

RYE ZONING BOARD OF ADJUSTMENT

Wednesday, September 5, 2018

7:00 p.m. – Rye Town Hall

Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Patrick Driscoll, Tim Durkin, Alternate Rob Patten and Burt Dibble (arrived 7:32p.m.)

I. Call to Order and Pledge of Allegiance

Chair Weathersby called the meeting to order at 7:14 p.m. and led the Pledge of Allegiance.

Motion by Shawn Crapo to continue Items # 9 and 10, Samonas Realty Trust applications, to the next meeting. Seconded by Patrick Driscoll. All in favor.

Chair Weathersby stating that she received a letter noting that the Theobald application has not yet been before the Conservation Commission. It is unlikely that the Board will get to that application at this meeting. She recommends that it be continued to the next meeting as well.

The Board agreed.

Motion by Shawn Crapo to continue Item #8, Theobald application, to the next meeting. Seconded by Patrick Driscoll. All in favor.

II. Approval of Minutes:

- **August 1, 2018**

Motion by Shawn Crapo to approve the minutes as amended. Seconded by Tim Durkin.

Vote: 4-0-1 Abstained: Patrick Driscoll

III. Applications:

Seated for the following petition for rehearing: Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Tim Durkin and Rob Patten

- **Petition by Russ and Jayne Dockham for a request of a hearing on the application heard by the BOARD on August 1, 2018 for property at 0 Perkins Road, Tax Map 5, Lot 51-001, owned by Tyler McGill from the Building Inspector's letter dated May 23, 2018 that parts of the fence installed appeared to be not in compliance of the 6' as required from Section 510.3 for height. Property is in the General Residence District. Case #29-2018. Public hearing closed during Board discussion on the request.**

Chair Weathersby noted that information has been received from the Dockhams and photos have been submitted. She reminded the Board that the standard for re-granting the hearing is that the Board's decision was unreasonable or unlawful, or new evidence that could not have been presented at the first hearing has come to light and is now being presented.

Vice-Chair Crapo stated that additional photos have been submitted that are not in the board's packets. There are about two dozen photos showing the fence with about six or seven photos in the packets.

Referring to the additional photos, Member Driscoll noted there are a lot that are redundant. There are photos of each section of the fence showing a measurement taken from the ground.

Chair Weathersby stated that the photos are from the Dockhams as part of their hearing request. She continued that the photos could have been presented at the first meeting but were not. That evidence was available to the Dockhams. The Board heard a lot of testimony about the land sloping off and the gap. The photos seem to support that testimony.

Vice-Chair Crapo stated that the fence is on the subject property. He does not think it has to be measured from the abutters' property if that property is lower. He does not see how it can be remedied with one property being lower than the other. He does not see that the Board made any error in their ruling.

Chair Weathersby stated she is sympathetic that the fence blocks a viewscape for the Dockhams but she does not think the Board's decision was unreasonable or unlawful. The fence measured from the McGill property was at the right height. As the land undulates, there will occasionally be a little reveal but other times there is very little. She does not think the Board has made an error.

Member Durkin stated that the building inspector sort of dumped this on the Board's lap to determine what a 6ft high fence is. If there is undulation along the fence line, should the maximum height of that fence be 6ft from the ground level, such that in some cases it would be less than 6ft? How is the height of the fence measured? Is it measured from the ground? Should the maximum height be from the ground to the top of the fence? Should that not exceed 6ft? If that is the case, there would be some sections that would be less than 6ft with the way the topography is.

Member Driscoll stated that could be taken further to a different lot with a slope more than 6ft. There would be some areas where they would not be able to have a fence.

Vice-Chair Crapo commented that it depends on where the land is measured from. The fence is in 6ft wide sections. The land is at a certain height at the post and dips in the middle.

Member Durkin asked if this is the only section along the Dockham property that exceeds 6ft based on the way they are measuring it on their property.

Vice-Chair Crapo explained the McGill lot is built-up and sits at a higher grade. It sits higher than all the backyards along there. There were photos shown from down the other end, which showed the break in the fence. Those were taken from the Eel Pond end, which is the farthest end from the Dockhams. Without having some sort of definition to go by, he does not see how they can find the fence in violation.

Chair Weathersby explained that if a property owner wants to install a 6ft fence, the grade they use is the grade on their property. They do not use the grade on the neighbor's property. It's where the fence will be going. Unless there is a significant slope or undulation, the fence is usually straight across with just a couple of dips in the ground. For the most part, this fence was off the ground just a few inches. She asked the Board if anyone feels their decision was unlawful or unreasonable.

No comments were heard.

Chair Weathersby asked the Board if anyone feels that new evidence has been presented tonight that could not have been presented before that has changed their minds.

No comments were heard.

Motion by Shawn Crapo to deny the request for rehearing. Seconded by Rob Patten.

Vote: 4-1 Opposed: Tim Durkin

Note: Rob Patten left the meeting at 7:40 p.m.

Seated for the remaining applications: Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Tim Durkin and Burt Dibble

- 1. Edward N. Herbert Assoc. Inc, for property owned by Cara C. Zohdi 1998 Trust of 1 Frost Rd, Windham, NH, and located at 4 Winslow Way, Tax Map 17, Lot 75-1, requests a variance from Section 304.4 for a house height to be 35' +/- where 28' is allowed. Property is in the Single Residence and Coastal Overlay Districts. Case #20-2018.**

Attorney Patricia Panciocco, representing the applicant, presented to the Board. She reviewed the new submittals for the Board.

Chair Weathersby noted that the applicant was asked at the last meeting to show the demarcation of where the 28ft falls. She thanked them for providing that information.

Attorney Panciocco noted that the first page of the information provided to the Board shows the frontage on Winslow Way. Driving down Winslow, there is a slight incline past the first couple of lots and then it tapers down slightly. This property also backs up to the furthest limit of the Coastal Overlay District. The area behind this property is a wetland and the topography goes

down quite a bit. Further to the north is conservation land. The property is the Single Residence District and is subject to the Coastal Overlay, which limits the building height to 28ft where the maximum in the Single Residence is 35ft. The property is bounded on the west by a marsh. There are three purposes cited in the ordinance for the Coastal Overlay. It talks about preventing density, preserving environmental resources and preserving the view sheds for the public benefit. It expressly states these purposes for keeping a building at a lower height. The ordinances balance the private property rights with the public's benefit of seeing the coastline. She continued that the area between Ocean Boulevard and the marsh is relatively flat. The original plan had a full cul-de-sac in front of the applicant's property. It is now more like a teardrop. For that reason, this house is a little further from the road than the prior home was. She further explained that there used to be a round cul-de-sac that cut into the front of 4 Winslow. That was removed a few years ago and there is now a teardrop as shown on the zoning map. As shown on the site plan, the house on lot 75-2 is about 28.6ft, which is just slightly above what is allowed. The house across the street is below at 26.6ft. The home located a little further to the south is quite a bit taller. The heights were determined by the surveyor who stamped the plot plan.

