

RYE ZONING BOARD OF ADJUSTMENT

Wednesday, October 3, 2018

7:00 p.m. – Rye Town Hall

Present: Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Patrick Driscoll, Burt Dibble, Tim Durkin and Alternate Rob Patten

I. Call to Order and Pledge of Allegiance

Chair Weathersby called the meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

II. Approval of Minutes – September 5, 2018

Motion by Rob Patten to approve the minutes of September 5, 2018 as amended. Seconded by Shawn Crapo. All in favor.

Motion by Burt Dibble to continue the review and approval of the September 19, 2018 minutes to the November meeting. Seconded by Shawn Crapo. All in favor.

• Proposed changes to the Rules of Procedure

The Board reviewed the proposed amendment to the Rules of Procedure, as drafted by Attorney Donovan based on the request of the BOA.

Add the following paragraph to Section 8.2.1 Application:

The application shall include all required fees and all items on the board's Checklist for Application Submittal. The Planning and Zoning Administrator shall determine if an application is complete. Incomplete applications shall not be placed on the board's agenda.

Motion by Burt Dibble to include the proposed paragraph to the Rules of Procedure. Seconded by Shawn Crapo. All in favor.

III. Applications:

- 1. 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. (Property is also located in the Business District.)**

- 2. 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.**

Chair Weathersby asked if the property is in the General Residence or Business District.

Eric Weinrieb, Altus Engineering, reviewed the location of the zone line on the plot plan for the Board. He noted that one building will be General Residence and the rest will be in Business.

Attorney Tim Phoenix, representing the applicant, presented the application to the Board. He stated that as a preliminary matter he brought a request for variances and also a request for a special exception because the town's ordinance says driveways need a special exception. It is his opinion that the variances cover the driveway. The Board can decide if the driveway is including in the 301.7 or whether it should go under a special exception. He continued that 1215 Ocean Blvd is about 2.21 acres and is located at the corner of Wallis Road and Ocean Blvd. Right now, the property contains a building with an existing restaurant, offices and apartment. Behind that, there is a standalone building and ten seasonal cottages. (He reviewed the plan showing the existing conditions of the property.) He noted that the restaurant is heavily used by beach traffic from across the street and the cottages are heavily used by cottage dwellers that rent on a weekly basis. From an aerial view, it can be seen that three of the cottages are very close to the wetlands. Some parts of the septic system are in the wetlands. (He pointed out the driveway, swimming pool and buildings currently located on the property.) He explained the intention is to take all of that out; every building, all septics, and swimming pool. The proposal is to build four duplexes with a total of eight units (two units in each building) across the front of the property. The new buildings will be pushed to the front of the property, as far as possible from the wetland. He noted that there has been a change since the submission, in response to the Conservation Commission's concerns. All the new septics and leachfields will be outside the **100ft** buffer (typographical error in submission of 75ft). The associated driveway, which will be permeable, will run behind the dwellings. He read a letter of support, signed by (38) residents of Rye, that was submitted October 3rd to the Board. He turned the presentation over to Mr. Weinrieb.

Mr. Weinrieb stated that one of the first things that was done with the project was the mapping of the tidal and freshwater wetlands on the site. An existing conditions survey was also completed for the site. Joel Noel mapped the wetland and Jim Verra completed the topographic survey.

This property was once being considered for development by Wentworth by the Sea. The wetland boundary was reviewed at that time. Based on the data, the wetland is slightly different. The wetland line for the marsh is a little bit higher. He continued that the swimming pool in the front of the property, is barely on the property. A corner of the pool is actually in the state right-of-way. (He pointed out the area of the right-of-way on the plan.) He noted that they cannot come any closer to Route 1A to move away from the resource area. The limits of the project are set by that boundary. One of the existing septic and leachfields is in the tidal marsh. (He pointed out the freshwater wetland and the tidal marsh, which is part of Parson's Creek.

Mr. Weinrieb stated they reached out to NH DES Subsurface Systems Bureau to get a feeling for where they sit with this project. DES is thrilled that the leachfields are going to be moved from the wetland area and away from the resource. The design actually fully complies with DES requirements; as far as, lot loading, design and separation to resource. All the leachfields will be 100ft from the resource. There is also a 50ft primary wetland setback. Within that, there are existing structures which will all be moved out of the wetland resource. The only structure that will actually be in the resource is about 40sf of the flare of the driveway. He noted that about 275ft of continuous street frontage and vehicles backing into the right-of-way will be eliminated, as well as seven parking spaces in the right-of-way are being eliminated in favor of a greener, safer entrance along Wallis Road. The driveway that is fronting on Ocean Blvd will be eliminated. All vehicle access and movement will be moved to Wallis Road. There are no DOT Permits required for the new driveway because it is a town road; however, they will have to work with DOT on moving the pavement and creating parallel parking on Ocean Blvd. He noted that the five septic systems are all state approved. The current systems are not in good working order. The owner has taken two units out of service as a voluntary act because he knows there is a problem. If the project was denied, he is not sure how they would replace the septic systems because the area in the front is encumbered with the existing pool and buildings. By redeveloping the site, pods of open space are being created to allow for septic systems.

He stated they have taken advantage of the zoning ordinance and averaged the front yard setback so they will not be looking for zoning setback. They are holding at 10.5ft to the front property line so they do not need any zoning relief. The property is very flat and with that there is plenty of flooding that occurs. The applicant has provided photos of some of the flooding that occurs on the property. The uplands on the property range from elevation 7 to 9. With two mounded septic systems it goes up to elevation 11. The proposal gets rid of the septic systems in the resource and gets rid of antiquated cottages that no longer meet code. The buildings will be moved further away from the resource with state approved septic systems. The traffic impacts will be eliminated from vehicles backing into the state and town right-of-ways and the resource will be protected. The four buildings will be elevated up to about elevation 12.5, which will get the structures above the 100-year flood, both existing and proposed, and it meets the 4ft setback for state and local 4ft separation for the septic. The property comes in at elevation 7, rises up to 11 to 12ft, runs flat and then drops back down. That is going to require some filling. This project will have a net increase of fill in the floodplain. The two leachfields that are being removed will reduce some of that. Parson's Creek Watershed is about 195 acres. They looked at the overall volume of water in that watershed, using vertical sides (which is all slope), and it was

figured that the increase in volume of fill is going to create a flooding condition about half the thickness of a finger.

Chair Weathersby asked if this is being created because water is no longer running onto this property.

Mr. Weinrieb explained this is in regards to the 100-year flood condition. It will be about a half a thumb difference in water.

Chair Weathersby asked if this is because water won't go onto that property.

Mr. Weinrieb confirmed. He commented the amount of water can't be quantified. He continued there will be a decrease in runoff coming from a normal storm event. The project will have a 4,480sf impervious reduction in the right-of-way. They are allowed up to 15% building coverage; not just for the building area but the whole lot. The uplands on the lot is over 66,000 sq.ft. Looking at just the uplands, the building coverage today is 11.8% of the lot. The project will bring it to 16% of the uplands or 10.5% of the total lot. The lot coverage is a non-issue.

Vice-Chair Crapo asked if those numbers exclude the right-of-way.

Mr. Weinrieb confirmed. This is for just the lot. He continued that the lot coverage is allowed to be up to 30% and it is currently at 24.2%. Post development, effective impervious will be 10.5%. The effective impervious does not include a permeable pavement area. It would be 23.7% if it were traditional hard surface.

