

## **RYE ZONING BOARD OF ADJUSTMENT**

**Wednesday, November 7, 2018**

**6:45 p.m. – Rye Town Hall**

*Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Patrick Driscoll, Rob Patten, Gregg Mikolaities, Charles Hoyt and Burt Dibble (arrived 6:59 p.m.)*

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

Chair Weathersby called the meeting to order at 6:45 p.m. and led the Pledge of Allegiance.

### **II. Approval of Minutes**

- September 19, 2018

**Motion by Shawn Crapo to approve the minutes of September 19, 2018 as amended. Seconded by Patrick Driscoll. Vote: 5-0 (Weathersby, Crapo, Driscoll, Patten and Hoyt)**

- October 3, 2018

**Motion by Patrick Driscoll to approve the minutes of October 3, 2018 as amended. Seconded by Burt Dibble. Vote: 5-0 (Weathersby, Crapo, Dibble, Driscoll and Patten)**

### **III. Rehearing Request**

***Sitting for the following rehearing request: Patricia Weathersby, Shawn Crapo, Patrick Driscoll, Rob Patten and Gregg Mikolaities***

- Request by Timothy E. Sanborn, Trustee of Ocean View Trust for rehearing and reconsideration of the Rye Board of Adjustment's September 19, 2018 denial of applicant's appeal of the building inspector's administrative decision case #38-2018.  
**Public hearing closed during Board discussion on the request.**

The Board reviewed the request from Timothy Sanborn for a rehearing and reconsideration of the Board's denial of the appeal from the building inspector's administrative decision.

Chair Weathersby stated that the request raises a number of points. One of the points was that the building inspector was in error by not offering him the option to repair the system before he revoked the occupancy permit. Mr. Sanborn raised a number of issues around that point.

Vice-Chair Crapo stated that the Board discussed several times that the building inspector's letter had an "and/or" do this. It had the ability for the pumping schedule, which was never pursued. There was no 100 percent stopping of use.

Chair Weathersby explained that Mr. Sanborn thinks there was an error in the way the building inspector didn't allow him to repair his system. Mr. Sanborn thinks that under Rye's Building Code and state law he is allowed to repair his system. The first point is that the ZBA overlooked the building inspector's error of not following Building Code 7.9.7. In looking at the state requirements, those require a plan to be in place for repair. The building inspector said in his letter that "since 2012, there is no septic plan and a new system must be designed and installed". Mr. Sanborn was unable to provide a plan and any specifics about the existing system. The building inspector visited the site and saw the pipe, chimney tile, stones and roof shingles. It did not give the inspector much confidence that it was a functioning system.

Vice-Chair Crapo stated that his interpretation of why there would be a statute saying that someone can repair, is that if there was an approved system that malfunctioned it could be repaired. In this case, there was no approved system. It would be fixing a system that was not built to design standards.

Chair Weathersby stated that they can agree that if there is an approved plan, the state and the town allows for repair; however, that is not the case here. She does not think the Board erred in finding that the building inspector was correct.

Member Mikolaities agreed. He stated that he would love to have seen a plan attached to the appeal.

Chair Weathersby noted that Mr. Sanborn's other points go back to what the Board just talked about. She does not feel the Board made an error. Mr. Sanborn attached information on the new procedure for dye tests and not needing an installer's permit. That is new information that could have been presented but wasn't. That is not something the Board can base the request on. She asked the Board if there was any further discussion.

**Motion by Shawn Crapo to deny the rehearing request of Timothy E. Sanborn.**

**Seconded by Gregg Mikolaities. Vote: 5-0 (Weathersby, Crapo, Driscoll, Mikolaities and Patten)**

**Note: Gregg Mikolaities was dismissed from the meeting at 7:13 p.m.**

Chair Weathersby noted that a number of cases that are on the meeting's agenda have requested a continuance. The Board has agreed to have a second meeting in November to hear some of the cases. The meeting is scheduled for Wednesday, November 28<sup>th</sup>. Shawn Crapo will be chairing the meeting on that night.

Cases that have requested a continuance to the next scheduled meeting:

- Carey & Giampa Realty Trust, 655 Wallis Rd; (#'s 10 & 11)

**Motion by Patricia Weathersby to continue the applications of Carey & Giampa Realty Trust to the November 28, 2018 meeting. Seconded by Charles Hoyt. All in favor.**

Cases that have requested a continuance the December meeting:

- Ray's Seafood Rest, Inc., 1677 Ocean Blvd (#7);
- Jesse Durkin, 395 Washington Rd (#'s 8 & 9); and
- Donald K. Laing Rev. Trust, 140 Harbor Rd (#6)

**Motion by Patricia Weathersby to continued the applications of Ray's Seafood, Jesse Durkin and Donald K. Laing Revocable Trust to the regularly scheduled December meeting. Seconded by Burt Dibble. All in favor.**

***Seated for the following rehearing request: Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Rob Patten.***

- Request by Attorney Scott E. Hogan for a rehearing and reconsideration of the Rye Board of Adjustment's decision of October 3, 2018, granting Variance requests of John Samonas for property at 1215 Ocean Blvd, Tax Map 17.3, Lot 6.

**Public hearing closed during Board discussion on the request.**

The Board reviewed the rehearing request from Attorney Scott E. Hogan regarding the Board's approval of variances for the property located at 1215 Ocean Blvd.

Chair Weathersby stated that the reasons they are giving for a rehearing is that the Board did not consider the historical significance of the property. They attached information that came up from the Beach Club proposal from the Historical Resources Department. She commented that the Board did not consider all that but in her mind that was information that could have been presented at the meeting but was not. That cannot be considered now.

Member Dibble asked if this information was part of the original application.

Chair Weathersby replied she does not think so.

Vice-Chair Crapo stated that it was not brought up nor did it actually serve as an impediment to the Wentworth's proposal. The historical aspect wasn't a factor.

Chair Weathersby stated that for this matter there was no discussion concerning that point. The Board does not know how it would affect it but that can't be discussed now. The other concern they raised was that the Board should have required the stormwater management plan and grading plan. She continued that she would have liked to have had those. She was frustrated that the Board did not have those. However, she feels that the Board asked so many questions about the grading and the storm water management that she had a sense of exactly what was happening on the site. The approval was conditioned on a stormwater management plan being required and approved by the building inspector. The proposal is also going before the Planning Board and they can hire an engineer if there are questions.

Member Patten stated that the applicant gave a reasonable explanation at the time. They did not invest that type of money at that time because they were waiting to get past the ZBA hurdle. Those plans will be done for the building inspector.

Chair Weathersby stated that in trying to more efficiently deal with applications, maybe the Board does want to require a stormwater management plan for everything. Regardless, she does not think that is a

reason for the Board to rehear the application. If the Board rehears on that issue, she is not sure what she would hear differently.

Member Driscoll stated that he has some general frustrations with not having the ability to discuss it with the building inspector during the meeting. He thinks there is a little disconnect in blindly relying on the Planning Board and building inspector. To the applicant's case, he understands the numbers side of it. He noted that when he was asking about how much fill was going to be brought in, the applicant new those numbers. They had definitely done some preparation for the presentation. They were honest about the fact that they did not want to make that investment but had prepared. He felt that they had taken it as far as the town requires to bring the case to the Board. The questions that he had were answered with the information that the applicant's team had gathered.

Vice-Chair Crapo pointed out that they did not provide those specific reports but they did provide testimony and data. Several items were talked about.

Chair Weathersby stated that another issue they raise is that the applicant didn't prove hardship on the height issue. The hardship on the height was self-created by putting the garage under. If they changed the design, they wouldn't have needed the height variance. They felt that because the issue was self-created, the Board should have denied the variance request. To her, this is the wrong standard. The standard is not whether the hardship is self-created. The standard is whether an unnecessary hardship is created if the variance is denied.