Referring to the house that is at 31.3ft, Vice-Chair Crapo stated that it could have either started at 31.1ft or the walk could have started out 4ft higher and they graded down. Under the way the ordinance is written, they could be 28ft to where the original grade was and still be at 31.3ft. Based on current measurement, it doesn't encompass whether it violates or not.

Attorney Panciocco noted that the house at the bottom of the page are quite a bit higher. Those houses were built before the ordinance was adopted. She continued that the surveyor has written a letter saying he believes the original grade is 22ft. He picked up this grade before the original home was taken down. She noted that her client has invested substantially in trying to keep the house down. The roof pitch was also changed to bring the house down a little bit lower. Hence, that is where it is 33.6ft, where previously it was at 35ft.

Chair Weathersby asked if they are asking for 34ft.

Attorney Panciocco replied that they are asking for no less than 34ft. She reiterated that her client did his best to keep the house down because there is an elevator that goes to the third floor, which needs a certain amount of head room. He also spent a lot of money blasting the cellar hole to keep the foundation in the ground. In addition, he is dealing with the little dip in the road in the area near his house. In reality, the house next door, closer to the ocean, has a little bit of an advantage because the original grade is a little bit higher.

Vice-Chair Crapo commented that everything is measured from the land that he owns. If someone has a low-lying lot it does not mean they can build a tall house to see the ocean.

Attorney Panciocco commented that if it was a high lot it would be built way above. The purpose of the ordinance is to preserve aesthetics.

Referring to the plan, Chair Weathersby stated the house elevation is at 22 and then it drops off.

Attorney Panciocco pointed out that it drops off in the back.

Chair Weathersby stated it seems it is at the highest point of the property.

Attorney Panciocco explained it has been pulled up to the front of the property for that reason. The back slopes off into the marsh.

Member Driscoll asked if the surveyor used the town's definition of established grade.

Attorney Panciocco confirmed.

Vice-Chair Crapo stated that the lot was purchased, the house that was there was torn down and now there is a fresh slate. He asked why they did not choose a building design that was at 28ft, instead of going a half a story higher.

Attorney Panciocco replied that the other house that was there had a variance issued for it also.

Chair Weathersby commented that was for a widow's walk, not living space.

Attorney Panciocco agreed.

Chair Weathersby stated that the applicant could put anything there. Why not put a house that is 28ft?

Vice-Chair Crapo commented that the zoning does not have to suffer because of someone's style choice. A different style house can be chosen instead of it being a half a story higher.

Attorney Panciocco explained this is not an inexpensive home. It is the last home they are going to build. They have a family that comes and stays with them a lot and they need the space. They would also like to see the ocean like everybody else.

Vice-Chair Crapo stated it is not the zoning's problem to have a certain house design. This is 7ft taller, which is half a story.

Attorney Panciocco stated the building height restriction on this particular property, in this particular location, provides no public benefit. They could jump on the other side of the line and have a 35ft structure. The purpose of this ordinance is to control density. Clearly, it is not serving that particular purpose to control density here.

Vice-Chair Crapo commented that controlling the height in some ways architecturally controls the size of the house, which results in density.

Attorney Panciocco pointed out that the original home that was there was a very large home. In reading the purposes of the height restriction, is says to control density. One house was taken down and another is being put up so it is one for one.

Chair Weathersby asked the footprint of the house compared to the house that was there.

Attorney Panciocco replied that she is not sure off the top of her head but it is not a whole lot different. There are all large houses in that area. She continued the next purpose is to preserve environmental resources. She is not sure how going from 28ft to 34ft, 6ft, is going to change environmental resources or would have any contrary effect on that. Preserve viewsheds for public benefit, this is probably the most important purpose served by the ordinance so everybody can enjoy the ocean.

Vice-Chair Crapo pointed out there are people in the front houses that might want to see the marsh.

Attorney Panciocco noted that most people build homes like this to see the ocean. She would say that the height limitation is more to preserve the rights of the people behind to see the water. In this particular situation, controlling the height of the structure does not serve that purpose because there is nobody behind them. There is never going to be someone behind them. In addition, if someone were to build behind them they would be building down in the hole. Even at 35ft they would not be able to see the ocean because it is so far down in the topography. There is also conservation land behind this so nobody will be building there. To restrict this particular property's height really does not serve to control density, preserve environmental resources or preserve a viewshed to the water. She thinks the Coastal District was intended to preserve the view to the ocean. As a matter of law, any ordinance balances public benefit with private property rights. It always has to serve health, safety and welfare of the public in some manner or form. In this particular situation, she is not sure whether the fact that this house may be 6ft taller has any enhancement to the public benefit served by the ordinance. Under the Chester Rod and Gun Case, to be contrary to the public interest the requested relief must unduly and to a marked degree conflict with the purpose of the ordinance. In this case, it would not impact the public's ability to see the water and would not threaten the health, safety or welfare of the general public. She does not think that granting the 6ft has any detrimental impact on the purpose of the ordinance.