Regarding the septic being out of the buffer, Vice-Chair Crapo asked if this is just for the systems. He asked if the slope and grading will be within the buffer.

Mr. Weinrieb replied the grading will be in the buffer. He explained that the back of garages will all be close to elevation 12. There will be a modest slope and just about 2ft off the pavement, it will go down at a 2 to 1 slope. The area that is raised up will be along the front of the building, sloping off towards Wallis and the driveway. It will then slope down.

Vice-Chair Crapo asked if the four fields are going to be on level lawn.

Mr. Weinrieb confirmed. He explained it will be coming up on the sides and generally running flat across.

Chair Weathersby asked for a grading plan.

Mr. Weinrieb explained they have not done a formal grading plan. Preliminary grading plans and test pits have been done for the site so it is known what the finish grades of the septic system need to be. They also have the finished floor elevation. They will take it to the next level when it goes for state permitting.

Chair Weathersby asked for a stormwater management plan.

Mr. Weinrieb stated that they have a stormwater management concept. He explained that the edge of the pavement will be sloping down to native ground. The existing mounded leachfield area will all be removed. There will be an area of native plantings that will be allowed to naturally vegetate.

Chair Weathersby asked if a plan has been prepared that shows the site conditions, where the runoff is going and where the plants are going. She pointed out that the fill and grading are a really big issue for this proposal.

Mr. Weinrieb continued there is a ridge off the center of the buildings and everything sheet flows across. There is also a natural filter strip in the front. Everything in front continues to pitch in the front, as it does today. It will flow around the site and discharge out.

Vice-Chair Crapo stated that currently, he thinks that water sheet flows from the boulevard right through the property because it is not currently elevated.

Mr. Weinrieb reviewed the current flow on the plan before the Board. He noted that impervious is being reduced so there is a lot less flow in that direction. He reviewed the advanced treatment septic systems that are proposed. The systems will be the same systems that are similar to the systems that were done on Odiorne Point Road a couple of years ago. The septic systems that were granted for that development are closer to the resource area than what these septic systems will be. Those septic systems were only 80ft away from the resource. He feels this proposal is a "win" with traffic, runoff, septic systems and is a great community project.

Member Patten asked the process for remediation of the soils when the old leachbeds are removed. He asked if the pipes and stone are removed.

Mr. Weinrieb explained that the three that are flush with grade would not be pulled out because it would be more environmentally disruptive. There will be plantings above it but will be left as it is. The elevated systems will come out, along with the septic tanks. Any piping that is within removable limits will be removed as well.

Member Driscoll asked if there is an estimate for how much fill will need to be brought in for the proposed plan.

Mr. Weinrieb replied that it will be somewhere around 4,000 cubic yards.

Referring to the 15 parking spaces on the plan, Member Driscoll asked if they are going to be public spaces.

Mr. Weinrieb replied yes. Those spaces are within the right-of-way.

Member Driscoll commented that he did not see any details on the new septic; however, it sounds like state approval has been received.

Mr. Weinrieb explained that they cannot get state approval until they get through the BOA. The systems are going to be similar to what they have been doing in Rye; AOS Systems with a septic tank, aeration chamber, settling tank and pumping to a small stone and pipe system with advanced treatment.

Member Driscoll asked where the compressors for the systems will go.

Mr. Weinrieb explained the compressors will be inside the building and elevated outside the flood zone. The septic tanks will be designed for anti-floatation.

Referring to the 4,000 yards of fill, Member Driscoll asked if this includes the fill needed for under the permeable driveway.

Mr. Weinrieb replied that everything is included.

Member Dibble asked if the homes are built on grade with garages under.

Mr. Weinrieb confirmed. The living space is above the garage.

Chair Weathersby asked if any other option was considered for the buildings to be on stilts with not as much fill being needed and the garage being 3 or 4ft lower. She pointed out there is a height issue.

Mr. Weinrieb stated that they looked at several different alternatives. However, there is a balance with FEMA and looking at the vulnerability study. The study says there is sea-level rise so those garages should not be in that area. It made sense to bring the garages up to consistent grade similar to the leachfield.

Chair Weathersby asked if they considered putting the garages adjacent to the buildings so the buildings could be lower.

Mr. Weinrieb explained they wanted to get the garages covered and minimize the footprint area. If the garages were put elsewhere, there would be more impervious area and runoff. There is an esthetic value of having gaps between the buildings. He reiterated that they looked at many alternatives. Creating a single pod of buildings created more massing that does not really go with the area.

Referring to the gaps in-between the buildings, Member Driscoll asked if they looked at putting in culverts perpendicular to Ocean Boulevard so there would not be a big wall of fill. He asked if this would be beneficial.

Mr. Weinrieb stated there wouldn't be an opportunity of putting culverts that close to leachfields because there has to be a 25ft separation. There is not going to be the type of flow coming off of Ocean Boulevard or these buildings that is going to require the water to run in that direction. Vice-Chair Crapo asked if the FEMA flood zone they are protecting against is from the marsh or the ocean.

Mr. Weinrieb stated that all the flooding that is seen is the surge coming in from the marsh.

Regarding the water that runs down from the beach access, Member Driscoll asked if it goes in that direction.

Mr. Weinrieb explained that something coming over that seawall does go in that direction. At that point, it is not flooding. It is pouring out and dissipating.

Chair Weathersby asked if the existing parking along the front on Ocean Blvd is being eliminated.

Mr. Weinrieb explained that all the parking that is in the right-of-way along Ocean and the backside of the property (Wallis Road side) is going to be eliminated.

Referring to the location of the existing restaurant, Member Driscoll asked how high above the road elevation the proposed building will be.

Mr. Weinrieb explained the existing grade in this area is about elevation 8. The finished floor is going to be 12.

Member Driscoll asked if there would be grade around the finished floor.

Mr. Weinrieb replied that they have not worked out all the details. There is not a lot of room for grading so there may be some exposed foundation on that side. The building will be forced up to the right-of-way so it won't be an option to have a nice gradual slope. The Wallis Road side is meeting the 20ft setback so that area will have a gradual slope.

Member Patten asked the heights of each individual floor within the design.

John Samonas, applicant, replied that the ceilings will be 7.6 to 8ft. He noted that 16 to 20 inches between each floor is needed for conduits, wiring and air-conditioning duct work. The total height from the floor of the garage to the peak of the roof is 31.5ft. He pointed out that it was higher under an earlier submission; however, the architect looked at it again and made the garage shorter to gain 6 inches on each floor and save 1.5ft from the original submission.

Referring to exhibit #9, Chair Weathersby asked if the building height numbers are lower or what is shown on the sheet.

Mr. Samonas replied that the building height is 31.5ft and the fill height is 4.5ft.

Vice-Chair Crapo pointed out that the zoning ordinance requires measurement from existing grade now.

Chair Weathersby commented it would be 35.8ft, including the fill. Referring to table #9, she asked if the numbers include the 4.5ft of fill.

Mr. Weinrieb replied 36.5, 36.3 and 36.0; below that the building is 31.6ft from slab to peak.

Attorney Phoenix stated that the ground now is approximately 2ft lower than the roadway. The proposal is for 4ft of fill for FEMA regulations so they have to have that. From that fill, it is about 31.5 but because of the garage and floors above, the zoning request is between 35.5 and 36ft from existing grade. He continued that the Conservation Commission has weighed-in on this proposal and the Board has received a letter from them dated September 18th. The plans were changed to move all the septs outside the 100ft so septic relief is not needed. There are six points in the Conservation Commission's letter, all of which, Mr. Samonas is willing to have as conditions. (He read the commission's recommendations as stated in their letter.)