Member Dibble commented that it is also about whether the hardship is attached to the nature of the land. With the FEMA and fill considerations, it was discussed that this was something that couldn't be done otherwise.

Member Driscoll noted that this was the hardest thing for him. He remembers talking about it for a considerable amount of time and coming to the same conclusion at the end.

Vice-Chair Crapo commented that he came to the conclusion that there was no hardship and voted "no".

Chair Weathersby stated that the units need some storage. She agrees that the garages could be detached and out back to bring the height down. However, there would be more disturbance to the wetlands. She felt comfortable that this was the better design option for the property. It reduced the amount of coverage on the lot. The applicant did what could be done to reduce the floor heights. She thinks the Board struggled with the design changes and what was best for the property. In the end, the Board felt that what was being presented was the best proposal.

Member Dibble stated that the Board had all those discussions. Those related to the building proposal but he does not think they directly related to the hardship issue, which is directly related to the character of the land. With the FEMA considerations and the low-lying nature of the land, there was some additional height. To him, that says the hardship is with the land not the decision of the property owner.

Chair Weathersby commented that she agrees to a large extent that 4ft or more of the height was due to the land. However, the design drove the extra reach because they wanted the garages. She got comfortable that the design presented was the least onerous.



Member Driscoll stated that something that was brought up in the request is that one of the abutter's views is somewhat affected. That is something that he did not consider as much on this application as he has considered on others with height restrictions he has voted on. That would be the one area that he might not have considered enough.

Chair Weathersby stated she was surprised to see this argument. It was not raised that their view would be affected. The Pelletiers sent a letter to the Board expressing their concerns. They stated their objections and it was not about blocking their view. The only reference to visual was in #3; *"Granting the variance of 36ft high buildings in this area sets an unacceptable precedence. The 28ft height has to be maintained for the integrity of the Coastal Overlay District or there could be an ongoing visual wall on Ocean Boulevard"*.

Vice-Chair Crapo pointed out that the ability to argue that was not taken.

Chair Weathersby agreed. If they didn't argue it, they can't now raise it when it could have been raised before. That can't be a reason for a rehearing because the argument could have been made and addressed.

Vice-Chair Crapo stated that if the Board felt this warranted a rehearing, the only part that would come in to play would be the part above 28ft. The analysis would be "this view and peak" versus "a flat roof at 28ft" and whether that little triangle is going to effect views.

Chair Weathersby noted that no one has a view easement. The fact that it effects a view goes back to what is the effect of having a view change. This goes back to the property value argument. There was nothing about the values of people's properties being diminished because of this proposal. In fact, the Board found that the values wouldn't be diminished. She pointed out that the Board could rehear just on the issue of views and how property values would be affected.

Member Dibble stated the Board made a decision based on the information that was before them. The Board is being asked whether they made an error in that decision. He does not see that they did.

Vice-Chair Crapo stated he understands why he voted "no" on the height and why it didn't meet the strictest definition of hardship. The members all had their interpretation of how they viewed the hardship. He does not know that he can say that they all erred in that. He disagreed with the conclusion on those questions but he does not think there is a blaring reason to say that something was misinterpreted. It comes down to people's views on the relation of the proposal and if it satisfies the criteria. He pointed out that four of the board members thought it did and he didn't; however, he does not feel there was an error by the Board.

Chair Weathersby continued that another point they raised is that buildings of this height and mass will alter the essential character of the neighborhood negatively. She commented that it is certainly going to change that corner. The Board heard testimony about other houses in the neighborhood that were of similar elevations. It was discussed how it is similar to the Riley property down the road.

Member Dibble stated that it was also discussed how it would affect the character of the neighborhood favorably.

Member Patten stated the Board spent a reasonable amount of time considering that the septic would be converted to state-of-the-art. He would have to agree that if this could never have been submitted that

evening, this might be a stronger case. The question is whether the Board made an error and he does not think they did. There may have been more to talk about if this was all there that evening but it wasn't.

Vice-Chair Crapo commented that the other part is whether there is new information available that was not available then. The argument could be made that it all could've been presented. In digesting the appeal, the Board has to try to separate the re-arguments of merit versus pointing out whether during the proceedings of that evening an error was made.

Chair Weathersby commented that she is hearing that the Board does not feel there was error. She continued that their last point was that the Board did not deal with the special exception. She thinks it was proper procedure. Granting the variances is the higher burden of proof for all the disturbance in the wetland and grading for the driveway.

Vice-Chair Crapo stated their last point was that in regards to the wording on the Notice of Decision. He noted that Attorney Donovan has said that just because someone votes "no" but the item passes, the overall package can still pass.

Chair Weathersby noted that the Board has struggled with this over the years on whether they can vote in favor of the whole package. That was done on this case and that was perfectly fine.

Vice-Chair Crapo pointed out that the height was voted 4 to 1. The overall Board voted to grant it.

**Motion by Burt Dibble to deny the rehearing request submitted by Attorney Scott E. Hogan on behalf of various Rye citizens listed. Seconded by Shawn Crapo. All in favor.**

#### **IV. Applications:**

*Seated for the applications: Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Charles Hoyt.*

- 1. Richard & Theresa Carey, Trustees, Richard & Theresa Carey Revocable Trust of 11 Robandy Street, Andover, MA for property owned and located at 11 Surf Lane, Tax Map 8.4, Lot 7.1** request variances from section 304.5 for building coverage of 24.5% where 19.1% was permitted by variance on ~~8-21-18~~ 8-21-17 and 15% is permitted; from section 204.3 B for a structure +/- 2.6' from the right side property line where 8.6' was granted and 20' is required; and from section 204.3C for a structure on the Breakers road setback of 7.2' where 11' was previously approved +/- 5' exits and 22.2' is required. **Property is in the General Residence and Coastal Overlay District. Case # 41-2018.**

*Attorney Phoenix noted an error in the posted agenda. The variance for 19.1% building coverage was permitted on 8-21-17. He suggested to hear the variance request first, as the equitable waiver would not be needed if the variances are approved. The Board agreed.*

**Attorney Tim Phoenix, representing the applicant,** presented to the Board. He stated that the lot is 6,274sf with 50ft of frontage on Surf Lane and 124ft of frontage on Breakers Road. There is a single-family home on the lot that underwent significant interior and exterior changes following the granting of the variances in 2017. The applicants are requesting 24.5% lot coverage where 19.1% was permitted by

variance in August of 2017. He noted that there are a series of site plans in the board's packets. The original plan from 2008 was done by Jim Verra. Mr. Verra shows a building coverage of 16.8%. He pointed out that Mr. Verra's office made a mistake because the rear covered porch was not included in that building coverage. In 2008, the building coverage was less than it should have been on the plan. In 2017, Mr. Carey took the same plan and submitted it to the Board. He recognized that the whole building, including the coverage porch, has to be in the building coverage. He started with 16.8% and took it to 19.1%, based upon the error on the first plan. After the variance for 19.1% coverage was granted, it was discovered that there was still an error, which brought it up to 21.9%. When that was discovered, the building office told Mr. Carey to fill out an equitable waiver form, which he did but nothing was ever done with it by the building department. Now in 2018 with all the work completed, Mr. Verra's office visits the site to do an as-built and they realize they had missed an additional covered porch that was not included, which brought it to 21.9%. With the whole back being closed in, it is really 24.5%. He continued that the building was built per the plans. However, the mistake was made in the beginning with the 16.8% coverage and everything stemmed forward from that until the as-built was done. He noted that the second reason they are before the Board is because Mr. Carey had a small patio put in and did not realize he needed variances for the setbacks. (He reviewed photos of the back of the home that is now all closed in making the coverage 24.5%.) The relief being requested is for the 24.5% and for the setbacks for the patio. Attorney Phoenix reiterated that the building is built as approved. The patio was added without approval.