Attorney Panciocco continued that the second prong is the spirit of the ordinance is preserved. This requires the Board to ask again, what benefit is provided to the public by limiting the height of this house to 28ft. It doesn't cause overcrowding to allow it to be 6ft higher. It doesn't harm natural resources and it doesn't infringe on the abutters' rights to see the ocean or the views. In fact, because the topography is a little lower, it helps to put the home on the same plain as the others in the neighborhood that are naturally at a higher elevation. Substantial justice would be done, is a difficult concept to measure. It requires the Board to balance what the gains would be by strictly enforcing this ordinance versus what the applicant would lose if the ordinance was strictly enforced. It is an undue burden, when building a home of this size and value near the

ocean, and difficult to keep the house at the lower height. Granting the relief would be substantially just because nobody, including the public, will be harmed by allowing the 6ft increase. The values of surrounding properties will not be diminished. All the homes in this area are well over a million dollars. Her client's home will not block anyone's view and the additional height will not harm a sole. Literal enforcement of the ordinance is an undue hardship due to the special conditions of the property. The special conditions are the lower elevation of the other homes; its view of the ocean is blocked by some of the other homes; it's located on the outer parameter of the Coastal Overlay District; and there are no other homes going to be behind it because of the marsh and conservation land. There really is no fair or substantial relationship between purpose of the ordinance and the relief being requested. No one from the public will lose and her client will benefit. If the relief is denied, her client will lose and the public is still not impacted. One other attribute of higher end homes is the fact that they don't have flat roofs. To dwarf this home benefits nobody and will actually harm the value of her client's property. The proposed use is reasonable because it is a single-family home and is permitted in the underlying zoning district. If it is permitted, it is presumed to be reasonable. The strict application of the height limitation, which they have done their best to comply with, is an unnecessary hardship and provides no public benefit but is an undue burden on her client's home.

Vice-Chair Crapo asked the height of the interior ceilings.

Attorney Panciocco replied that the first floor is 9ft and the second floor is 8ft. She reiterated there is an elevator to the third floor and there needs to be sufficient height.

Member Driscoll clarified that it is only in the main structure that there will be a third floor.

Attorney Panciocco confirmed. She commented that there are dormers on the front that would look silly if the roof was shorter.

Member Driscoll clarified that the dormers are currently above the 28ft height and they are already built.

Attorney Panciocco replied that the 28ft is not exact. She did the best she could to put an estimated height. She noted that the architect figured the 33.6ft and she put in the 28ft.

Member Durkin stated this is the third time they have made the request and it is an approximate measurement.

Chair Weathersby stated that this happened today and the applicant had a month to get the Board a set of plans that show where the 28ft was. The 28ft is approximate and it can't be said this is exactly where it is.

Attorney Panciocco stated the 33.6ft is exactly where it is at the peak of the roof. The 22 grade is exactly where it is. To the best of her ability she marked the 28ft.

Vice-Chair Crapo stated the document the Board had this morning had a reference to final grade. Final grade could be different from the 22. To what certainty is it known that they are the same? He asked if someone with a survey tool has gone out and verified that what is being measured from is the same as the 22 mark.

Attorney Panciocco noted that the letter from the surveyor to Mr. Rowell confirms that he has done that. The plot plan shows the house on the lot. The surveyor spent quite a bit of time on this and did quite a bit of research before the first home was taken down.

Chair Weathersby noted for the record that the site plan was prepared by Paul Zarnowski from Hebert and Associates Land Surveyors for the applicant. His letter is dated August 29th.

Vice-Chair Crapo asked why the home has to have 9 and 8ft ceilings.

Attorney Panciocco replied that the lowest they can go is 7.6ft. A 9ft ceiling on the first floor is pretty typical in a new home.

Vice-Chair Crapo stated he would agree if it was in an area where there wasn't a restriction. The design should have been to the restriction.

Attorney Panciocco asked why her client shouldn't be able to look out the window and see the ocean like everybody else.

Member Durkin commented that he does not think that qualifies as a necessary hardship. This is a lot that has a height restriction of 28ft. The applicant knew that when he purchased that property. The fact that his view is blocked because there are houses below, does not qualify as unnecessary hardship. The applicant can build a smaller house. There is no basis here in hardship. All the applicant wants to do is build a taller house that exceeds the height variance by more than 20%. He does not get the hardship.

Attorney Panciocco replied that the hardship is the location.

Member Durkin stated the applicant knew the location. He knew the fact that this property is in the Coastal Overlay, which is a 28ft height variance.

Chair Weathersby asked how this property is different from the one next door, which also backs up to the marsh, or any other property that is located along the western edge of the Coastal Overlay. There are a lot of properties on that western edge that have no likelihood or possibility of a house being built behind them. She is struggling with how this property is differently situated than those properties, including the one right next door.

Attorney Panciocco stated it is situated differently because imposing the height restriction poses no public benefit. In this particular situation, it is an undue hardship that is unnecessary because

restricting the height benefits nobody. She does not know where any purpose of the ordinance is furthered by requiring this house to be 6ft shorter.

Member Durkin stated that he would make the argument that complying with the ordinance is in the public interest.

Attorney Panciocco noted that the ordinance has to serve a public benefit to be valid. In this situation, with this particular property it does not.

Member Dibble stated that this reasoning is a little skewed. The zoning ordinance belongs to the people of the Town of Rye. Construction should be done in accordance with the zoning ordinance, unless there is a hardship that is clearly demonstrated. It must adhere to the ordinance, unless there is clear evidence that it cannot be done and there are factors beyond the applicant's control. That would then be a hardship.

Attorney Panciocco stated she hears what he is saying about the ordinance and she agrees. She does not know when it was discovered that the height was a problem. However, that is why there are zoning variances. It acts as a relief valve when the ordinance that strictly applies serves no public purpose. To strictly apply an ordinance and not allow for relief, where it is warranted, negates the need for even having the variance process. In this case, she feels it has merit. She does not see where anyone or any public at large benefits from the house being 6ft shorter. She noted that her client has done his part. He has spent thousands of dollars to get the foundation down into the ground further. The roof has also been adjusted to get it as low as they could, while still having an elevator to the third floor.

Member Driscoll asked if there is a plan to have finished space in the basement.

Attorney Panciocco replied no.

Chair Weathersby opened to the public.

Cara Zohdi, applicant, stated that her husband has arterial disease. If he is walking in a year that is going to be a good thing. That is one of the reasons the extra height is needed for the elevator. It is not about building a bigger house. It is about having quality of life for as long as they will be in that home.

Member Driscoll asked what is going to be on the third floor.

Mrs. Zohdi replied nothing. That is attic space for the elevator.

Peter Rowell, Building Inspector, stated that they did some research on where the grade is measured from after the last meeting. The attorney thinks that in this situation it should go back to the original subdivision for measuring the grade. The Board has to decide whether it should go back to the original subdivision. There is documentation that it was 20 at that time. While he

agrees with that, it was probably 22 when the building was torn down because it was built up at some point in time.

Chair Weathersby noted that the Board was provided with original subdivision plans.