1. Area between the edge of slope of driveway to wetlands be planted with native plantings for infiltration of runoff.
2. Create a plan to eradicate invasive plants on the site.
3. No fertilizers used on the site – Condo docs should include this restriction.
4. No chemicals or pesticides be stored on the site – Condo docs should include this restriction.
5. A single landscape company should be engaged to ensure uniform compliance – Condo docs should include this restriction.
6. All septic systems installed outside the 100ft tidal buffer

In regards to the stormwater management plan, Attorney Phoenix stated that he was involved in a case in the past few months where the Board required it before a decision was made. However, traditionally, the stormwater issues are reviewed by the building inspector. The building inspector's letter states that a stormwater management plan that he would approve is required. The first step is to get the variances needed to start the project. Secondly, this project will have to be reviewed by Planning Board. (He read from RZO 304.6, Tourist Accommodations Uses). He pointed out that the density in Section 304.6 (D)(1), for the Wallis Sands area, is 4.5 dwelling units per acre. This lot is 2.3 acres, which under that ordinance would allow 10 plus units. The applicant is not pushing the envelope and putting in 10 units. He has scaled it back and come in with 8 units, in an effort to show that he is trying to comply with everything and have a good project that is approvable. He continued that Jim Verra did an analysis of the elevation above sea-level of this property as compared to others. That information has been submitted with a map showing the locations (exhibit #10). (He reviewed this information.) He stated there are a number of structures in the area that are as tall as this one from sea-level. (He presented photos of other homes at similar heights in the area).

Referring to the requested variances, Attorney Phoenix stated he listed the variances that the building inspection department said was needed. In some cases, he is not sure he agrees it is needed. (He reviewed the variances being requested):

- 304.4 front yard setback – He is not sure this is needed because the proposal has a 9.5 average of the two adjacent yards. Existing is 8 so it is better than it was before. Typically, if it is improving, it is making it less non-conforming and would not require a variance.
- 301.5 A, tidal and freshwater marshes – no alteration within 50ft of the buffer. He noted that there is some alteration because of things that are being taken out; however, nothing is going in within that 50ft. It is unclear if this is needed for taking things out. The driveway is going to be 24ft from the marsh but it is a porous driveway.
- 301.8 B(1) (2) & (7) – He noted the septic are not within 100ft. There will be surface alteration, removal of buildings, construction of dwellings and roadway. Right now, there is a cottage that is 12ft from the resource and a propane tank of 5ft. The driveway is 49ft. When the project is completed, building 1 will be 64ft, building 2 will be 80ft, building 3 will be 82ft and building 4 will be 84ft from the resource.

Attorney Phoenix stated those are the variances being requested. The variances from 301.8 B(1) (2) and (7), which covers basically anything that is done in the buffer, he feels covers the driveway and thus a special exception for the driveway is not needed. If the Board agrees, they can decide what to do about the special exception.

Vice-Chair Crapo asked if there are generator and air-conditioning provisions.

Mr. Samonas replied there are no generators proposed. Air-conditioners would be split systems.

Vice-Chair Crapo noted there are no outside pads shown on the drawings.

Mr. Weinrieb stated if there are pads they would be outside the 100ft buffer and adjacent to the buildings.

Vice-Chair Crapo asked about the separation between those and the septic. There is not a lot of room in-between the buildings.

Mr. Weinrieb explained that it does not require a setback from the septic. There is a space between the building and the septic in which it would fit.

Member Driscoll pointed out they can be wall hung also.

Mr. Samonas noted this is probably what he would do.

Chair Weathersby asked the distance between the buildings.

Mr. Samonas stated that they are 40ft and the one closest to Wallis is 50ft. Initially, the buildings were much closer together. By separating them, the marsh can still be seen from Route 1A. The people behind can still see through the buildings. The buildings are separated so there is less massing.

Attorney Phoenix noted that exhibit #7 summarizes the changes on the site. The number of buildings is being reduced from 12 to 4. The number of units with sprinklers is increasing from 0 to 4 for all units (8). The number of pools will be reduced from 1 to 0. The number of residential units will be reduced from 15 to 8. The number of commercial rental units will be decreased from 1 to 0. The number of restaurants will decrease from 1 to 0. The number of residential units within the 50ft buffer will be reduced from 3 to 0. The impervious surface in the tidal buffer will be reduced from 2,091sf to 0. The impervious surface between 50 and 100ft will be reduced from 8,228sf to 1,845sf. The lot coverage will be reduced (effective impervious surface) from 24,400sf to 10,560sf. The pervious pavers is 0 now and will have 12,300sf. The linear feet of access onto public roadways will be reduced from 275ft to approximately 45ft. The reduction of impervious surfaces in the town and state right-of-way will be reduced by 4,480sf. The total reduction in site effective impervious associated with the project is 18,300sf. He stated that everything, except the height, is driven by the fact that essentially the entire property is within the flood zone and wetland buffer. The height is driven by the need to bring in fill. In order to reduce impervious coverage and keep some openness, the garage was put on the bottom. When the garage is put on the bottom and a couple of floors with roof are added, it gets to a certain height. That is the reason for the 36 plus feet. In considering all the benefits this project is providing and the area that has buildings essentially the same height and massing, he thinks it is a fair trade and all the variances should be granted. (He reviewed the criteria for granting the variances.)

- **The variances are not contrary to the public interest and the spirit of the ordinance is observed:**

He stated these are considered together under the Malachy Glen Case, which says "*it must be determined whether granting a variance would 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.*" The purpose of the ordinance is to lessen the congestion in the street. The proposal is to take away the seasonal cottages and apartments, which causes traffic and busy streets. The restaurant is going to go away and the whole area is going to be cleaned up. Environmentally, traffic wise and esthetically it is going to be an improvement over what's there. In addition, this town has determined that it wants to see the redevelopment of these old, tired, tourist accommodation units by virtue of the passage of 304.6.

Second section is to secure safety from fire, panic and other dangers. Buildings and septs in the 50ft, and old antiquated systems outside of 50ft but within 100ft, and the old tired buildings that are not to today's code are unsafe. This project will provide safety from fire, panic and other dangers.

In regards to promoting the public health and general welfare, it is much better septic wise and is much better overall environmentally. Stormwater management will make sure the marsh is protected and the buildings will be built to code.

In regards to promoting adequate light and air, 15 or 16 buildings will be coming down and four buildings will be going up with thoughtful separation between them so people can maintain view corridors. Adequate light and air will exist.

For the same reasons, this project prevents overcrowding of land.

In regards to avoiding undue concentration of population, the proposal takes it from a very heavy use of the site to a lower use of the site on an overall basis, which is wanted by the town by virtue of the ordinance.

Facilitate provision of transportation, solid waste, water, sewage, schools and recreation facilities; this is talking about a height variance and solid waste, which is being dealt with much better than the site that is there today.

Assure proper use of natural resources and other public requirements; this is a great improvement of the natural resource in this area.

The Malachy Glen also says that when these first two sections are considered, the following should be considered;

Would the variances alter the essential character of the locality?

Attorney Phoenix stated that fixing the septic, getting a stormwater management plan, and protecting against flooding in the future is not going to change the essential character of the locality and neither would the height variance considering everything else in that area.