Referring to the plan that was presented to the ZBA in 2017, Chair Weathersby asked if it was the second plan with the handwritten coverage.

**Richard Carey, applicant**, explained that the original site survey was done in 2008 by Mr. Verra. Nothing changed on the lot from 2008 to 2017 when it was decided to move forward on the work. On the original plan, the 16.8% looks like it includes the whole building but it really only includes the foundation. The existing 250sf deck with roof (screened porch 10x25) is missing. There is 250sf missing from the baseline of the measurement. He continued that in 2017, he came to the Board with a proposal to add 6ft beyond the existing porch footprint, which is 145sf. This took the coverage from 16.8% to 19.1%, which is what was thought to be correct at the time.

Referring to plan 3, Chair Weathersby stated there is a proposed coverage porch with steps. She asked if this is different than what was proposed.

Mr. Carey explained that at this point, Mr. Verra was presented with construction drawings. The building inspector required a plan that included construction drawings. Mr. Verra neglected to add the covered porch area to the square footage. He came up with a coverage of 21.9%. It wasn't until the final as-built was being done that it was realized that the whole covered porch area needed to be part of the building. The coverage is actually 24.5%.

Referring to plan 4 (as-built), Chair Weathersby commented that the covered porch is very different from the covered porch on the prior plan. She asked if it is still within the same footprint as what was presented to the ZBA in 2017.

Mr. Carey confirmed.

Chair Weathersby asked if there is additional bulk or height from what was presented to the Board in 2017.

Mr. Carey replied that it is exactly the same as 2017.

Attorney Phoenix noted that the new plan adds the permeable pavers that were put in, which were left off of the interim plans and wasn't counted.

Mr. Carey pointed out that as soon as he realized there was a mistake, he brought the issue to the Planning Administrator, prior to getting the permit. Mrs. Reed said that an equitable waiver would most likely be needed. An equitable waiver form was filled out and given to the building inspectors. The building inspectors looked at it and put it in the file. They had the construction drawings and subsequently a permit was issued. The project was inspected extremely carefully throughout by Mr. Marsden and measured. He noted that he did nothing to change any plans that were presented. It was an error that carried forward in the building coverage.

Member Driscoll asked if the additional patio was already installed when the error was found.

Mr. Carey explained he had a variance for permeable pavers for the driveway for the Surf Lane side. In the back, he knew that he couldn't put down anything that would increase impervious coverage and he really liked the pavers for the driveway. He pointed out that his mother requires a wheelchair and they wanted something where she could be taken outside to sit out back. Crushed stone and gravel are not that friendly for wheelchairs. Also, there has been issues over the years with crushed stone and grass being used for the outdoor shower area. He stated that the permeable pavers were put in not knowing that variances were needed. The area of the pavers is 10ft out and 4ft wide; just wide enough to get into the shower.

Attorney Phoenix stated the equitable waiver request is part of the packet that was turned in. There is also a letter from the landscaper confirming that the pavers are permeable. There are also two letters from neighbors in support;

- **Donna Morse, 9 Surf Lane**
- **Steve & Jeanne Wentzell, 12 Surf Lane**

He reiterated that the house was built as approved and has been in the neighborhood for over a year without any complaints. The rear patio is at ground level and doesn't really affect anyone. The closest neighbor has no objection to it. The Rye Ordinance for setbacks has exceptions for things like subsurface disposal systems, driveways, fences and stone walls. He would submit that something like a patio ought to be included in that list because it is very similar to a driveway, fence and stone wall, in fact its lower. It is not in the ordinance so technically a variance is needed.

Attorney Phoenix reviewed the criteria for granting the variances.

- Granting the variances are not contrary to the public interest and the spirit of the ordinance is observed. Would granting the variance unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives? (Mere conflict is not enough.)  
In the Malachy Glenn Case, the question for those two tests is; Will the variance alter the essential character of the locality or threaten the public health, safety or welfare?  
The 24% coverage for the home is higher than what was thought and is based on a mistake. It is what the ZBA approved physically it is just the numbers were wrong. The home is already part of the central locality. The patio, which is tasteful, permeable, at ground level and approved by the neighbors, does not threaten the public health, safety or welfare.

- The variance will not diminish surrounding property values.  
The home is already there. The patio is already there and no one can see them.  
Nobody's property value is going to diminish by granting this variance, which is really just a correction of something that should've been passed previously.
- Denial of the variance would result in an unnecessary hardship.  
Special conditions exist that distinguish it from other properties in the area?  
Special conditions were found last time for the same reasons that exist here. It is a very small lot. Almost any improvement would require these same variances. The patio serves both an aesthetic and human purpose. It keeps the shower from becoming muddy from use. There are special conditions.  
Is there a fair and substantial relationship between the public purposes of the ordinance and its application in this instance?  
The reason for building limits is to avoid over bulking, to provide for stormwater management, air, and light. This building has been there and a stormwater management plan was done. That has all been approved. The patio is permeable so runoff will be controlled as it should. There is no reason to apply the 15% maximum when it is already done and is not a problem for anyone in the neighborhood.
- Substantial justice will be done.  
If there is no benefit to the public that outweighs the hardship to the applicant, this factor is satisfied.  
The house is built. The public will not be helped by denial of these variances but it would require some of the building to be removed to get down to the required percentage. That would not be fair or reasonable.

Vice-Chair Crapo pointed out that with the corrected numbers and the proposed patio, it is still under the 30%.

Mr. Carey confirmed. The total coverage is 27.6%.

Chair Weathersby asked if the stormwater management plan was done with the pavers in the back in place.

Mr. Carey replied they weren't. He explained that the gentleman who designed the infiltration trench wrote a letter confirming the pavers have no impact on the functional aspect of the drainage plan that was approved and they are permeable. The drainage system that was required catches the water runoff from the roof and brings it down into a big pipe for dispersion.

**Jim Verra, Verra and Associates**, explained the stormwater management design to the Board.

Vice-Chair Crapo asked if the new pavers in the back are permeable.

Mr. Carey confirmed. The pavers were installed by the same person who did the driveway.

Vice-Chair Crapo clarified that the permeable pavers are not included in the 27.6%.

Attorney Phoenix confirmed. (He submitted a letter from the person who designed the underground system who stated that the functionality of the system would not be inhibited if an impervious treatment



was constructed above the trench and this is pervious.) The patio constructed above the system, pervious or impervious, will not affect the installed system.

Chair Weathersby opened to the public for comments.

**Dwight Tuttle, 31 Breakers Ave**, stated that he has no issues with the proposal.

Speaking to the applicant, Member Driscoll asked if he has spoken to the abutter to the southeast about the proposal.

Mr. Carey confirmed. He noted that his neighbors have no objections to the proposal. He also noted that he has planted 8ft arborvitaes on both sides of the property for more privacy.

Hearing no further comments from the public, Chair Weathersby closed the public hearing at 8:19 p.m.

She opened to the Board for discussion.