Chuck Marsden, Deputy Building Inspector, stated there is an approved building permit on the property. The owners wanted to get started so they submitted a plan showing that the house can meet the 28ft height restriction. They did that to get started with the project. They wanted to come back after to get a variance for the extended height.

Member Driscoll asked if the gables that are shown today are for the conforming or for the proposed.

Mr. Marsden held up the plan that was submitted conforming to the 28ft height.

Member Durkin clarified that they submitted a plan that met the height requirement and a building permit was issued on that basis because a variance wasn't necessary.

Mr. Marsden replied that for the original submission they did not need to apply for one. The original plan was submitted July 18th.

Chair Weathersby clarified that at the time the first plan was submitted the applicant was anticipating going for a variance.

Mr. Marsden confirmed.

Mrs. Canotas, 2 Breakers Road, asked if this would be in the footsteps of the old building.

Chair Weathersby replied that it is not in the same footprint.

Mrs. Canotas asked why the character of Rye has to be changed when most everyone has to abide by the zoning requirements. She noted that they built a home and couldn't go any higher. They wanted to build a deck but couldn't go any closer to the neighbors. Certainly, everyone would all like a view of the ocean but it's not possible.

Chair Weathersby stated that everyone has the right to ask and the Board is going to decide if they meet the criteria.

Attorney Panciocco stated that what is unclear from the ordinance is when it talks about grades before construction begins. It doesn't really address this particular situation. It was one way before the first home was built. The shots were taken before the first home was taken down. It is hard to know what the grade was and what that is supposed to mean.

Member Driscoll clarified that they are giving the application the benefit of the doubt that the grade is 22. It is more conforming at 22 than it would be at 20.

Attorney Panciocco confirmed.

Chair Weathersby closed the public hearing at 8:34 p.m.

Member Dibble stated that his understanding is that the position of this house on the land says that the grade is the average grade around the house and it was measured to be 22.

Vice-Chair Crapo pointed out when it was raw land it was 20.

Chair Weathersby noted that “grade is the elevation of the ground before any alteration or construction begins”. The question is whether the grade is from the time the property owner started their project or back to the original subdivision.

Member Dibble stated that he doesn’t see any reason that anybody gave that it should go back.

Vice-Chair Crapo stated that once it is developed land it would be a hard stretch to try and go back to raw land.

Member Driscoll stated he is okay with 22ft.

Vice-Chair Crapo noted that if someone was doing a renovation on the original home the Board would be using the 22ft.

Chair Weathersby agreed.

Member Durkin stated that he does not believe that denial results in unnecessary hardship. It can easily be demonstrated that a beautiful house can be built on that lot at 28ft, while still enjoying the view and quality of life. He does not think there are special conditions that distinguish this property from other properties in the neighborhood. He does not think that substantial justice is done by awarding the variance. The ordinance is very clear. There are not special conditions here that warrant exceeding the height requirement by more than 20%.

Chair Weathersby stated that she is afraid that if this is granted, everyone who backs up to a marsh or is not going to block anyone’s view is going to say “hey it was done there”.

Member Durkin noted that they look at these on a standalone basis and are not supposed to concern themselves with precedent; however, this does open the door. To him, this is a very clear case.

Member Dibble agreed.

Vice-Chair Crapo pointed out that the applicant's own original submission shows they could almost have the same house. It is the applicant's own peril that they have started on this. He does not see the hardship at all.

Member Driscoll stated that the point made by the applicant was that keeping to the height requirement doesn't benefit the public. He thinks it does benefit the public in this area and in properties that have slight grade changes. It has a tremendous benefit to the public in general. He is not in favor of this application.

Vice-Chair Crapo agreed.

Chair Weathersby stated they want a view of the ocean but that is not a hardship reason. This is in the outer parameter of the district abutting the marsh but so are a lot of other properties. She does not think there are special conditions of this property that distinguish it from other nearby properties. This property has to be burdened different from other similarly situated properties. It can't be a result of just being in the Coastal Overlay.

Vice-Chair Crapo stated that throughout the Coastal Overlay there are very different topographies. It is 28ft from grade and grade changes from parcel to parcel. Virtually every parcel has its own unique grade. He does not see that there is a special condition that makes this one any different.

Chair Weathersby noted that the special condition has to arise from the property itself and not from the individual plight of the landowner. It seems that any burden here is self-inflicted. They can still build a lovely home that meets the zoning requirements.

Chair Weathersby called for a vote on variance relief to Section 304.4:

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

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

2. The spirit of the ordinance is observed?

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

3. Substantial justice is done?

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

4. The values of surrounding properties are not diminished?

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – Yes

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

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

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

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

7. The proposed use is a reasonable one?

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

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

Shawn Crapo – No
Patrick Driscoll - No
Tim Durkin - No
Burt Dibble - No
Patricia Weathersby – No

Motion by Shawn Crapo to deny the request of Edward N. Herbert Assoc. Inc, for property owned by Cara C. Zohdi 1998 Trust for a variance request from Section 304.4 for a house height of 34ft where 28ft is allowed. Seconded by Tim Durkin. All in favor.

- 2. Richard Beauchesne & Patricia Ann Healy of 46 Mountain Road, Camden, ME, for property owned and located at 0 Cable Road, Tax Map 8.4, Lots 76-1 and 76-2, request variances from Section 304.4 for a building height of 30' where 28' is required; from Section 601 to build a house on two non-conforming lots, which, when merged will remain non-conforming; and from Section 304.5 for dwelling coverage of 16.3% where 15% is required. Property is in the General Residence, Coastal Overlay District. Case #27-2018.**

Attorney Monica Keiser, representing the applicants, presented to the Board. She stated that the property used to be called 0 Cable Road. It has now been assigned a number and is 9 Cable Road.

Chair Weathersby commented that when she went by the property there was no sign posted.

Attorney Keiser stated that she submitted the application back in July. She posted the sign herself way back when it was originally filed. It was posted at the appropriate time.

Member Dibble noted that he saw the sign.

