his suggestion was to pick the ones that apply.

Chair Weathersby commented that the ones that do apply would have to be listed separately as conditions of approval.

Member Dibble stated that it seems that what this turns on is the genuine belief that the owner had town approval. He has some sense that they ought to find a way to honor that and find a way to not extend that privilege to the next owner. What troubles him about that though, is if the next owner is a family member, they may be deprived of some value of the property. He explained the relief requested is for a multi-dwelling apartment house on a single residence lot. He is comfortable with the notion that the owner has behaved in a sincere way relative to the Town. The Board should honor the owner's opportunity to continue what he is doing but he is not certain this should be passed on to the next owner.

Member Driscoll agreed. He continued that Mr. Demarco has been exceptional but not all landlords are as good.

Member Dibble stated that the downside is that if that restriction goes forward it may have some impact on the value of the property.

Vice-Chair Crapo pointed out the relief being requested is a variance. He does not know of any case where a variance is allowed for only the current owner and does not run with the land.

Chair Weathersby stated there is a provision where a variance can be terminated when there is something personal about the request.

Vice-Chair Crapo stated it appears there is enough history showing there has been no secretive creation of apartments here. Several of the town officials have been to the site and gone through the house. Different town officials, at different stages, had allowed and let this go from a farmhouse to multiple apartments. He does not think that any approval could be pulled away and make some future owner revert to a single farmhouse.

Member Mikolaities stated that everyone knew about the three units but he is still having trouble with four or five. He heard the logic for three.

Vice-Chair Crapo pointed out the applicant said they couldn't find the building permit for four and five. He reiterated there have been several inspections and documentation.

Member Mikolaities stated that the abutters concerns are not with the current owner. They are concerned about what happens when the property sells. He thinks the abutters raise some good points.

Member Driscoll stated that he loves that it was brought up how many families and generations have been in not only this building but also the abutters. Part of him wants to protect that. There could be someone that comes in and runs the place just as well. He would like to handcuff the property enough that it needs to be run in that way. He likes taking the wordage that is in the

accessory dwelling ordinance because it has already been vetted by someone. He struggles with how a single occupancy would be controlled and if the units can have a maximum of two occupants, that is too many people for him on this property. That goes back to the owner who has clearly thought of that and knows that one person in each unit works. He asked if they can take the units, other than the owner occupied unit, as a whole and say there cannot be more than eight occupants in the building.

Member Dibble asked if they could limit the number of occupants to what is there today.

Chair Weathersby noted they can limit the total number of occupants. They can say the one bedrooms can have one person. She continued that the idea of terminating the variance can only be done if the variance requested is required to allow a person or persons with a recognized physical disability to reside in and regularly use the premises. Otherwise, the variances run with the land.

Referring to Member Driscoll's comments, Vice-Chair Crapo stated his only concern would be it going against any federal housing or discrimination laws.

Speaking to Attorney Kiezer, Chair Weathersby asked if they are still boarding horses.

Attorney Kiezer explained there is no longer a commercial part going on in the barn at all. There was a special exception for the riding school in 1976. When Mr. Demarco purchased the property, he terminated that. She thinks he was allowing some people to board their horses there in the past. She does not know if this is something that will happen in the future. The issue right now with boarding is that one of the tenant's horses are taking up the barn.

Mr. Demarco noted that the property is permitted for ten horses. Right now, there are five horses that all belong to one woman who lives there.

Chair Weathersby stated that she struggles a little with the five units. She is totally in favor of having more small units for people to reside in this town. She is just having a hard time getting her head around a five unit building.

Member Dibble stated the application request is to permit a multi-dwelling apartment/house on a lot in a Single Residence District. He has no problem with the present circumstances. The question is whether it should it be conditioned.

Chair Weathersby stated if it falls under different ownership there could be fifteen people in every unit. She thinks that because this is a Single Family District with a multi-family dwelling being allowed, there ought to be some limitations placed on the approval.

Vice-Chair Crapo stated the he can see applying B, of the accessory dwelling ordinance, and maxing this out at twelve. He commented that it sounds like everyone would like nine or ten. If this is done, would they be rubbing up against some legal issue?

The Board discussed whether they should condition the number of occupants on the entire property or break it down for each individual unit.

Chair Weathersby stated she is hearing that the Board respects the way the property is being run presently. Not everything has been properly permitted; however, there is enough history that they are comfortable with it being five units. The Board could give it a blessing with certain conditions. She reviewed possible conditions:

- Septic system be installed within six months;
- Each one-bedroom unit be limited to a maximum occupancy of two residents.
Each two-bedroom unit be limited to a maximum occupancy of three residents.
At no time shall there be more than ten residents occupying the five units.

Member Driscoll stated that he would like it at eight. Right now, they are hearing testimony that it works really well with five or six. People do not really know there are five units. If there are ten or twelve units it will become cognizant that there are five units. His hope is that ten years down the line nothing will change.

Speaking to the applicant, Chair Weathersby asked the size of the smallest unit.

Mr. Demarco stated the carriage house is 40x22 and is a three unit structure. All three levels have the same footage.