Member Driscoll stated that he has no real problem with the house numbers. It seems that it was presented to the Board with the correct calculations. It was the dimensions that were wrong. He remembers this case and deliberating a lot on the parking spaces. He remembers not being worried about the building coverage, especially with a small change. He thinks it was an honest mistake. A good portion of proposed structure was presented. He feels a little uneasy that there is not a surveyor's stamp on the plans. He had more of an issue with the pavers; however, he thinks it was an honest mistake. He does not see a reason to have the applicant peel that up. Also, the abutters are all in favor and the designer says it does not affect the drainage plan. He commented that he does not like approving things after they have been put in. However, if this was part of the original application, he would not have changed his vote to approve the application.

Vice-Chair Crapo stated that with respect to distance from the abutters, view scape and bulking, the Board analyzed it as they say the plans. It was just an error in the numbers. If the numbers had all been there, part of the argument would have been that it is a small lot. He does not see any reason to deny this. He does not see that the permeable pavers negatively affect the drainage.

Member Hoyt stated that he does not have any problem with the application. He thinks it was an honest mistake. The permeable pavers were an honest mistake. It does not change how the neighbors view the property. He takes the applicant on their word that the engineer is an engineer. He would approve this application with no stipulations.

Member Dibble commented that he does not have to see the engineering stamp on the drainage plan.

Referring to the house, Chair Weathersby stated that she was encouraged to hear that exactly what was presented to the Board was what was built. When the problem was recognized, he was told what to do and applied for an equitable waiver or variance. The building department did not follow the proper procedure. She cannot fault the applicant for building the house knowing it didn't comply because he thought he had done everything he needed to make it comply at that time. She does not have a problem with the house nor the pavers. She might want to know the engineer's qualifications. She noted that many times the Board requires a maintenance plan for the pervious pavers. It is a small area but it is a tight neighborhood. There could be water issues.



Referring to the square footage attributed to the new permeable patio, Vice-Chair Crapo asked if the coverage would be over 30% if the pavers were to become impermeable. He asked if anyone has run the numbers.

Mr. Carey replied that it might be close but he is not sure of the percentage.

Chair Weathersby commented that she would like to see the engineer's qualifications.

Member Driscoll stated he would like to see them as well.

Vice-Chair Crapo commented that it would have to be over 300sf of impervious to get over 30%. It does not look like it will tip the scales.

Chair Weathersby stated that it sounds like the Board is in favor of granting the variances. They will go through the criteria with the condition that the engineer is licensed and his qualifications are presented.

There was discussion on having a condition on the vote. It was the consensus of the Board to not have the condition on the approval.

Chair Weathersby called for a vote for relief to *304.5, 204.3 B and 204.3 C*:

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to grant the variances requested by Richard and Theresa Carey for property owned and located at 11 Surf Lane as advertised. Seconded by Charles Hoyt. All in favor.**

2. **Richard & Theresa Carey, Trustees, Richard & Theresa Carey Revocable Trust of 11 Robandy Street, Andover, MA for property owned and located at 11 Surf Lane, Tax Map 8.4, Lot 7.1** request an equitable waiver of dimensional requirements from section 304.5 for the building coverage where 19.1% was permitted, 15% is allowed and 24.5% was built. **Property is in the General Residence and Coastal Overlay District. Case # 40-2018.**

*Attorney Phoenix withdrew the equitable waiver without prejudice.*

Speaking to the Board, Member Driscoll stated the he spoke to the property owner for the next case about doing the project. He will not be doing the project and it will not change his thoughts on the application. He feels he can be impartial in his decision.

The Board did not feel Member Driscoll needed to recuse himself from the application.

3. **Grace Sheehan (Wieczorek) of 7 Piccadilly Court, Manchester NH for property owned and located at 2165 Ocean Blvd, Tax Map 8.4, Lot 77** requests variances from section 603.1 for expansion of a non-conforming structure on a non-conforming lot; section 204.3 B for an addition within the 20' side setback and from section 304.5 for dwelling coverage where 11.7% exists, 15.6% is proposed and 15% is required. **Property is in the General Residence, Coastal Overlay District and SFHA, Zone AO (1). Case #42- 2018.**

**Ray Holmes, contractor**, presented to the Board. He explained that Ms. Sheehan's property is on the corner of Cable Road and Ocean Boulevard. There are two cottages on the property. In 2012, the substandard structure was removed and was replaced with a brand-new building completely in compliance. He continued that the current proposal is for a small remodel to the second building at the rear of the property. (He reviewed the photos of the property.) He noted that there is an existing deck and that is the area proposed for the new addition, except it will be 111sf smaller than the deck. He continued that the front setback and the side setback do not meet code but those are being left exactly as they are currently.

Ms. Sheehan noted that she would like to put a second story over the deck area but will not be changing the rest of the house.

Vice-Chair Crapo asked what the height will be.

Mr. Holmes replied 26 or 27ft. It will definitely be less than 28ft.

Vice-Chair Crapo commented that the lot next to this property was saying that the house is taller than 28ft.

Ms. Sheehan replied it is not.

Mr. Holmes pointed out that the house was approved and built to code.

Vice-Chair Crapo asked if there are any FEMA issues.

Mr. Holmes replied no. (He reviewed the plot plan for the Board.) He pointed out the deck and the size of the proposed addition. The main section of the house will stay exactly the same. An existing set of steps and a landing is being removed. The driveway to the bottom of the page is an existing stone driveway. A second parking spot is being added.

Chair Weathersby asked if there will be any deck at all.

Ms. Sheehan explained that under the addition will be a screened in porch. The addition will be two bedrooms and a bathroom. On the ground currently is a flat deck.

Mr. Holmes pointed out that the overall impervious coverage is being reduced. The impervious numbers include the crushed stone driveway and it came in under 30%. (He reviewed the elevations and floor plans for the Board.)

Vice-Chair Crapo asked if the drip edge is getting any closer to the lot line. The building inspector hasn't called that out. All that is before the Board is basically the coverage and to expand a non-conforming.

Chair Weathersby pointed out that they need side setback relief because they are adding volume.

Mrs. Reed noted that she sent an email to the applicant asking for an adjustment and didn't hear back.

Chair Weathersby explained that cottage B does not presently meet the side setback of 20ft. The side is being changed by making it taller. More volume is being added in the setback. Side setback relief is needed because volume is being added in the side setback. She asked what the setback is.

Mr. Holmes stated that the right-hand setback is 13.8ft and 12.3ft to the drip edge. Where the deck is located it is 4.0ft and 2.5ft to the drip edge.

Vice-Chair Crapo asked if this is closer than what is there now.

Chair Weathersby noted that it is the same. Speaking to the applicant, Chair Weathersby asked if she has talked to the neighbors to the right.

Ms. Sheehan replied no but the notices have been sent out. She has not heard anything from the neighbor.

Vice-Chair Crapo pointed out that the application requests a variance from Section 204.3. He reiterated that it is in the application and he feels comfortable going forward.

Chair Weathersby stated it is in the application. It just didn't make the notice. She is comfortable going forward.

Mr. Holmes stated that he did the numbers with the building inspector and they are accurate. Also, on the existing new house there are two bump-outs on the second floor that are 4x12 each. Those were included as if they were on the ground as part of the coverage.

Chair Weathersby opened to the public. Hearing no comments, she closed the public hearing at 8:55 p.m.

Member Hoyt stated he does not have a problem with the application, except for one thing. He would've liked to have seen some dimensions on the height.

Vice-Chair Crapo stated it is a reasonable renovation. It is unique in that it has two structures on the lot. They are trying to do a modest addition. They are trying to stretch the house without doing too much to the essence of the variances. He is comfortable with the proposal.

Member Driscoll stated he would recommend to watch out for the drip edge and to make sure the drainage from the new roof is not encroaching onto the abutter's property.