Attorney Keiser stated that the two lots she is before the Board for were originally merged with 17 Cable Road. The lots were unmerged back in January 2017 and purchased by her client in November 2017. Going way back in time, these lots (76-1 and 76-2) used to be lot 46 and 47 on the 1903 plan. The goal of this project is to construct one two-story home on the combined lots. Once the approvals are received, they will institute a lot merger application. The lots combined will be over 10,000sf. She noted there are some grading issues because it is a very low-lying property. The existing grade at number 17 Cable Road is at 11. The front part of the property is at 9.3/9.5, it goes to 8 and then 7. There is a small wetland area in the back. It does not require a buffer but it somewhat drives the placement of the house. The lot is within the AO1 flood zone. That coupled with the topography is driving the height request because they are trying to put in an average of 2ft of fill. There is also the 2ft freeboard requirement that is in the floodplain development ordinance. Those are some of the special considerations that had to be dealt with in

the design of the project. The design is for the house to be in the center in the front, which will comply with the existing setbacks. She continued that they are asking for a 28ft building on top of 2ft of fill. The finished building, standing on the ground, will be 28ft high. That is needed to accommodate the garage underneath but also to accommodate the utilities being above the existing grade. All the utilities have to be either suspended from the ceiling or mounted so there is nothing on the first 2ft of the structure.

Member Durkin asked the height of the crawl space.

Attorney Keiser replied 4ft.

Member Durkin asked where the grade measures from

Attorney Keiser stated the existing grade is 9.2, according to the building inspector.

Mr. Rowell noted that it is measured from the center of the front wall of the proposed building.

Attorney Keiser stated this is consistent with the information on their plans (C-1).

Paul Dobberstein, Ambit Engineering, noted that it goes up to almost 13ft at the sidewalk on the far westerly side of the property. The benchmark is at 12.74.

Chair Weathersby asked if this property is in the zone where breakaway walls are needed.

Mr. Rowell replied not in this zone. The AO Zone is measured from the highest adjacent grade to the proposed building. It has to be elevated 1ft to accommodate a sheet flow. The water will come over Cable Road and sheet flow 1ft deep across that lot. The building needs to be constructed 1ft above the existing grade at time of construction, plus the 2ft freeboard. When the lot is built up, the AO Zone comes up with it.

Member Driscoll clarified that in the zone there does need to be flood vents.

Mr. Dobberstein confirmed.

Attorney Keiser stated it is a 28ft home. It just happens to be higher because of the fill that is being added. They are also asking for the home on a vacant substandard lot. The frontage is at 99.90ft. The lot predates zoning and meets the requirements of 304.3B. The lot has frontage on Cable Road and it 110ft in depth. The next issue that they may need relief from is the issue of dwelling coverage. There was a difference in opinion with the building inspector. The house was designed to meet the 15% requirement for dwelling. It was at 14.4%; however, the building inspector is interpreting the covered screened porch on top of the garage as living space. If that interpretation is adapted, they would be looking at 16.3% building coverage. She continued that in looking at the ordinance, a garage is considered an accessory building whether it is attached or detached.

If it is an accessory building then it falls in the second 15%. In looking at it that way, it is under the 30% maximum. She noted that the space is unheated and is just a covered screened porch.

Chair Weathersby asked if the garage is attached to the building.

Attorney Keiser explained that it is an attached garage. The ordinance defines a garage as attached or detached. It defines a dwelling in such a manner to exclude garages. It defines coverage by dwelling coverage and then dwelling coverage plus everything else; and it lists garages, porches, decks and accessory buildings. The dwelling has to be 15% or under and the dwelling plus garages, porches, decks and accessory buildings has to be under 30%. She noted that this space above the garage is not dwelling space, given its unheated screened porch nature.

Chair Weathersby commented that relied is probably need for that. The criteria should be addressed for that as well.

Attorney Keiser stated that the variance won't be contrary to the public interest and the spirit of the ordinance is observed. These factors are considered under the Malachy Glenn Case. It is not enough to consider that there is a conflict of the ordinance. The conflict has to be significant enough to really undermine the purposes of the ordinance. Generally, the ordinance talks about less congestion, making the home safe and making a situation safe for the neighborhood. It talks about promoting health and general welfare. This is a single-family home. There is ample parking off the street. The home will be to code and addresses flood prevention issues. The home is also meeting all the setbacks so it is safe for pedestrians and motorists. It is going to provide adequate light and air because it is going to comply with the applicable setbacks. The slight height request will not have a significant impact on the area. (She showed the drawings by Architect, Ralf Amsden, showing the proposed home.) She stated that she understands that when they are measuring height, it is not finished grade, it is measure from the existing grade before any alterations take place. In considering the impact of a 2ft height variance on the surrounding property, it has to be thought about what it is going to look like. (She noted the heights of the two abutting homes.) She noted that they will be under the average of those two structures at the height that is being requested.

Member Durkin asked what the height is across the street.

Henry Boynton, surveyor, noted that the house directly across the street is substantially higher because the topography climbs up and goes back down in the back. Mr. Amsden asked for the survey to locate all the ridges because he wanted to show a grade plan for the houses on either side to show how this house would fall into that.

Attorney Keiser continued that they have a lot area of 10,000sf. It is well under the 7,000sf minimum. The lot coverage is under 30% and this will be a single-family home. They are not trying to intensely develop the land beyond having a home for this family. Public water and sewer is available in the area so that is not an issue. There is not going to be disruption of the wetland patch in the back and the overall impervious surface is under the maximum requirement

of 30%. The Coastal Overlay goals are to control the overall density, valuing the resource of the coastal area, resisting the pressure to overdevelop and to balance the rights of the private property owner with the rights of the public. She thinks that the modest home that has been presented falls within the purview of what the goals of the Coastal area are, save for the height requirement which is directly linked to the flood prevention issue and the new requirement for the 2ft of freeboard.

Attorney Keiser stated that an additional analysis that is done when talking about developing a vacant coastal area lot, is looking at whether or not the lot is materially smaller than the abutting properties. She noted that there are 7 submissions regarding other lots in the area to address that. The developing of the lot shall not create drainage problems for adjacent property. She noted that they have spent a lot of time working on a drainage and stormwater management plan. She also noted that they have submitted a letter from the town engineer stating that his concerns have been addressed. The engineer requested that a notation be added to the plans that the gutters have to drain to the filtration trenches that have been provided. (She reviewed the final drainage plan for the Board.)

Joe Mulledy, Ambit Engineering, noted a 4" PVC pipe that drains the area was discovered after the first submission. The pipe drains the local tributary in the neighborhood. The pipe discharges to a catch basin on Breakers Road.