Would the variances threaten the health, safety and welfare?

He stated that for the reasons stated this is clearly not going to happen.

- **Granting the variance will not diminish surrounding property values:**

He stated that something similar was granted for Riley a couple of years ago. He pointed out that one of the letters he submitted was from Peter Rowell a couple of years ago expressing his concerns over the effect of these septic systems on the marsh. It was after that letter that Mr. Samonas voluntarily shut down a couple of the cabins. Getting rid of the cabins, the building on the corner, fixing the traffic, fixing the flood and septic issues is certainly going to increase the value of this property and will not decrease the value of any surrounding properties.

- **Denial of the variance results in an unnecessary hardship:**

Attorney Phoenix stated there are three prongs of this. One is that there are special conditions of the property that distinguish it from others in the area. This property has special conditions because it is low. It has to have fill and the septic systems are a problem where they are located. The existing buildings and septic systems are special conditions of this property.

- **The proposed use is reasonable:**

He stated that the Hudson Case says that if it is a permitted use in the zone its presumed reasonable.

- **Substantial justice will be done by granting the variances:**

Attorney Phoenix pointed out that the case law says *"if there is no public benefit that would outweigh the hardship to the applicant, this factor is satisfied. Any loss to the applicant that is not outweighed by any gain to the general public is an injustice"*. If the variances are not granted, what is there now is going to stay there and probably some of the septics will be replaced in-kind in place or nearby. The traffic, pedestrian and septic

problems are going to continue. There is no benefit to the public by denying the variances. It leaves existing harm to the public because of the situation on the lot and harms the applicant who wants to do something more environmentally sensitive to the area and better overall. Denying the variances is really harmful to Mr. Samonas but would not harm the public.

Attorney Phoenix stated he would like the Board to consider that this complies with the purpose and requirements of Section 304 with respect to conversion of seasonal cabins to residential use. It replaces antiquated and poorly functioning septic systems in or very near to the actual wetland with four new state-of-the-art AOS systems completely outside the 100ft buffer; reduces the number of buildings from 12 to 4; increases the code compliant buildings up to 4, increases the units with sprinklers from 0 to 8; removes the outdoor pool; reduces the number of residential units; reduces bedrooms; reduces non-residential units; reduces the restaurant; reduces the number of residential units in the 50ft tidal buffer from 3 to 0; reduces impervious surface; increases pervious pavement; reduces linear feet of access; reduces total on-site effective impervious surface; significantly improves public safety by properly delineating the interface of the lot with the public travelled way; and it reduces the foot traffic of those going back and forth from the cottages and restaurant. This is a very good project. The building inspector and DES seem to be excited about the project. There are at least 38 people who are in support of the proposal. Overall, it is a win/win and they ask the Board to grant it. He asked the Board if they would like him to go over the special exception now.

Chair Weathersby commented that she tends to agree it might not be needed.

Vice-Chair Crapo stated that if the Board determines it is needed, they can then take the time to address the special exception. Speaking to Attorney Phoenix, he asked why they do not have parking on the pervious driveway with two floors of living so it meets the height requirement.

Attorney Phoenix stated that it could be done but then there is the rain and snow falling on the cars, plus the oil from the cars is an issue. Storage is needed for the dwellings and that would provide some. In today's 21st Century living, given the value of properties on the beach, people who are going to live there will want a garage for their cars. They will not want to be walking through the snow to their house. Given Riley and a lot of the other houses up and down the beach, its reasonable to have the garage under. While he respects that it wouldn't require a variance, when it is all weighed out, what is around it is considered and what it will look like visually, it fits; therefore, it should be granted.

Mr. Weinrieb commented it is cleaner.

Chair Weathersby asked if it can be confirmed that there will be no activity in the tidal or freshwater marsh itself.

Attorney Phoenix stated that the only thing that is in the marsh is a portion of the septic, which will be closed off and stay because it will be the least impactful compared to digging it up. Everything else is outside of that, except for a portion of the driveway, is outside the 50ft.

Chair Weathersby asked for clarification on the grading and stormwater management. It is going to gently slope up and then be relatively flat with plantings along the back. She asked if they are going to need raingardens and gutters.

Mr. Weinrieb explained that because there is a natural buffer and porous pavement, the water coming from the midpoint of the building back will be going into the porous pavement. That will give treatment and it will seep into the ground. Everything beyond, will have native plantings and it will become a natural area. The invasive species will be eliminated. The front portion is going to shed towards the front. There will be a little bit of grading. Everything is going to shed off this property. (He pointed out locations for possible culverts.) He noted that there is a catch basin now that discharges back to the brook. There will be a little bit of flow that will continue to go to that but there will be a reduction in flow.

Referring to the sides of the property, Member Driscoll asked if the grade is going to taper off almost to the property line.

Mr. Weinrieb pointed out that on one side there is more room than on the other, there is more room for drainage.

Member Driscoll asked how they are proposing to not increase the runoff onto adjacent property.

Mr. Weinrieb noted that they are reducing the impervious on the site by 18,000sf.

Member Driscoll pointed out that on the left side there is a driveway to the abutter that is right near the property line.

Mr. Weinrieb stated that runoff will taper down but there will be a spoon ditch that will send it back. There is water that is going in that direction now but there will be a reduction.

Mr. Samonas explained there is also 40ft of grass from the front property line forward to Route 1A, which will remain. That accepts and catches all the runoff from Ocean Blvd westward. The property floods from the rear of the property and won't reach the areas on the side. He reiterated that there is a 40 to 50ft area in the front of green area of state-owned land and there is another 10ft from the property line to the building. There is a lot area in the front that is a catchall from midway of Route 1A westward.

Mr. Weinrieb noted that around each building will be drip edging, along with the fill, it will infiltrate most of the roof runoff. He pointed out that gutters are not proposed. There may be a diverter over the front door.

Member Dibble noted the last cottage to the left is right on the property line. Building number 1 is to the north of that cottage. There is all of that space to absorb any runoff that might occur from the building. Some of the pervious driveway wraps around the corner. It looks to him like it would be less likely to shed water onto the adjacent property than what exists now.

Member Driscoll replied that this would be if all the grades were consistent but they are not.

Member Dibble commented it will likely not be worse.

Vice-Chair Crapo asked if there will be much, if any, lawn to the marsh side of the pervious driveway.

Mr. Weinrieb explained there will be a sloping off and after the shoulder there will be a 2 to 1 slope down to the natural grade and none of that will be maintained. The only lawn will be in-between the buildings on top of the septic systems.

Mr. Samonas commented there will be no lawn west of the driveway.

Attorney Phoenix read from RZO 306.4, Tourist Accommodations. He noted that this will get special scrutiny from the Planning Board with respect to all of these issues; runoff and fill. They may require a stormwater management plan as part of that.

Mr. Weinrieb confirmed that they will.

Attorney Phoenix pointed out that the building inspector will not issue a building permit, unless he is satisfied with the stormwater management plan.

Chair Weathersby commented that if this goes to the Planning Board, she would like consideration given to putting in a sidewalk in the state right-of-way.

Mr. Weinrieb replied that they would work with DOT. In his experience, DOT is happy to allow sidewalks in the right-of-way; however, the community needs to maintain it. He is not sure that is something the town would want to do.

Chair Weathersby commented it is not going to be tied into this request.

Mr. Samonas noted that they will work on this. If it is allowed, he would like it for safety purposes.