Chair Weathersby stated that she thinks it is generally reasonable. She struggles a little bit with adding an additional story over an enclosed porch, when the drip edge is 2.5ft from the line. She wishes the notice had been correct. They did ask for it in their application so she is comfortable going forward. She is just struggling with that much volume being so close; however, she does not believe it is enough to hold up the whole project.

Chair Weathersby called for a vote for relief to *603.1, 204.3 B and 304.5*:

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to grant the variances to Grace Sheehan (Wieczorek) for property owned and located at 2165 Ocean Boulevard from Section 603.1 for expansion of a non-conforming structure on a non-conforming lot, Section 204.3 for a side setback where 2.5ft, 2.5ft to the drip edge is requested and 20ft is required, and 304.5 for dwelling coverage where 11.7% exists, 15.6% is proposed and 15% is required. Seconded by Shawn Crapo. All in favor.**

4. **James & Penelope Shepperd of 6 Bay Road #33 Newmarket NH for property owned and located at 1021 Ocean Blvd, Tax Map 20.2, Lot 131 request variances from section 603.1 for expansion of a nonconforming structure; from section 204.3 B for addition on the right side setback where 7.7' exists, 5.0'/9.7' is proposed and 20' is required and on the left side setback where 7.4' exists, 7.9'/9.0' is proposed and 20' is required; from section 204.3 C for an addition in the front yard setback where 15.4' exists, 9.7' is proposed for pavers and 13.4' for stairs and 30' is required; from section 304.5 for dwelling coverage where 23.7% exists, 24.4% is proposed and 15% is allowed; from section 304.5 for lot coverage where 36.4% exists, 39.6% is proposed and 30% is allowed; and from sections 500.2 and 500.3 for parking in the front yard setback within 10' of the lot line. **Property is in the General Residence, Coastal Overlay District. Case #43b-2018.****

**Attorney Tim Phoenix, representing the applicant,** presented to the Board. He explained that it is a 6,876sf lot on Ocean Boulevard near Wallis Sands Beach. The house dates back to 1948. It is a two-family and has been since 1962. The two-family is not going to change. The bedrooms are not going to change. The applicant would like to do some interior and exterior modifications. (He showed the photos of the existing home.) He noted that the house goes pillar to post across the lot. It is very close to the



side line and the front line. Most of the circular driveway is not on the property. Most of it is in the state right-of-way. He noted that he has requested variances for parking. He has also requested an administrative appeal with respect to parking. If the variances are granted, the administrative appeal will be withdrawn without prejudice. He continued that there is just barely room for three parking spaces. The actual parking has not changed since 1968 and is unlikely to change. The lot would need four spaces under the ordinance. He explained that a mudroom is being added in the front and a large deck with a parking space under. There will be steps to accommodate the deck and entry into the addition. There is relief requested for a concrete wall to support the deck. Side and rear setbacks are needed. (He reviewed the plans for the Board.) He stated that they are requesting 603.1 because the building is being expanded, which already doesn't meet the requirements in any respect. The side yard setbacks are not changing very much on the right and left. The dwelling coverage has increased slightly because of the little appendage on the front of the house. The coverage is already at 23.7 and goes up to 24.4. The existing lot coverage is 36.4 and this will take it up to 39.6. Given it is a pretty small lot, it is a modest proposal and there is a drainage study that says it all works, they hope the Board will agree it is fine. With respect to the parking spaces, two spaces are required per unit under the ordinance. Although, his argument would be that it is probably grandfathered since it has been that way since 1962. The parking spaces cannot be in the front yard or within 10ft of a lot line. There is no place to put parking unless it is within 10ft and the front setback. He would argue that there are 1.5 parking spaces per unit now. He is asking for a variance for three parking spaces. (He pointed out the state right-of-way on the plans.)

Attorney Phoenix reviewed the criteria for granting the variances.

- Granting the variances are not contrary to the public interest and the spirit of the ordinance is observed. Would granting the variance unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives? (Mere conflict is not enough.)  
Will the variance alter the essential character of the locality?  
There are many houses up and down Ocean Boulevard that have been renovated. The applicants are leaving the structure the way it is and adding something to make it a little more livable. They are adding a deck so they can enjoy the beach views in the summer. Everything else is pretty much aesthetic. The retaining wall to hold up the deck and stairs to the addition puts it a little closer to the lot lines than the existing conditions. None of those characters alter the essential characteristic of the locality. None of them threaten the public health, safety or welfare.  
With respect to the parking, it has always been a tight site. Right now, it is two units with three total bedrooms. The parking does not alter the essential character of the neighborhood nor threaten the public health, safety or welfare.
- The variance will not diminish surrounding property values.  
This property is going to be "dressed" up. It will look a lot better than it does now. None of the variances will diminish surrounding property values.
- Special conditions exist that distinguish it from other properties in the area?  
The lot is very small and has a building filling most of it. Anything that is done to this lot would require very similar variances.
- No fair and substantial relationship between the purposes of the ordinance and its application in this instance.  
Section 603.1 and 304.5 are designed to eliminate over bulking, provide adequate air, space, light and sight lines, and stormwater treatment. This proposal respects all of those reasons and is supported by the drainage plan.

With respect to parking, parking is needed on the site. They need to be of a certain size and the lot is limited as to where parking can be on the site. They are asking for 1.5 spaces per unit, instead of two.

- The proposed use is reasonable.
- Substantial justice will be done. If there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to the applicant, not outweighed by a gain to the general public, is an injustice.

Given the location and values of properties in Rye, people have a right to bring these older cottages up to a more reasonable type of use. The Shepperds have stayed very modest. They do not see how the public could be harmed by allowing the little addition on the front, the deck or the permeable pavers nor would the public be harmed by having three parking spaces. The public is not benefited in any way by denying the variances. If the variances are denied, then the Shepperds cannot undertake this very reasonable project. It would hurt the value of their property and would be a total injustice because there is no public benefit from denial.

Speaking to the architect, Chair Weathersby commented that the deck is 20ft long. She asked if it was designed that way so a car could go under.

The architect confirmed. She explained that right now there is one car spot in the existing basement.

Chair Weathersby asked if some of that could be reduced to not have a 20ft deck.

The architect explained that the laundry room and some of the mechanical systems are going to be down there. Half of the basement is unexcavated so it is deceiving how much useable space there is. The space for parking the car is narrow.

Chair Weathersby commented that the stormwater management plan doesn't seem to take into account the parking spaces.

Attorney Phoenix noted that the parking spaces are already on impermeable surface.

Chair Weathersby asked if the parking spaces are still part of the existing circle.

The engineer for the project confirmed that the parking is on the existing pavement. He noted that there are pervious pavers that will be installed on the right-hand side of the house and in the back.

Chair Weathersby opened to the public for comments. Hearing none, she closed the public hearing at 9:30 p.m.

Member Driscoll stated that the majority of the application is fine. The only thing that he is struggling with is the garage space. If the garage space wasn't there, they wouldn't be asking for that relief.

Vice-Chair Crapo stated that the way he is viewing it is it allows them to have a fourth space.

Member Driscoll agreed. He commented that it is going to be storage anyways but that's reasonable.

Chair Weathersby stated that she struggled similarly. She understands why they want a deck and a mudroom; however, the size of it is driven because they want to get a car under. It is a tight lot and this is

a pretty good size deck. If it is not allowed, there will be one less parking space so there needs to be some give and take.

Member Driscoll stated that he sees the struggle with the 20ft of the deck. The deck has some jogs so it doesn't function as a 14.2x20ft space.

Chair Weathersby commented that it is probably 20x12ft that is actually useable space. She continued that even though there is so much in the front boundary, there is so much of a state right-of-way. Visually it is not right up to the road.

Member Hoyt stated that is why he does not have a problem.