Vice-Chair Crapo asked if anyone has mentioned that the catch basin is subject to tidal constraints. It drains towards the north to the marsh. If it is high tide there is no relief.

Mr. Mulledy commented that he was aware of that. He continued the stormwater control design mitigates the additional runoff that would have been due to the impervious surface. There will be two infiltration basins, one on each side of the house. The original submission was more aggressively graded. It filled a lot more land. The grading has been softened and it will not be as aggressive with the fill. Swales will be developed on each side to take the runoff from the site to the rear of the house. A raingarden has been added in the southeast corner, which mitigates the additional fill as well as the additional impervious surfaces.

Member Durkin asked the location of the PVC pipe.

Mr. Mulledy explained that it starts off the property. (He pointed this out on the plan and reviewed the direction of the water flow.)

Chair Weathersby asked if there will be an increase in water leaving the site.

Mr. Mulledy replied that they are not increasing the runoff on the site compared to the existing. The town engineer has concurred with that, which is supported in his final letter submitted to the building inspector.

The Board reviewed the drainage management plan.

Peter Rowell, Building Inspector, stated that the stormwater plan was submitted to the building department and was reviewed by the town engineer, which was paid for by the applicant. The town engineer has spent a substantial amount of time working with Ambit Engineering on the plan. They modeled the whole area and made a lot of revisions. The water coming out of the wetlands is not going to impact the abutters to the north, which has been confirmed by both engineering firms. He noted that the building permit will state that there shall be no increase in water running off the site. The building department will also be conducting inspections along the way. They will make sure that the gutters are installed and the project is built according to the plans. He feels comfortable that they have done their job. The town engineer and the DPW Director has looked at the plans and are comfortable with it.

Attorney Keiser continued that with that understanding, it also supports the conclusion that they are not going to diminish surrounding property values. Surrounding properties are not going to have adverse drainage issues or water coming onto the site from this development. That is certainly one concern that abutters will have with respect to their property values. Other considerations are things like what is the use going to be and what is it going to look like. She asserts that what has been designed for this rather small combination of two lots is modest and tasteful. It is 2ft higher than what is required if it is measured from the existing grade but it is not such a significant ask that it is going to dwarf the surrounding properties. Looking at it from Cable Road, it is going to appear to be right in context because it is going to be below the average of the two heights on either side. Denial of the variance will result in an unnecessary hardship. There are three parts to that analysis. The first is special conditions exist that distinguish this property and project from others in the area. Obviously, there are other lots in the area that are small. Some of these lots are just over 5,000sf and some are larger. The lot is not unique in that regard but it is an issue to consider. This is a small lot with a small building envelope. There is a wetland area that other lots do not have. There is a depression with the decreased grade in comparison to the lots on either side and in comparison, to Cable Road. That is something that is unique to this property. This property is also in the AO Flood Zone and a little bit in the X Flood Zone as well. That coupled with the fact that the lot is quite depressed, is essentially vacant and therefore collecting water from surrounding lots and from the street, is a special condition, coupled with the fact that there are certain requirements that have to be met in terms of flood compliance. No fair and substantial relationship exists between the general purposes of the ordinance and the specific application in this instance. She noted that she already went through the purposes of the zoning ordinance. She would submit that there isn't a relationship when this situation is considered with the unique features of this lot in terms of the depression and the decreased building area. There is not a fair and substantial relationship between the height requirement in this specific circumstance and also with respect to the building coverage. The dwelling and overall coverage exists to avoid over bulking. They exist to make sure that there is not too much impervious coverage, whereas here there is an overall impervious coverage under 30%. The dwelling is not going to be too large for this lot. The idea is to specifically address stormwater and the impact the impervious surfaces that are being added. The proposed use is reasonable. It is a permitted use and is reasonable as a result. Substantial

justice is done by granting the variance. There is no benefit to the public that would outweigh the hardship to the applicant. The team has worked hard to assure that the public is benefited. Therefore, there is no benefit to them by denying the variance with the way this project is developed and by the considerations given to address the drainage issues. If the variance was denied the loss to the Beauchesnes is significant and would not be outweighed by gain to the general public.

Mr. Dobberstein stated that he wanted to address the issues with the flood zone. It is an odd situation in this area right now because there are preliminary flood maps that are set to become effective soon. This particular area is actually going from an AO1, a 1ft flood depth, to an AE8. There is a slight difference in elevation to what is shown on the existing conditions plan. The elevation 8, due to the datum that 0 is measured from, is essentially 9 inches lower. What is now elevation 9 on the existing condition plan, will basically be the base elevation. Two feet of fill is being added, partially to raise the area out of the flood zone (based on the new maps) and also provide the client protection against future flooding due to sea-level rise. Looking forward, that is very responsible. The extra 2ft of height requested is essentially for the 2ft of fill to get it above the base flood.

Attorney Tim Phoenix stated that the height is 2ft higher than what is allowed because the fill is needed for both drainage and flood protection in the future. It also puts the lot even with everybody else on the street. He noted that he has photos that show that the lots around this lot have already been filled. Cable Road is higher. The houses across the street are higher and the house on either side are higher with fill. The purpose of the height restriction is so that the house will not overpower the neighbors. He submits that when the fill is put in it will be consistent with the neighbors because everything has been raised up around it. On the coverage issue, he has always treated an attached garage as part of the dwelling and part of the 15%. However, it was pointed out that the ordinance actually reads the dwelling can be 15% and accessory structures, plus anything else, can be an additional 15%. A garage, whether attached or detached, is defined as an accessory structure. The reasoning is the garage goes in the second 15% and something on top of it, because it is not covering anything more, would be in the percentage, therefore, a variance wouldn't be needed. The building department has said that if the garage is taken out, moved over to the side, if what is on top is put on the ground it would count. The building department counted it and that is how it got from 14% to 16%.

Chair Weathersby noted that the Board received a letter in opposition to the request for variances was received from **Mary Claire Clarkson, 14 Breakers**.

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

Mrs. Canotas, 2 Breakers Road, noted that there is a lot of flooding in this area when there is a storm. The drainage is terrible. Any runoff from that new home will run into the wetlands. She does not think that particular area needs anymore drainage from anywhere.