Member Driscoll asked how they differentiated between a den and a bedroom in the floorplans.

Mr. Samonas explained the den has no closet and is a much smaller room.

Member Driscoll pointed out that in some dens on the plans there is a closet.

Mr. Samonas explained it is really not a closet. They are toying with ideas on where the washer and dryer could possibly go. The interiors are not refined because he has not received approvals yet. The inside is still a moving design. People today want an office somewhere that is separate and that is why it is there.

Vice-Chair Crapo asked about the loading capacity on the septic.

Mr. Weinrieb explained that as part of the exercise with DES, the maximum lot loading capacity is 16 bedrooms. None of the units could be a three-bedroom unit. It cannot be converted later.

Vice-Chair Crapo asked if there would be an overflow of the septic if people did convert a den to a bedroom anyways.

Mr. Weinrieb replied likely not because the septic is so over designed that it is 300 gallons per day per bedroom. The average person uses about 70 gallons per day. Also, the AOS system is on an inspection cycle and it will be known if there is a problem with the system.

Member Dibble pointed out that for the purpose of septic loading it is the number of bedrooms and what determines a bedroom is a closet.

Mr. Samonas stated that he would have no problem with a stipulation that no closets will be included in the den area.

Chair Weathersby asked if this type of septic requires an annual inspection and certification.

Mr. Weinrieb explained there is a maintenance agreement that has to happen. The company pumps it out and inspects it. Some of the systems have remotes so the company can watch the systems remotely.

Attorney Phoenix noted that this requirement is added to the homeowner association documents. The association as a whole is responsible.

Chair Weathersby opened to the public in favor of the proposal.

Ray Tweedie, 605 Wallis Road, spoke in support of the variances. He stated that he spent four years on the Planning Board and has seen similar developments in Rye. These are variances that should be approved because the overall end result of this project is better for the environment. He was the lone dissenting vote on the Wentworth project. His one concern was the environment. This project is far better than what that was and he still thinks that was an improvement over what exists. What exists pollutes the environment and is a safety hazard on many levels. This alleviates those concerns. With those cottages being rented over the summer, that is more than 100 people going back and forth across the street. This development is going to cut that by more than half. He noted that the Board has the ability to put on conditions, which he recommends that they do. He recommended a maintenance plan for the pervious driveway. He

recommended that there be a condition that the units cannot be rented for less than 31 days to eliminate seasonal rentals. He noted that Mr. Samonas could have bulked these buildings together and blocked a great portion of the view for certain people. By spreading this out, there is more natural air flow and views on both sides. He recommends the variances be approved with certain conditions.

Michelle Locandro, 64 Wallis Road, spoke in favor of the proposal. She thinks it will be esthetically pleasing and would prefer permanent residents in the neighborhood, rather than a constant flow of transients.

Dan Philbrick, 1393 Ocean Boulevard, spoke in favor of the application. He noted that the applicant is willing to spend a lot of money to correct a lot of problems that are on that corner. When the Wentworth put forth their project, it was going to have a lot of impact on the beach. This is really reducing the impact. He hopes that this is looked at in the light of cleaning up that area, which is extremely tired. It will be nice to see the property green. It will be nice to see it new. It will be nice to see it meet safety and FEMA codes. The town passed on the Wentworth proposal, which was probably a good idea. However, something is going to end up there. There is a lot to deal with to meet FEMA regulations and he gives the applicant a lot of credit. This is an opportunity to come up with a better solution than what is there now. He does not know that they will get a less impacting use in that area or whether they will get someone to throw this kind of money at that corner. It is an important corner for the town. It will be nice to see it comply in so many ways. It is a massive improvement. He is familiar with the property and there is nothing about it that is not tired. He hopes that the Board will look at it objectively.

Chair Weathersby asked for comments in opposition.

Victor Azzi, Old Ocean Boulevard, stated that he would like to speak somewhere in-between opposition and support. He would hope that there was a solution that doesn't need as many variances or exceptions. One thing that he finds is missing, is an elevation drawing of the proposed structures. An easterly elevation as to what people will see westerly as they are moving along Ocean Boulevard. From what has been said, they are going to add 4 to 4.5ft of fill and then they will build the structures that are essentially four stories tall. That leads to a rather tall set of structures to replace what is there now.

Vice-Chair Crapo noted that from the street it will appear to be a three-story unit. The applicant provided a streetscape elevation that would include grading.

Referring to the garages, Mr. Azzi asked if storm surge has been considered. When the storm surge comes it flows down Wallis Road Extension and in this neighborhood. He hopes that this will be considered. He asked if they will be using breakaway construction at the ground level.

Mr. Samonas replied there will be scuppers involved.

Chair Weathersby paused the public hearing so the Board could address the other applications and whether they should be continued because of the late hour.

Motion by Shawn Crapo to continue the applications (#7, 8, and 9) of Sheppard and Lainge Revocable Trust to November's meeting. Seconded by Burt Dibble. All in favor.

Chair Weathersby reopened the public hearing for the Samonas application.

Larry Rocha, 39 Perkins Road, asked why the garages could not go behind the building, instead of stacking it. That would take care of the height requirement.

Chair Weathersby commented that she will have them address this question.

Sandy Milley, 1256 Ocean Blvd, stated that he is CEO of a company that makes robotic instruments that go in and inspect stormwater and waste water lines. In looking at the cottages, they are on stilts and underneath is gravel. That is permeable. He asked if this is being counted as impervious.

Mr. Weinrieb replied yes.

Mr. Milley stated that he does not know how many people would agree with that. He does not. He does not think it is a fair trade. A roof with gravel under it is going to be impervious. But water runs down and it migrates in the soil all around. Stormwater studies is an art, not science. Nobody knows where this water is going to run off. They can make a calculated guess and it's a good guess. The permeable driveway is a plus. There is a lot of art to this. The Board needs to really understand how this is going to be affected. The people who live on this marsh want to know if there is going to be anything less for them environmentally. He questions the numbers about impermeability.

Judy Scott, 1237 Ocean Blvd, stated that she lives adjacent to this project. If the property is going to be elevated 12ft and her property is 9ft, the water is going to head right into her yard. She is seeing that more and more with flooding and the marsh. As the marsh floods, it is coming closer and closer to the properties and killing the vegetation. Things are changing drastically. She hopes they get something resolved out there. She would like to see a nice structure out there; however, she is concerned about the runoff. The other concern is the massiveness of these duplexes. In this little section, it is out of character and it is going to be protruding way up. She thinks it sets a bad precedent for the neighborhood. The zoning is 28ft and 41ft is way out of line.

Lori Carbajal, 18 Tower Ave., stated that she is also on the Beach Committee. They have run into problems in the past four years, not just in Rye but also Hampton and North Hampton, with much larger properties being built. With each larger structure that goes into an area, there is more ponding and pooling. She commented there are no storm drains in her area. With the larger homes being built in the last four and five years on Cable, taking up green space, there is

ponding at the end of her road that lasts for days. The concern of the Beach Committee is going back to the debacle of homes not getting the proper permitting in 2009 that was discovered by FEMA in 2012. The more the wetlands are encroached on the more permits are required. Any time there is another permit it is another 5ft or 10ft into the wetlands. It is a great project but permits need to be had by FEMA, Army Corps of Engineers and DES. If they are okay with it, then it is a fine project. The town needs to vet properly if these agencies need to be involved.