Member Driscoll stated that it is a big deck but he does not see it as being a visual encroachment. He does not think it is going to dwarf the size of the house.

Chair Weathersby commented it is a tiny house so it is nice for them to have more space. It is a little bigger than she would like but she wouldn't hold the project because of it.

Chair Weathersby called for a vote for relief to *603.1, 204.3 B, 204.3 C, 304.5, 500.2 and 500.3*:

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to grant the variances for James and Penelope Shepperd for property owned and located at 1021 Ocean Boulevard as advertised and presented.**

**Seconded by Charles Hoyt. All in favor.**

- 5. James & Penelope Shepperd of 6 Bay Road #33 Newmarket NH for property owned and located at 1021 Ocean Blvd, Tax Map 20.2, Lot 131 request an administrative appeal from the 8-9-18 denial letter by the building inspector to obtain variances from sections 500.2 and 500.3. Property is in the General Residence, Coastal Overlay District. Case #43a-2018.**

*Attorney Phoenix withdrew the administrative appeal without prejudice.*

6. **Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH for property owned and located at 140 Harbor Rd, Tax Map 9.2, Lot 17** request variances from section 603.1 and 603.2 for expansion of a non-conforming structure on a non-conforming lot; from section 203.3 F for lot area where 50,516 s.f. exists, 50,516 s.f is proposed and 66,000 s.f is required and lot frontage where 0' exists, 0' is proposed and 150' is required; from section 301.8 B (1) (2) & (7) for construction in the wetlands buffer where 14.8' exists from tidal water to cottage, 22.9' is proposed and 100' is the required tidal buffer, where 19.6' exists from freshwater to cottage, 22.4' is proposed and 75' is the required freshwater buffer, where a privy is located in the tidal wetland resource, a septic tank is proposed 50' from tidal water where 100' is required, a leachfield is proposed 60.6' from tidal water where 100' is required and leachfield is proposed 44.6' from fresh water where 75' is required; from section 301.5 A for disturbance in the 50' buffer; and relief from the building code sections 7.9.2.2, 7.9.4.1 and 7.9.4.2 for septic tank 50' tidal, leachfield 60.6' tidal and 44.6' freshwater where 75' is required. . **Property is in the Single Residence District, Coastal Overlay and SFHA, Zone AE. Case #44-2018.**  
*Continued to the December meeting.*
  
7. **Ray's Seafood Restaurant, Inc. for property 1677 Ocean Blvd, Tax Map 13, Lot 12** requests an administrative appeal from the 8-30-2018 Notice of Violation by the building inspector. **Property is in the Commercial and Coastal Overlay District. Case #45-2018.**  
*Continued to the December meeting.*
  
8. **Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA for property owned and located at 395 Washington Road, Tax Map 16, Lot 117** requests a special exception from section 301.7 B for a driveway within 100' of vernal pool and wetlands setbacks and buffer. **Property is in the Single Residence District. Case #46a-2018.**  
*Continued to the December meeting.*
  
9. **Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA for property owned and located at 395 Washington Road, Tax Map 16, Lot 117** requests variances from section 202.5 for a septic system 15.5' +/- from the side property line where 20' is required; from section 202.13 for total upland soils of 27,970 SF all of which is contiguous where 44,000 SF of total upland soils and 30,000 SF of contiguous upland soils is required; from section 203.3 C for a house with a front yard setback of 14' where 40' is required; from section 203.F for lot area of 52,270 SF where 66,000 SF is required and for 149' +/- of frontage where 200' is required; from sections 301.8 B(1)(2)(5) & (7) for surface alteration, septic system, tree cutting, and construction of dwelling 48' +/- from the vernal pool where 100' is required and 22' +/- from a wetland 1 acre or larger where 75' is required; from section 601 for building on a vacant non-conforming lot; from section 500.3 for one parking space in the front yard setback. Applicant also requests relief from Building Code section 7.9.2.2 for an effluent disposal system 85' +/- to vernal pool and 50' to wetland where 75' is required and from section 7.9.2.5 for an effluent disposal system 15.5' +/- of side boundary where 20' is required. **Property is in the Single Residence District. Case #46b-2018.**  
*Continued to the December meeting.*

10. **Carey & Giampa Realty Trust for property owned and located at 655 Wallis Road, Tax Map 16, Lot 22** requests a special exception from section 202.10 for installation of a septic system on a non-residential lot which will require tree cutting within the 50' residential boundary. **Property is in the Commercial and Single Residence District and Aquifer Wellhead Protection District. Case #47-2018.**

*Continued to the November 28<sup>th</sup> meeting.*

11. **Carey & Giampa Realty Trust for property owned and located at 655 Wallis Road, Tax Map 16, Lot 22** requests a variance from section 202.10 for installation of a septic system on a nonresidential lot which will require tree cutting within the 50' residential boundary. **Property is in the Commercial and Single Residence District and Aquifer Wellhead Protection District. Case #48-2018.**

*Continued to the November 28<sup>th</sup> meeting.*

**Motion by Shawn Crapo to take the application for Edwin Harding out of posted agenda order. Seconded by Patricia Weathersby. All in favor.**

12. **Edwin K. Harding, IV for property owned and located at 119 Wentworth Road, Tax Map 24, Lot 35** requests variances from section 203.3A for a shed 7' from the rear property line where 30' is required and from section 203.3B for a shed within the 20' setback. **Property is in the Single Residence District. Case #50-2018.**

**Attorney Michelle LaCount, representing the applicant,** spoke to the Board. She explained that the applicant is requesting variances from 203.3A and 203.3B for a shed that he has constructed on his property. Mr. Harding was unaware of the fact that he had to get a building permit prior to installing a shed.

Attorney LaCount reviewed the criteria for the variances.

- The variances are not contrary to the public interest because the shed is predominately out of site from the road and will have no affect on the public interest. (She reviewed the photo showing the shed.) She noted that a right-of-way runs alongside his property line. Even though the shed is close to the property line, it is not right on someone's lot. The lot that the house is situated on is very small. There is nowhere to locate the shed on the property where it would meet all the setback requirements. Also, this is the most level part of the land and that is why the shed was placed in that location. She pointed out that the surrounding lots have sheds that do not meet setbacks.

Attorney LaCount noted that they have received a letter from the owner of 117 Wentworth Road stating that they do not oppose the request for the shed.

Referring to the photo, Vice-Chair Crapo asked about the area with PVC pipes.

**Edwin Harding, property owner,** explained that the septic line runs along that area. There is a shared septic between five units. The septic line runs between the house and shed.

Vice-Chair Crapo asked if the building inspector has looked at this.



Mr. Harding stated that when he was plotting where to put the shed, the person who redid the septic told him where the shed should be.

Member Hoyt asked Mr. Harding to speak to the foundation under the shed.

Mr. Harding explained that the shed is on 4x4 pressure treated wood.

Attorney LaCount continued to review the criteria for the variances.

- The spirit of the ordinance is observed because due to the small size of the lot, the fact that the lot is irregularly shaped and the location of the septic tank, it is essentially impossible to locate the shed anywhere other than where it is now. In the past, there was a shed in that same location.
- Substantial justice will be done because the shed will provide ample storage, which is necessary because of the size of the house. The shed will provide storage for bikes, tools and lawn equipment so it won't create an eyesore for the neighbors.
- The values of surrounding properties will not be diminished because the shed is very high quality. It will increase the value of Mr. Harding's property. It may enhance the values of surrounding properties because there will not be items laying around the yard. They will be stored properly out of sight.
- There are special conditions of the property that distinguish it from other properties. The fact that the lot is so small and irregularly shaped, it would be impossible to locate the shed out of the setbacks.
- Fair and substantial relationship between the general purpose of the ordinance and the application exists. The purpose of the ordinance is to prevent overcrowding on the lot. The fact that both the home and the shed are small, and the shed will provide for storage, will not take away from values of surrounding properties.
- The proposed use is reasonable because sheds are common in the area. In fact, all the houses that share that right-of-way all have a shed on their properties. It will allow for safe and secure storage of items.
- Literal enforcement of the ordinance would result in unnecessary hardship because the lot is small and irregularly shaped. Mr. Harding would not be able to have a shed at all because there is nowhere else on the property where it would fit.