Mary Claire Clarkson, 14 Breakers Road, stated that she heard about all the adaptations to the property to address drainage but the water has to go somewhere when it fills up the ditches. It is only going to go to lower ground, which is Breakers Road. Her home backs up to the home that is being proposed. She has had as much as 2ft of water in her crawl space when the sump pump has failed. Even a moderate rain will turn on the sump pumps and they will keep pumping out. She does not see that the water will be collected enough to protect the neighbors on Breakers Road.

Bill Laramie, 14 Cable Road, stated that this is very similar to the last hearing. There's an issue with elevation on a vacant lot. Going up 2ft creates a hardship but it seems like it is self-induced. The height has to be consistent in the area.

Richard Beauchesne, applicant, stated that there was a point made in the last application that the buyers knew what they were getting. Before he purchased the property, he contacted FEMA, the State and the Town to see if a lot in the flood zone could be filled. The answer was "yes". The issue has been with the stormwater management. It has been a massive problem. The lot has a problem. It floods and it has to be fixed for someone to develop on this lot. He is not asking for it to be a mountain. He is just asking to get his house to where it is safe. To get insurance, the house has to be out of the flood zone. Without insurance the house can't be built. After recognizing that filling is possible, and not illegal, he purchased the property but then came the stormwater management, which has been an unbelievable undertaking. He continued that if this is allowed to go through, it will actually be doing the neighborhood a service because it will drain 35% less water, by the engineers' analysis, to the back wetland than what it currently is doing. Not only will it not increase, it will actually absorb more. He commented that he thinks he can build a house, do it safely and add some benefit to the general area. The drainage problem is a massive problem that everybody has but he does not think building his house will contribute to increasing that problem. If anything, by the analysis, it is actually going to be made better.

Attorney Phoenix stated that they have heard the concerns of the neighbors and certainly respect that they are nervous about more water. The experts have come up with a plan, over a lengthy period of time, that they believe meets the requirements and makes things no worse but better. The town's engineers reviewed the plan and agree. The Building Inspector agrees. There is no basis for the concerns of the neighbors because the experts agree this is going to be better. The fill is needed to deal with both FEMA and drainage and put this on a level with everybody else. The dwelling coverage is pretty slight when there is usually more of a concern with the overall coverage, which is under 30%.

Attorney Keiser noted that the 2ft freeboard is a new requirement as of March 2018. That is an additional issue to contend with. She thinks it is a substantially different proposal from what was heard earlier tonight. This proposal is only asking for 2ft and there are a number of different considerations why it's needed. One of which is brand new and no one has had to deal with yet.

Chair Weathersby asked if the water that is leaving the property is actually being reduced.

Mr. Mulledy explained that they are matching what is existing. Mr. Beauchesne was referring to an old analysis.

Chair Weathersby clarified that the amount of water that is leaving the property now will be the same after the home is built.

Mr. Mulledy confirmed. He noted they are detaining and slowing down the rate of runoff quite substantially.

Chair Weathersby asked for the interior ceiling heights.

Mr. Amsden replied that they are 8ft high on the first floor and 7.6ft on the second floor.

Member Driscoll asked if there was an attempt with the freeboard and the regulations to adjust the roofline to get it down to a conforming roof height.

Mr. Amsden replied yes; however, it created almost a flat roof.

Member Driscoll asked if it made any changes to the inside living area.

Mr. Amsden replied no.

Chair Weathersby asked if it is the intent to voluntarily merge these lots with the Planning Board.

Attorney Keiser confirmed.

Hearing no further comments, Chair Weathersby closed the public hearing at 10:00 p.m.

The Board agreed to not hear any more applications for the night.

Motion by Burt Dibble to continue the applications of Ocean View Trust, William and Beverly Macleod, Chris Stafford, Brian Putnam, Ed and Beth Parolisi, and the administrative appeal filed by Ocean View Trust, to a meeting on September 19, 2018. Seconded by Patrick Driscoll. All in favor.

Chair Weathersby opened up discussion to the Board on the Beauchesne/Healy application.

Member Durkin stated that he does not see any comparison in this situation and the prior application. There is a FEMA requirement and it has to be at a certain grade now.

Member Driscoll commented that they have said that they can get the same house footprint it would just change the aesthetics a bit.

Vice-Chair Crapo stated that Mr. Amsden is a qualified architect. This is probably at the precipice of whether snow is going to move or not. He thinks that part of the reason for the multiple peaks is an attempt to keep it lower rather than to have one overall arching roof from front to back, which might have driven the height up even more. He agrees that on the height issue this is unique from the last situation. This is a lot that sits down lower. Part of the reason for the Coastal Overlay is to reduce the dominance.

Member Durkin stated that he can hear with future applications that this is precedent setting. If the vote is in favor, it should be clear that it isn't precedent setting. It is looking at this particular lot because it has unique characteristics relative to the elevations of the properties across the street and on either side of this lot.

Member Dibble commented there is a hardship here.

Vice-Chair Crapo stated that he struggles with the drainage. Once it is done, it is done and what if it doesn't work? However, he felt the same way about a property on Laurence Lane. The neighbors were all concerned about the drainage. The drainage was addressed by modern engineering and the applicant got their relief. The neighbors left the meeting upset but six months later, some of them admitted that it actually helped some of the drainage in the area and it had worked. Here the lot is down in a bowl that fills with water. It concerns him. However, the complication of it does not scare him as much as the sheer elevation and the fact that the catch basin that helps that neighborhood daylights to high tide.

Member Dibble stated that he read the engineer's report and it is beyond him. It is his usual habit to trust the experts. His intuition is that there is not going to be any more water in this neighborhood than what is there now without the house. The wetland is going to continue to drain just like it does and the rain is going to fall in the wetland just like it does. In regards to the roofline, it is clear there is hardship here regarding the height. When he stood on the sidewalk and looked at the house to the left it was pretty tall. He is satisfied with the analysis that it is in keeping with the neighborhood and it is not bulking things up. He is inclined to approve the variances.

Member Driscoll stated that on first brush he thought the house was too big for the lot. In hearing the application, looking into it further and having the town's engineer look at it and confirm their respected engineer's findings, put his mind at ease. He is always a little skeptical of new technology but he is not an engineer and is willing to leave that to the professionals. It seems like it was well thought out. After hearing the application and discussing it, he does not have an issue with the stormwater management part. He still struggles with the ridge height. He agrees that this is an important part of the house but they can get the same square footage and the same layout by just reducing the roof pitch.