Steven Borne, 431 Wallis Road, stated that everyone knows that Parson's Creek is over saturated with septic systems. Mr. Philbrick made a good point that the community needs to find a solution to that corner because it is a bad section. Mr. Azzi made a good point that replacing something that is very, very bad with something very bad, isn't very good. It's still bad. Taking the volume of exceptions and things needed, still give the indication that this is still bad. Also, all the measurements are being taken from where the water is today but that is going to keep coming up and keep getting closer. That is a very bad spot. The solution might be to make that conservation land. If this goes through, there will be 8 units with people living there. That is a lot of volume of septic. How many cars will be packed in that area? Wallis Road is backed up in the summer, never mind the driveway coming onto it. He also heard someone say that the condo documents are a savior but they are not worth the paper they are written on. There are a lot of problems with developments. People are doing what they want and asking for forgiveness later. Parson's Creek is already overbuilt. Don't replace something that is very, very bad with something that is very bad.

Chair Weathersby read a letter submitted to the Board with 38 signatures in support of the proposal. She also read a letter from neighbors objecting to the project. A letter was received from the Rye Conservation Commission, dated September 18th, stating their concerns and recommendations to help mitigate the potential impacts. An email was received from **Delvin Arnold, 1220 Ocean Blvd**, in support of the proposal, which was read by Chair Weathersby. She noted a letter was received from the **Andersons, 1236 Ocean Blvd.**, objecting to the proposal. Emails in opposition were received from **Karen Pelletier, Nancy and John White, 26 Odiorne Drive**.

Chair Weathersby asked for further comments from the public. No comments were heard. She opened to Attorney Phoenix to address the concerns that were raised.

Attorney Phoenix stated that he is shocked by how much opposition there is. He cannot understand someone preferring what is there today over what is being proposed. Mr. Azzi said something about not having something that is less bad. He continued this is a vast improvement over what is there. The town and the state rules require that if it has a roof, it is impervious. That is why it is counted as impervious. The concerns about water coming onto neighboring properties is a legitimate concern. However, it has to be balanced against the requirements. Fill has to be brought in to get the building up to comply with FEMA and to get separation for the septic system, in order to get them out of the marsh and buffer completely at 100ft. It is totally unreasonable and unfair to say it is only an art. Mr. Weinrieb is experienced in designing these stormwater management systems and other systems to make sure that the rainwater does not

negatively affect the neighbors. They have to make sure that proposed conditions do not exceed existing conditions. The surge typically comes from the back of the marsh and that is what Mr. Weinrieb's design takes care of. It will be pursuant to a valid stormwater management plan approved by the Planning Board and/or the building inspector. As for Mr. Borne's comments, he just disagrees with it. These cottages generate a whole lot of traffic in the summer and some of them all year round. The overall traffic and pedestrians using this area is going to be significantly reduced, as compared to what happens in the summer right now. Someone said that they prefer it to be year-round residents, rather than transients. That can be addressed with how long someone can rent. On an overall basis, he respectfully has not heard anything from the neighbors that has not been addressed. He would ask that if the Board felt there was a question that has not been addressed that it be asked before the public hearing is closed.

Mr. Weinrieb stated that he would like to address the other question about the garage location. He explained there is really a limited building development envelope that would not require zoning relief. (He pointed out the 100ft buffer line on the plan.) Anything developed on the other side would require zoning relief. There is also a front and side setback. With that said, as a zoning requirement there has to be access on the lesser travelled road. By requirement, they have to come in off Wallis, no matter what is done. (He pointed out the location for the driveway.) In regards to the question of why the garage could not be put behind the building, this could be done but there has to be turning room and there has to be room for the driveway. That would move everything at least 20 to 24ft closer to the resource. The 50ft buffer is the "magic" line. They do not want to go over that. It is a primary setback from the tidal line. They can't build in that area by DES requirements. A wetland permit is required because the project is within the 100ft buffer. If the garage was to go where the driveway is located, it would force the project to go closer to the resource. The garage going underneath, pushes up the building, reduces the footprint area and drives the proposal further away from the resource. This proposal is making it better. It is less impactful. There is less traffic. These are great septic systems, where the existing systems are bad and there is a problem in Parson's Creek. When this project is done, this is not going to be the source of the pollutants. He continued that there is a catch basin in the corner and there is a requirement of DPW to clean them out. The challenge is that this is a low point and it discharges back to the stream. The inlet out is at elevation 5. At high tide, it is just not going to work because there is no place for that water to go. This proposal is reducing the flow to it.

Vice-Chair Crapo asked if it is a state catch basin.

Mr. Weinrieb explained that it is a state catch basin but the Public Works Director has said that the town takes care of it. He continued that in regards to the comment about the pervious underneath, he agrees but he would not be able to tell the Board that this is all pervious.

Mr. Samonas stated that he respects everyone for being at the meeting and respects all the concerns. He and his team have spent hundreds of hours trying to figure out what the best thing is to do for this property. After hundreds of hours of exploration, this is what they came up with as the best possible solution for what is there. He appreciates the way Mr. Milley and Mr. Azzi

addressed a neutral position. The cottages have skirting under them that has rotted. When those were originally built, water didn't get underneath them. What is being proposed is a lot less bad. Variances are here for someone that can show hardship. That is what he is doing.

Vice-Chair Crapo asked if the units are going to be sold and rented by individual unit owners. One of the concerns was short-term rentals. He asked if they are open to some sort of restriction.

Attorney Phoenix stated that he does not think they would be in favor of saying only 8 people can be in the unit at one time. But he thinks there could be a limitation on short-term rentals.

Mr. Samonas stated that he is not sure he wants to agree to that. He could definitely say there will be no one, two- or three-night rentals as there are now. If someone wants to leave and rent their house to a someone for a week or two, he does not want to limit that.

Attorney Phoenix pointed out that there is only so many people that can fit in the unit.

Chair Weathersby asked for the concern about federal permits to be addressed. She asked what other permits are necessary for this project.

Mr. Weinrieb explained they are going to need state septic, DOT permit for activities in the state right-of-way, and a wetland permit. They will not need an Alteration of Terrain (AOT) Permit because they are under the 50,000sf threshold, unless they want the septic physically removed, which might trigger it to be over 50,000sf.

Hearing no further comments, Chair Weathersby closed the public hearing at 9:30 p.m.

The Board addressed the remaining applications and the late hour of the meeting.

Motion by Shawn Crapo to continue applications 4 and 5 for Theresa and Richard Carey to the November meeting. Seconded by Burt Dibble. All in favor.

Motion by Shawn Crapo to continued application 6 for Wieczorek to the November meeting. Seconded by Burt Dibble. All in favor.

Chair Weathersby called for a 5-minute recess. The meeting was reconvened at 9:40 p.m.

Chair Weathersby opened to the Board for deliberation.

Member Driscoll stated he thinks they have done their due diligence. He always has some reservation about trying to vote on something without a stormwater management plan; however, he does see the reasoning for it and there is the stop gap that it needs to be approved by the building inspector. In going through the criteria, the only thing that he is hung up on is the height. On the sheet it is 32ft. He thinks that what is proposed now is 31.5ft going off the new grade. He is not considering the 4 to 4.5ft of fill. He can make an allowance for the fill because he can see the purpose for it. He would like to talk about the purpose for the other 3.5ft from the

first-floor grade up to the ridge height. He struggles with the hardship for those extra few feet. He continued that he looks at what is there. This isn't an empty lot. The existing septic that are there are sure to be polluting the water far worse than what is proposed. He does not see any issues going through the criteria with anything but potentially the height from first floor to ridge.