Chair Weathersby asked if they are 750 to 800 square feet.

Mr. Demarco confirmed.

Vice-Chair Crapo commented that the building limits itself.

Chair Weathersby stated they could do one-bedrooms have no more than two occupants; two-bedrooms have no more than three; and a total of eight occupants max for the five units.

Attorney Kiezer stated there is no problem with two people in one-bedroom and three people in a two-bedroom. The problem is the overall cap.

Mr. Demarco stated that if the apartments were maxed the total would be twelve people for two dwellings. According to the bedrooms and the septic system, it could be done.

Vice-Chair Crapo stated that looking at the other conditions, one is that the owner must occupy. That owner is either going to be in a two or three unit. If they were only in a two, there would be a maximum of ten potential tenants.

Chair Weathersby opened the discussion up to the public.

Mr. Tucker asked if a future owner could knock the building down and put five condominium units on the property.

Member Dibble stated there cannot be new construction condominiums in Rye.

Vice-Chair Crapo pointed out that there would also be a restriction that the property owner would have to reside on the premise.

Chair Weathersby noted that if someone wanted to condominiumize there is a whole process they would have to go through. There is certain criteria that has to be satisfied. She thinks the restrictions would follow the condominium conversion. She asked the Board who is amendable to a maximum of two residents in a one-bedroom, three residents in a two-bedroom with an overall cap at ten residents.

Member Driscoll, Member Mikolaities, Member Dibble and Chair Weathersby agreed.

Vice-Chair Crapo was not in agreement. He stated he would go to twelve because it matches up with everything. He pointed out that the owner is going to live in one of the units so it would be limited to nine or ten tenants out of the twelve.

Chair Weathersby reviewed the conditions:

- **New State approve septic system to be installed within six months;**
- **Residency cap – no more than 2 occupants per one-bedroom unit; 3 occupants per two-bedroom unit with an overall cap of 10 occupants total for the five units.**
- **Two additional off-street parking spots for each unit;**
- **The home will continue to be maintained in such a manner to retain the appearance and character of the structure and site as a single family home with attached carriage house and barn;**
- **Property owner will reside on the premises;**
- **Rental term shall be a six month minimum;**
- **Floor plans of the two units in the 1773 house to be submitted and made a part of the package.**
- **Every two years, and when the property is sold, the owner of the property and all adult occupants of each unit shall file an affidavit with the building inspector certifying that the owner lives on the premises and the occupancy of the accessory units comply with the conditions of approval.**

Chair Weathersby called for a vote for variance to Sections 203.1A and 202.9B, to permit multi-dwelling/apartment house on a lot in the Single Residence District:

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Patrick Driscoll – 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
Patrick Driscoll – 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
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on Building Code relief to Section 7.9.6.7, to allow the use of the existing septic system until the new system is installed within six months:

- Would enforcement of 7.9.6.7 do manifest injustice and be contrary to the spirit and purpose of the Building Code and public interest?

Shawn Crapo - Yes
Patrick Driscoll – Yes
Gregg Mikolaities – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to grant the variances and building code relief requested by Samuel J. Demarco, 961 Washington Road, as requested and with the conditions;

- 1) The new septic system is to be installed within six (6) months;**
- 2) Each two-bedroom dwelling unit shall be limited to a maximum of three residents;**
- 3) Each one-bedroom dwelling unit shall be limited to a maximum of two residents;**
- 4) There shall be no more than ten (10) residents total in all five dwelling units;**
- 5) There shall be two on-site parking spots for each dwelling unit;**

- 6) The home shall maintain the character of a single-family residence with an attached carriage house and barn;
- 7) The property owner shall reside on one of the units;
- 8) No unit shall be rented for a term of less than six (6) months;
- 9) The property owner will provide a floor plan of the units in the main house (1773 house) to the building inspector within sixty (60) days; and
- 10) Every two years after approval and when the property is sold, the owner of the property and all adult occupants of each dwelling unit shall file an affidavit with the Building Inspector certifying that that the owner lives on the premises and that the occupancy of each accessory dwelling unit complies with the conditions.

Seconded by Patrick Driscoll. All in favor.

8. Osprey Unlimited Industries, Inc. of Scarborough, ME and Eurphoria LLC for property owned by Fifty Lafayette Road Real Estate and located at 50-52 Lafayette Road, Tax Map 14, Lot 017, requests Variances from Section 501.1C for a sign greater than 25sf; from Section 501.3 for three (3) signs and from Section 501.4 for an electronic message sign. Property is in the Commercial District. Case #12-2018.

- Continued to the May 2nd meeting.

Adjournment

Motion by Burt Dibble to adjourn at 11:36 p.m. Seconded by Shawn Crapo. All in favor.

**All corresponding documents and files 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:

Lavoie Alice M. Rev Trust, Alice M. Lavoie Trustee
of Epping NH

Property:

0 Richard Road, Tax Map 5.2, Lot 156
Property is in General Residence District and Coastal Overlay

Application case:

Cases # 47-2017

Date of decision:

April 4, 2018

Decision:

The Board Voted 5-0 to continue the Applicant's request for Variances to the May, 2018 meeting.