Chair Weathersby asked if it would affect drainage or snow runoff with a shallower pitch.

Member Driscoll stated that water is going to runoff on a 4 to 12 pitch. He thinks the case could be made that for the health of the house it shouldn't go below a 4 pitch.

Referring to the application, Chair Weathersby stated that she does not have a problem with it. She is sympathetic with the existing conditions and the requirement of the ordinances and with FEMA. She thinks there are times, because of those regulations, a house needs to be raised in order to meet those requirements or in order to get a modern house. She thinks that is part of the unique character of this property. It sounds like the ceiling heights are reasonable and the house is aesthetically pleasing. She would be concerned if the pitch was to get too shallow. She does not have an issue with that 2ft extra. The house is still at 28ft it just needs the fill. Addressing the substandard size lot, the Coastal Overlay requires that the lot be 7,000sf or larger, which this is. They have shown that this lot is pretty similar to other lots in the area. With the drainage issue, she would have to rely on the engineer's report and the town engineer's findings that there is not going to be any increased runoff to the abutting properties. Based on the reports, she does not think the development of this property will exacerbate those conditions. As far as the dwelling coverage, what they are asking for is a small amount and she is comfortable with the 16.3% impervious coverage. She suggested a condition that all the stormwater features be installed and also be maintained.

Member Driscoll pointed out that the town does not have anything for enforcement of that.

Chair Weathersby noted that if the neighbor says the water is running over into his yard, he can call the building department for them to follow up.

Member Dibble commented that it cannot hurt to say that they should be maintained.

Chair Weathersby called for a vote on variance relief to Section 601:

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes

Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - 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
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - 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
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on variance relief to Section 304.5:

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - 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
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - 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
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on variance relief to Section 304.4:

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

Shawn Crapo – Yes
Patrick Driscoll - No
Tim Durkin - Yes
Burt Dibble - Yes

Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll - No
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll – No
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - 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 - No
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - No
Tim Durkin – Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Patrick Driscoll - No
Tim Durkin - Yes
Burt Dibble - Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Richard Beauchesne and Patricia Ann Healy of 46 Mountain Road, Camden, ME, for property owned and located at 0 Cable Road, now known as 9 Cable Road, for variances to 304.4, 601 and 304.5 conditioned upon compliance with the proposed drainage plan and its ongoing maintenance. Seconded by Tim Durkin.

Member Driscoll noted that in general he is in favor of the project, stormwater management and overall coverage, but he is not in favor of the height. He asked if that means he has to vote “no” on the entire application.

Member Dibble stated that as he understands it, if they total up all the “yeses” and the “noes” for the all the individual questions, there are more “yeses” than “noes”.

There was some discussion on voting on the project as a whole.

Chair Weathersby called for a vote on the motion to approve the three variances with the condition.

Vote: 5-0

- 3. 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.**

- Continued

4. 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.

5. 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.

- Continued

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.

- Continued

7. 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.

- Continued

8. 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.

- Continued

9. 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.

- Continued

10. **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.**

- Continued

11. **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.**

- Continued

Adjournment

Motion by Burt Dibble to adjourn at 10:30 p.m. Seconded by Patrick Driscoll. 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: Petition by Russ and Jayne Dockham

Property: 0 Perkins Road, Tax 5, Lot 51-001 owned by Tyler McGill

Application case: Cases # 29-2018

Date of decision: September 5, 2018

Decision: The Board Voted 4-1 to deny the request for a rehearing of the Board's August 1, 2018 decision granting an Administrative Appeal from the Building Inspector's letter dated May 23, 2018 regarding fence height.



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 N. Herbert Assoc. Inc., for property owned by
Cara C. Zohdi 1998 Trust of 1 Frost Road, Windham, NH


Property: 4 Winslow Way, Tax Map 17, Lot 75-1

Application case: Case # 20-2018

Date of decision: September 5, 2018

Decision: The Board voted 5-0 to deny the request for a variance from section 304.4
for a 34' building height for the following reasons:

- There were no special conditions of the property that distinguished it from other properties in the area. The property is burdened by the height restriction in a manner that is not distinct from other similarly situated properties.
- The applicant did not meet the burden of hardship. Any hardship is self-created.
- The applicant submitted plans demonstrating that a tasteful and modern home (indeed very similar to that proposed) could be built upon the lot that meets the height restriction of the zoning ordinance.
- Additional building height needed in order to obtain an ocean view is not a sufficient reason for granting a variance.
- Granting the requested variance would be contrary to the public interest.
- The spirit of the ordinance would not be observed if a variance were to be granted.
- Substantial justice is done by denying the request. Any loss to the Applicant is outweighed by the gain to the general public in enforcing its ordinance.
- Granting the variance may result in a diminution in the values of surrounding properties; and
- The proposed use was not reasonable.



Patricia Weathersby
Chairman

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BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION


Applicant/Owner: Ocean View Trust, Timothy E. Sanborn, Trustee

Property: 753 Ocean Blvd, Tax Map 23.1, Lot 16

Application case: Case # 28-2018 and Case #38-2018

Date of decision: September 5, 2018

Decision: The Board voted 5-0 to continue the applications to the September ¹⁹5, 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: Chris Stafford

Owner: Elizabeth Hoffman

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

Application case: Case # 32-2018

Date of decision: September 5, 2018

Decision: The Board voted 5-0 to continue the application to September 19, 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/ Owner: Edward & Donna Theobald

Property: 20 Brackett Road, Tax Map 22, Lot 87
Single Residence District

Application case: Case # 35-2018

Date of decision: September 5, 2018

Decision: The Board voted 5-0 to continue the application to September 19, 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/ 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 5, 2018

Decision: The Board voted 5-0 to continue the application to September 19, 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/ 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 5, 2018

Decision:

The Board voted 5-0 to continue the application to September 19, 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/ 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 September 19, 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

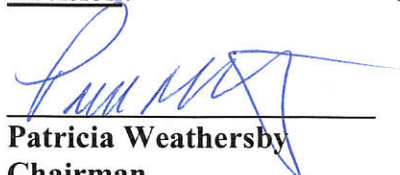
Applicant/Owner: William & Beverly MacLeod of 77 Sunset Rock Rd., Andover MA

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

Application case: Case # 31-2018

Date of decision: September 5, 2018

Decision: The Board voted 5-0 to continue the application to September 19, 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.