Chair Weathersby asked if the house has a basement.

Mr. Harding replied no.

Chair Weathersby opened to the public for comments. Hearing none, she closed the public hearing at 9:54 p.m.

Member Hoyt noted the request is modest and he does not have a problem with it.

Chair Weathersby read a letter from **Steven Manseau, 117 Wentworth Road**, in support of the variance request.

Vice-Chair Crapo stated that it is common practice that a cluster of houses all need a shed. He does not have a problem with the request.

Chair Weathersby asked for the side setback to the shed.

There was review of the setbacks to the shed.

Chair Weathersby called for a vote for relief to 203.3 A, for 3 ft +/- to rear yard setback and 8.5ft +/- on the left side rear setback:

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - 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  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll - Yes  
Burt Dibble – Yes  
Charles Hoyt - Yes  
Patricia Weathersby – Yes

**Motion by Shawn Crapo to grant the variances requested 203.3 A for a rear yard setback of 3ft +/- and a 203.3 B side yard setback of 8.5ft +/- . Seconded by Patrick Driscoll. All in favor.**

*Charles Hoyt recused himself for the following application. Rob Patten was seated.*

*Sitting for application: Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Rob Patten.*

13. **Peter G. Weeks, PGW Weeks R/E Consulting for Cindy Weeks and Roland Routhier for property owned and located at 437 South Rd, Tax Map 4, Lot 28 requests relief from the Building Code section 7.9.6 for an effluent disposal system that does not meet the requirements; from section 7.9.3.1 for a effluent disposal area with 57” of separation from the bed bottom to an impermeable substratum where 72” is required; from section 7.9.3.2 for an effluent disposal system with of 30” separation from the bed bottom to the seasonal high water table where 48” is required; and from and 7.9.4.3 for an effluent disposal system with impervious substratum within 36” of the surface. **Property is in the Single Residence and Aquifer & Wellhead Protection District. Case #49-2018.****

**Peter Weeks, representing Cindy Weeks and Roland Routhier**, presented to the Board. He noted that Cindy Weeks is his daughter-in-law. He explained that the house was built prior to the time that any approvals for septic systems were required. There was a new leachfield installed in the year 2000. There was a building permit issued for that but nowhere in the records is there an operational permit issued by DES. As far as the building inspector is concerned, there is no approved septic system. In May, they went to the Planning Board for an accessory dwelling unit (ADU). They approved the ADU with a stipulation that no occupancy permit would be issued until there was an approved DES septic plan. The property was

previously a single-family home and chiropractic office. The inspection of the septic system shows it is in fine working order and doesn't need to be replaced; however, at some point it may need to be done to meet the building inspector's requirement. He continued that it is a gravity system now. Under the new Rye Ordinance, it can't be a gravity system but it does meet all DES requirements. They are requesting a building code waiver. The Town of Rye's requirements are more stringent than DES requirements. He pointed out that a pump system would be needed to meet the requirements, which would spoil the backyard. The power goes out in Rye occasionally and a generator would be needed for consistent operation. The minimal waiver request is such that it is not going to harm any surrounding properties. He stated that when the subdivision was done off South Road, it was found that this property had been using that little area for over 20 years. (He pointed the area out on the map.) The Planning Board has merged that area with the lot so it is now one lot. It meets the requirements using that piece of land.

Vice-Chair Crapo clarified that the approvals are for a system that is to be a backup for if the existing one fails.

Mr. Weeks confirmed. He commented that it will be a backup unless the building inspector requires the system to be installed. He pointed out that it was 18 years ago that the leachfield was installed. At least, the system will be approved and it would only be about a year before they would have to do it anyways. He continued that there is a letter from John Chagnon, Ambit Engineering, that the septic design meets all the requirements of DES; however, it doesn't meet the town's.

Chair Weathersby asked if the system would have to be located somewhere else on the property or be a pump system if this was not approved.

Mr. Weeks replied it would have to be a pump system and would have to be raised.

Member Driscoll asked if the state has any record of the existing plan.

Mr. Weeks replied no. He explained that there is a gentleman in Epping that replaced the system in 2000. He was asked for any records of it going to DES for the operational permit. No one to date has been able to come up with the records.

Member Driscoll clarified that the leachfield was installed in 2000 and the tank is older than that. He asked if there is any estimate of how old the tank is.

Mr. Weeks replied no. He noted that the gentleman that inspected the system said it was in great shape. The leachfield, the gravel and tank were in good shape. The cover of the tank was the only thing that had to be replaced.

Member Driscoll asked if the septic inspector could figure out if the size of the tank conforms to the size of the house.

Mr. Weeks confirmed.

Member Driscoll asked if there is a letter from the septic inspector.

Mr. Weeks explained it was in the material that was given to the Planning Board for the ADU.

Chair Weathersby opened to the public.

**Charles Hoyt, as a member of the public**, expressed his support.

Chair Weathersby closed the public hearing at 10:29 p.m.

Vice-Chair Crapo stated that with the newer construction and the advanced systems some of the separation in not necessarily needed.

Member Driscoll stated he puts a lot of weight on the septic engineers to inspect what is going on there. The applicant took something that was fairly confusing and made it somewhat easy to understand. He has no problems with the application.

Member Dibble agreed.

Chair Weathersby called for a vote on building code waivers:

- **Would enforcement of 7.9.6 do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

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

- **Would enforcement of 7.9.3.1 do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

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

- **Would enforcement of 7.9.3.2 do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

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

- **Would enforcement of 7.9.4.3 do manifest injustice and be contrary to the spirit and purpose of the building code and public interest?**

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

**Motion by Burt Dibble to grant the Building Code relief as requested for property located at 437 South Road. Seconded by Patrick Driscoll. All in favor.**

#### **V. Other Business**

The Board discussed whether or not to hold a second meeting for November on the 28<sup>th</sup>. It was agreed to not hold a second meeting in November and to start the December meeting at 6:30 p.m.

**Motion by Patricia Weathersby to not hold a meeting on November 28<sup>th</sup> and to continue the Carey and Giampa application to the regularly scheduled December meeting. Seconded by Charles Hoyt. All in favor.**

The Board discussed ways to move cases off the agenda to address the recent backlog of applications. Attorney Donovan sent a memo to the board with suggestions that included limiting the time for an applicant to present, starting the meetings earlier and limiting public comment. Another suggestion was to hold two meetings per month with the members and alternates rotating the second meeting. He also suggested changing the order of the cases to address the simple cases first to get them off the agenda.

The Board agreed that it is important that members are prepared and review applications before the meetings. Questions from the members should be germane to the variances being requested. There was discussion on the possibility of asking the building inspector to be at the meetings. The members felt it would be helpful to the Board when questions arise. It was also agreed that if the Board has too many questions in regards to an application, especially in regards to stormwater management, that the applicant be asked to return to the next meeting with the information, instead of prolonging the hearing with unanswered questions. The members discussed the idea of limiting the time for the presentations or asking the applicant to give an estimated time for their presentation in which they adhere to. Mrs. Reed agreed to draft some language to add to the applications in regards to the estimated time idea.