Vice-Chair Crapo stated that he agrees with 95% of what Member Driscoll said. His issue with the Riley Case was the stylistic desire. He just does not see how it turns under the criteria of hardship on the height. He is fairly comfortable with everything else. There is something on the property now. There are horrible systems there. There are property rights to develop this property. Fifty years from now the whole thing might be under water and this will be a moot point. To Mr. Borne's point of turning this all into green space, he does not think they can go to those extremes and take away the right to develop. A lot of effort has been done to keep everything as least impactful to the environment as possible. He continued that a maintenance condition should be placed on the driveway. His fear is if there is a flood that comes up above the fill, it will fill that with swill from the marsh and it may require the whole replacement of the driveway. Even if the driveway became impervious, he thinks there is enough pervious on the site that acts as a buffer to the marsh, when it is not flooded. The one thing that he cannot get to on satisfying hardship is the height. He can see the rest of the proposal as being reasonable and a solid project.

Chair Weathersby stated she also voted against the Riley project because of the height. With that project, what was driving the height was trying to get the garage under. She wrestles with it in this case for a couple of reasons. When she looks at the Riley project, it looks better than what she thought so that is in their favor. She also understands the argument that people want to have garages. On this lot, it is probably less impactful to the wetland and environment in general to have the garages under, rather than behind or next to. There is also the issue of oil runoff if the cars are parked outside. Is wanting to have a garage a hardship? That is where she struggles a little bit.

Member Driscoll stated that in a house like this he finds that not having a garage is a hardship. He struggles with whether the ridge is more or less of a hardship than trying to adjust floors to try and obtain the 28ft ridge height. On the permeable pavement, he is fine either way. What he has found on permeable pavement is that it is not all that durable. It lasts about ten years and that is kind of a built-in maintenance because it has to be replaced. It has been shown to fall apart. It just does not have the durability traditional pavement does. He can go either way on the maintenance condition for the pavement.

Member Dibble stated that the hardship on the height is the central matter here. This is not the first time the Board has looked at a project that is being forced upward by water issues. They are asking for fill to give it some extra height. The mechanicals are going to have to be elevated and that will increase the space between the floors, which pushes the height. To that degree, he thinks that represents a hardship. He agrees that to build a residence in the Town of Rye without a garage is a very serious hardship. He is convinced by the engineering presentation that if the

garages are out back it would just push the pavement closer to the marsh, which does not make any sense. If people want a garage, they would like to get out of the garage inside the house. That contributes to the hardship in relation to the height. He has faith that the stormwater management plan will be required by the Planning Board. He continued that the Board had a presentation about this type of a septic system. It was said that the seller of these septic systems will not sell them without a maintenance contract. It is pretty assured that the septic system is going to get watched over. He thinks the septic systems will continue to offer advantages for the indefinite future. What will happen to sea-level rise in 50 years? Who knows. Lots of structures last 350 years but not all. Because it is an unknown here, he does not think the decision turns on that issue. He is not inclined to condition this on pervious asphalt. It feels to him that when its 50ft away from the marsh and water runs off the driveway into the native plantings, it is pretty well treated by the time it gets to the marsh.

Member Patten asked if they are deciding on a variance to allow 31.5ft from 28ft.

Chair Weathersby explained it is the difference from the existing grade. They are asking for a building height of 36ft, which is really 31.5ft depending on the grade. But the variance would be for a building 36 or 35.8ft in height.

Speaking to Attorney Phoenix, Member Patten asked if the height comparison to the other buildings around were relative to 36ft.

Attorney Phoenix replied those were relative to sea-level height.

Member Patten asked if there is a clear idea of how it all figures out. How do they come down in line with the overall height of the building?

Attorney Phoenix explained the reason they did sea-level is so it was comparing apples to apples because it is unknown on all the other buildings if there were variances granted or filled and built up. The ones across the street, on the ocean side, the land goes up a bit and that is a cause of it. That has been problematic for people who are developing there because on the beach side there are two stories but on the other side, where it is measured from, there are three. Visually, some of those buildings that are as tall or taller, look even taller yet because the land is already higher and they are already so many feet up from the ocean side. If the premise of the garage being under is accepted, two stories are then on top. If the variance is not granted, then it will send the applicant back with a flat roof. This design is traditional and in keeping with Rye.

Vice-Chair Crapo stated there was a similar discussion for a project on Winslow Way. What was not known is where that land started.

Member Patten stated this project has a number of pluses and some minuses. If it were right next to the marsh and there were other homes that were going to be blocked by this, that would be one issue but that is not the case here. If it is a matter of figuring out hardship on height, there is a

great deal of investment needed to make this property into something. Who would want to buy this if it does not have a garage? He would be surprised if someone would be interested without a garage. To him, that constitutes a level of hardship, given the fact that so many other issues are improved on the property. He is pretty confident the drainage is going to get resolved, even though there is nothing firm in place right now.

Member Dibble stated he is persuaded by the argument that there is going to be something here. What is there currently is terrible. The Town of Rye is never going to assume ownership of this property. This project treats the land well. He is convinced by the sincerity that the owner wants to do the right thing.

Chair Weathersby agreed. She stated that she is convinced that the garages should be allowed. She thinks that if more of the space is used around the houses it would then block views. If the garages are put out back, they would be closer to the marsh. Putting the garages under is probably the cleanest. She is very sympathetic to buildings being raised over 28ft if it is being driven by a FEMA concern. It is just a reality the town is being faced with. She is okay with the fill, as long as the stormwater piece works. She wishes they had a plan but she thinks they have asked enough questions to understand generally the grading and the slope. She thinks the water issue will work. She does not think the neighbors are going to have water issues because of this being built.

Vice-Chair Crapo asked if the height could be voted on separately. He tends to be against the height. In the strictest of sense, he does not see a hardship as not having a garage. With the Riley case, he said "they stuffed the garage under and that is how there is this height issue". Now, here is the second case.

Regarding hardship, Member Driscoll stated he was the initial one who thought there should be a garage on a property like this. However, this garage can house three vehicles.

Chair Weathersby pointed out that it is still the same height.

Attorney Phoenix commented that it is the only storage on the site. There are no sheds or basements.

The Board discussed some possible conditions and agreed to the following:

- Maintenance plan for the pervious surface of the driveway;
- Maintenance plan for the septic;
- Compliance with the recommendations of the Conservation Commission (1-5) as stated in their letter;
- All necessary state and permit approvals;
- Stormwater Management Plan and Planning Board approval.

Chair Weathersby stated there is also the issue of the rental period. This was a condition with the Saunders development. The homes could not be rented for less than a month.

Member Patten stated this gets into property rights' issues. Saying someone can't rent for less than 31 days, completely limits someone's ability to recoup any money on the property. If it was for a week, at least the person could rent it for a week and its still a hundred times better than having people come in for a night. If it is a traffic issue, a week is enough to limit that.

Member Dibble stated that the reason to limit the duration of the rental is so the property doesn't get trashed. Short-term rentals tend not to respect the property like someone who is going to be there for six months or a year. The owner takes on that risk.

Chair Weathersby commented it also protects the neighbors, particularly, where there is a shared wall in each of the buildings. It is a protection of the investment that the other folks have on the other side of the house.

Vice-Chair Crapo stated this is going from something that is like "Caddyshack" to an expensive investment with quality construction. He does not picture the owners allowing transient destructive people in there. He does not think they need to get into a restriction on that.