Patricia Weathersby

Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Degnan Family Revocable Trust
Tom & Tracy Degnan

Property:

41 Park Ridge Road, Tax Map 19.4, Lot 20
Property is in General Residence District and Coastal Overlay

Application case:

Cases # 06-2018

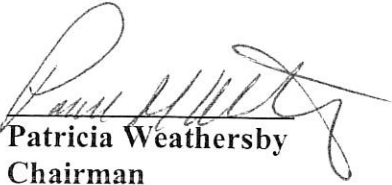
Date of decision:

April 4, 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 nonconforming structure;
- Section 204.3A for construction 11.7' from the rear boundary;
- Section 204.3B for construction 12.09' from the left side boundary; and
- Section 305.5 for dwelling coverage of 15.07%



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: Scott & Amy Komisarek of 38 Fieldstone Lane, Candia NH


Property: 80 Baker Ave, Tax Map 5.2, Lot 134
Property is in General Residence, Coastal Overlay District

Application case: Cases # 08-2018

Date of decision: April 4, 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 nonconforming structure;
- Section 204.3 B for a deck, pergola and AC unit and rinsing station 5 ft. from the side boundary.



Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

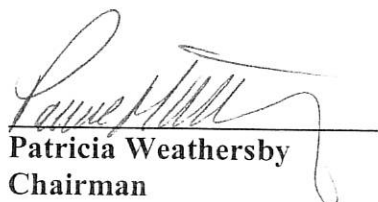
Applicant/Owner: Charles & Judith Sampson of Portsmouth, NH

Property: 300 Pioneer Road, Tax Map 24, Lot 11
Property is in the Single Residence District

Application case: Case # 26-2017

Date of decision: April 4, 2017

Decision: The Board voted 5-0 to continue the Applicants' request for variances to the May, 2018 meeting.



Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Carey & Giampa Realty Trust

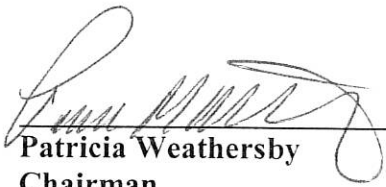
Property: 655 Wallis Road, Tax Map 16, Lot 22
Property is in the Single Residence District

Application case: Case # 09-2018

Date of decision: April 4, 2018

Decision: The Board voted 5-0 to grant relief from the following Building Code sections upon the condition that the use of the property remain "professional office":

- Section 7.9.3.1 for an effluent disposal system that does not meet the 6ft of separation from ledge to the bottom of the effluent;
- Section 7.9.3.2 for an effluent disposal system that has a 2.5' separation from the seasonal high-water table



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: Stephen & Michele Smith of Hollis, NH


Property: 166 Perkins Road, Tax Map 5.2, Lot 189
Property is in the General Residence, Coastal Overlay District

Application case: Cases # 10-2018

Date of decision: April 4, 2018

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

- Section 603.1 for expansion of a nonconforming structure;
- Section 203.3 B for a deck and pergola 19 ft. from the side boundary; and
- Section 304.5 for dwelling coverage 30.2%.



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:

Samuel J. Demarco

Property:

961 Washington Road, Tax Map 11, Lot 1
Property is in the Single Residence District

Application case:

Cases # 11-2018

Date of decision:

April 4, 2018

Decision:


The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance for a five (5) unit multi-dwelling/apartment house on the Property:

- Section 203.1A; and
- Section 202.9B

The Board voted 5-0 to grant relief from Building Code Section 7.9.6.7 for use of the current septic system until the earlier of six months or the installation of a new system.

Each of the variances and the building code relief is conditioned upon satisfaction of the following:

1. The new septic system is to be installed within 6 months (See Septic System Plan dated January 2018 submitted as Exhibit 7 of the Application);
2. Each two-bedroom dwelling unit shall be limited to a maximum of three residents;
3. Each one-bedroom dwelling unit shall be limited to a maximum of two residents;
4. There shall be no more than ten (10) residents total in all five dwelling units.
5. There shall be two on-site parking spots for each dwelling unit;
6. The home shall maintain the character of a single-family residence with an attached carriage house and barn;
7. The property owner shall reside in one of the units;
8. No unit shall be rented for a term of less than six (6) month;
9. The property owner will provide a floor plan of the units in the main house (the so called 1773 house) to the building inspector within sixty (60) days; and
10. Every two years after approval and when the property is sold, the owner of the property and all adult occupants of each dwelling unit shall file an affidavit with the Building Inspector certifying that the owner lives on the premises and that the occupancy of each accessory dwelling unit complies with conditions #2 and 3.



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: Osprey Unlimited Industries, Inc of Scarborough ME
Euphoria LLC

Property: Fifty Lafayette Road Real Estate
50 Lafayette Road, Tax Map 14, Lot 17
Property is in the Commercial District

Application case: Case # 12-2018

Date of decision: April 4, 2018

Decision: The application was continued to the May 2, 2018 meeting.



Patricia Weathersby
Chairman

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