#### **Adjournment**

**Motion by Burt Dibble to adjourn at 11:12 p.m. Seconded by Shawn Crapo. All in favor.**

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

**Respectfully Submitted,  
Dyana F Ledger**



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Richard & Theresa Carey, Trustees, Richard & Theresa Carey Revocable Trust of 11 Robandy Street, Andover, MA

**Property:** 11 Surf Lane, Tax Map 8.4, Lot 7.1  
Property is in the General Residence and Coastal Overlay District

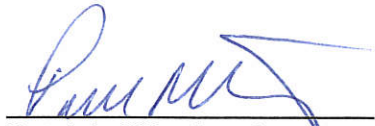
**Application case:** Cases #40-2018 and #41-2018

**Date of decision:** November 7, 2018

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

- Section 304.5 for building coverage of 24.5%;
- Section 204.3 B 4 for building +/- 2.6' from the right-side boundary; and
- Section 204.3C for building 7.2' from the Breakers Road boundary.

The applicant withdrew without prejudice the equitable waiver of dimensional requirements from Section 304.5 for building coverage of 24.5%.

  
**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:** Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of  
21 Whippoorwill Drive, Newton, NH

**Property:** 140 Harbor Rd, Tax Map 9.2, Lot 17  
Property is in the Single Residence District, Coastal Overlay and SFHA,  
Zone AE.

**Application case:** Case #44-2018

**Date of decision:** November 7, 2018

**Decision:** The Board voted 5-0 to continue the application to December 5, 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:** Edwin K. Harding, IV

**Property:** 119 Wentworth Road, Tax Map 24, Lot 35  
Property is in the Single Residence District

**Application case:** Case #50-2018.

**Date of decision:** November 7, 2018

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

- Section 203.3 A for a shed 3 +/- from the rear property boundary; and
- Section 203.3 B for a shed 9' +/- from the side property 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

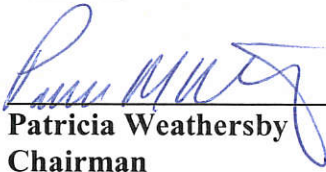
**Applicant/ Owner:** Carey & Giampa Realty Trust

**Property:** 655 Wallis Road, Tax Map 16, Lot 22  
Property is in the Commercial and Single Residence District and Aquifer  
Wellhead Protection District

**Application case:** Cases #47-2018 and 48-2018

**Date of decision:** November 7, 2018

**Decision:** The Board voted 5-0 to continue the application to December 5, 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

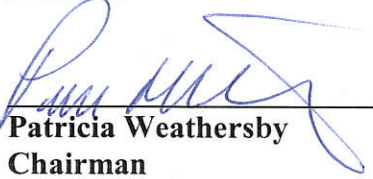
**Applicant/ Owner:** Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA

**Property:** 395 Washington Road, Tax Map 16, Lot 117  
Property is in the Single Residence District

**Application case:** Cases #46a-2018 and 46b-2018

**Date of decision:** November 7, 2018

**Decision:** The Board voted 5-0 to continue the application to December 5, 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:** Ray's Seafood Restaurant, Inc.

**Property:** 1677 Ocean Blvd. Tax Map 13, Lot 12  
Property is in the commercial and coastal overlay districts and SFHA.

**Application case:** Case #45-2018

**Date of decision:** November 7, 2018

**Decision:** The Board voted 5-0 to continue the application to December 5, 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:** James & Penelope Shepperd of 6 Bay Road #33 Newmarket NH

**Property:** 1021 Ocean Blvd, Tax Map 20.2, Lot 131  
Property is in the General Residence, Coastal Overlay District.

**Application case:** Cases #43a-2018 and #43b-2018

**Date of decision:** October 3, 2018

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

- Section 603.1 for expansion of a non-conforming structure;
- Section 204.3B for an addition 5.0'/9.7' from the right boundary;
- Section 204.3B for an addition 7.9'/9.0' from the left boundary;
- Section 204.3C for pavers 9.7' from the front boundary;
- Section 204.3C for stairs 13.4' from the front boundary;
- Section 304.5 for dwelling coverage 24.4%;
- Section 304.5 for lot coverage of 39.6%; and
- Section 500.2 and 500.3 to allow for only three for parking spaces, each located in the front yard setback and within 10' of property line.

The applicant withdrew without prejudice the request for an administrative appeal from the 8-9-18 denial letter by the building inspector to obtain variances from sections 500.2 and 500.3.



**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:** Grace Sheehan (Wieczorek) of 7 Piccadilly Court, Manchester NH

**Property:** 2165 Ocean Blvd, Tax Map 8.4, Lot 77  
Property is in the General Residence, Coastal Overlay District and SFHA, Zone AO (1)

**Application case:** Case #42-2018.

**Date of decision:** November 7, 2018

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

- Section 603.1 for expansion of a non-conforming building;
- Section 204.3 B for building 2.5' from the side boundary; and
- Section 304.5 for dwelling coverage of 15.6%.



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

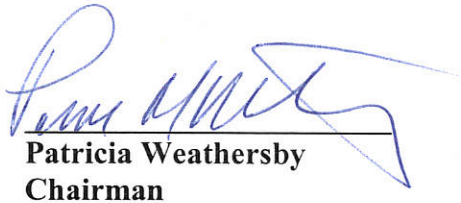
**Applicant/ Owner:** Timothy E. Sanborn, Trustee of Ocean View Trust  
767 Ocean Blvd

**Property:** 753 Ocean Blvd, Tax Map 23.1, Lot 16  
Property is in the General Residence, Coastal Overlay District and SFHA,  
Zone AO (1)

**Application case:** Case #38-2018.

**Date of decision:** November 7, 2018

**Decision:** The Board voted 5-0 to deny the request for a rehearing and reconsideration of its September 19, 2018 denial of the applicant's appeal of the building inspector's administrative decision.



**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:**

Attorney Scott E. Hogan on behalf of:  
David and Karen Pelletier, 22 Odiorne Drive  
Michael and Tami Pelletier, 30 Odiorne Drive  
Becky Williams, 1235 Ocean Blvd.  
Francis and Judy Scott, 1237 Ocean Blvd.  
Shawna Healy, 1201 Ocean Blvd.  
William Morin, 1250 Ocean Blvd.  
Sandy Milley, 1256 Ocean Blvd.  
Valerie and Bill Wilson, 1252 Ocean Blvd.

**Property:**

1215 Ocean Blvd, Rye Tax Map 17.3, Lot 6  
Property is in the General Residence, Business and Coastal Overlay  
District and SFHA, Zone

**Application case:**


Case #36-2018.

**Date of decision:**

November 7, 2018

**Decision:**

The Board voted 5-0 to deny the request for a rehearing and reconsideration of its October 3, 2018 decision granting Variances to John Samonas for property at 1215 Ocean Blvd, Tax Map 17.3, Lot 6.



**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:** Peter G. Weeks, PGW Weeks R/E Consulting for Cindy Weeks and Roland Routhier

**Property:** 437 South Rd, Tax Map 4, Lot 28  
Property is in the Single Residence and Aquifer & Wellhead Protection District.

**Application case:** Case #49-2018.

**Date of decision:** November 7, 2018

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

- Section 7.9.6 for an effluent disposal system;
- Section 7.9.3.1 for a effluent disposal area with 57" of separation from the bed bottom to an impermeable substratum;
- Section 7.9.3.2 for an effluent disposal system with of 30" separation from the bed bottom to the seasonal high water table; and
- Section 7.9.4.3 for an effluent disposal system with impervious substratum within 36" of the surface.



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.