Chair Weathersby stated this is probably a Planning Board issue.

Vice-Chair Crapo pointed out he is not replacing tourist cabins with tourist cabins. Its tourist cabins being replaced with a more formal condominium.

It was the consensus of the Board to not make the rental period a condition if the project is approved.

Vice-Chair Crapo suggested adding all necessary state approvals.

Member Dibble pointed out that the building inspector will manage that problem.

Member Driscoll asked if they have any way to manage light pollution.

Chair Weathersby commented the Planning Board would deal with that issue.

Member Driscoll stated the Board has had three cases back to back that had issues with ridge height. This is the first one, that after thinking about it, he is going to vote in favor of. The reasoning is because of the number of units that was there before and the fact that they are trying to look out for the property. They are trying to isolate the drainage as far away from the wetlands as possible. He still has a concern about the stormwater management but that is a whole different story. The reasons he is voting for this one is because there is something already on the property. What is on the property is a bunch of "mini-residences" and this is an

improvement on the property. That is his reasoning for voting for the variance on the ridge height, where he hasn't in past cases.

Chair Weathersby called for a vote on variance relief to ***Section 304.4, for the heights*** (with building and fill) ***of 35.8ft, 36ft, 35.8ft and 35.5ft:***

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

Shawn Crapo – No
Patrick Driscoll - Yes
Rob Patten - 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 – No
Patrick Driscoll - Yes
Rob Patten - 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 those provisions to the property?

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote on variance relief to *Section 204.3 C, 301.5 A, 301.8 (1)(2) and (7)*:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

Motion by Burt Dibble to approve the request for variances by Samonas Realty Trust to 304.4, 204.3 C, 301.5 A, 301. 8 B (1)(2) and (7) as requested with the conditions;

- (1) Maintenance plan for the pervious surface of the driveway;**
- (2) Maintenance plan for the septic;**
- (3) Compliance with the recommendations of the Conservation Commission (1-5) as stated in their letter;**
- (4) All necessary state and federal approvals;**
- (5) Stormwater Management Plan and Planning Board approval.**

Seconded by Shawn Crapo. All in favor.

Attorney Tim Phoenix requested to withdraw without prejudice the special exception request.

- 3. John & Carole Murtagh for property owned and located at 33 Pollock Drive, Tax Map 23.1, Lot 2, request variances from section 203.3 B for a generator 12'5" from the side property line where 20' is required and from section 301.8B (1) & (7) for a generator 58' from the marsh. Property is in the General & Single Residence and Coastal Overlay District. Case # 39-2018.**

John Murtagh, applicant, presented his request for variances for a generator 12.5ft from the side property line. He pointed out that the generator is going in a location on the property that is pretty level. The generator will be 58ft from the marsh. It is outside the 10ft radius of the tank, 5ft from the house and on level ground, where the other option would be on a slope. It is also on the protected side of the house from most winter storms.

Member Driscoll thanked Mr. Murtagh for the way he put the application together. It is very clear and complete. It's very reasonable.

Member Dibble pointed out that best of all the Rye Conservation Commission had no comment.

Chair Weathersby opened to the public for comments. No comments were heard. She read the letters of support from the abutters;

- **Sandra Dombrowski, 39 Pollock Drive**
- **Anthony Constanzo, 21 Pollock Drive**
- **Timothy Bergeron, 28 Pollock Drive**

She also read the letter from the Rye Conservation Commission stating they did not have any objections to the generator as proposed.

Chair Weathersby closed the public hearing at 10:33 p.m.

The Board had no issues with the proposal.

Chair Weathersby called for a vote on variance relief to *Section 203.3 B, 301.8 B (1) and (7)*:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll - Yes
Rob Patten - 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
Rob Patten - 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 those provisions to the property?

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

7. The proposed use is a reasonable one?

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

Motion by Patrick Driscoll to grant the variances as presented. Seconded by Shawn Crapo. All in favor.

- 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 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.**
 - Continued to the November meeting.
- 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 variances from section 304.5 for building coverage of 24.5% where 19.1% was permitted by variance on 8-21-18 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.**
 - Continued to the November meeting.

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 and from section 304.5 for dwelling coverage where 11.7% exists, 15.6% is proposed and 15%. Property is in the General Residence, Coastal Overlay District and SFHA, Zone AO (1). Case #42-2018.**
 - Continued to the November meeting.

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 an administrative appeal from the 8-9-18 denial letter by the building inspector to obtain variances from sections 500.2 and 500.2. Property is in the General Residence, Coastal Overlay District. Case #43a-2018.**
 - Continued to the November meeting.

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 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.**
 - Continued to the November meeting.

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 November meeting.

Other Business

- Approval of Minutes of July 27, 2018

Motion by Burt Dibble to approve the minutes of July 27, 2018. Seconded by a Patrick Driscoll. All in favor.

Adjournment

Motion by Shawn Crapo to adjourn at 10:38 p.m. Seconded by Burt Dibble. All in favor.

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

Respectfully Submitted,
Dyana F. Ledger

TOWN OF RYE ZONING BOARD OF ADJUSTMENT

Amendment to Rules of Procedure

Add the following paragraph to Section 8.2.1 Application:

The application shall include all required fees and all items on the board's Checklist for Application Submittal. The Planning and Zoning Administrator shall determine if an application is complete. Incomplete applications shall not be placed on the board's agenda.

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:

October 3, 2018

Decision:

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

- Section 304.4 for height of 36.3' for proposed building #1; 36.5' for proposed building #2; 36.3' for proposed building #3; and 36.0' for proposed building #4;
- Section 204.3 C for dwellings 9.5' from the Ocean Blvd property line;
- Section 301.5 A for removal of vegetation and, if required or recommended by NHDES, removal of the septic system in the tidal marsh;
- Section 301.8 B (1) for approximately 4000 cubic yards of fill within the wetlands buffer; and
- Section 301.8 B (2) and (7) for removal of existing structures and for
 - Building (#1) 64' from the marsh;
 - Building (#2) 80' from the marsh;
 - Building (#3) 82' from the marsh;
 - Building (#4) 84' from the marsh; and
 - Driveaway 24' from the marsh;

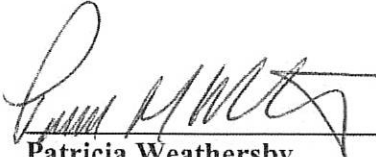
Each variance and building code relief was granted upon the following conditions:

1. On-going maintenance plan for the pervious driveway surface;
2. On-going maintenance plan for the septic system;
3. Planning Board Approval;
4. Stormwater management plan approved by the Building Inspector;
5. Installation and maintenance of native plantings from the NHDES Native Plants list in the entire area between the edge of the toe slope of the driveway to the wetland;
6. The eradication of the invasive plants on the site;

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.

7. No fertilizer being used on the site. Condominium association documents are to include this restriction;
8. A single landscape company being engaged to service the entire site to help ensure uniform compliance with the requirements. Condominium association documents should include this restriction; and
9. All state permits be applied for and approved.

Note: The Special Exception for the driveway to be located within the tidal buffer was determined to be unnecessary in light of the above variances and withdrawn by the applicant.



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 & Carole Murtagh

Property:

33 Pollock Drive, Tax Map 23.1, Lot 2
General & Single Residence and Coastal Overlay District

Application case:

Case # 39-2018.

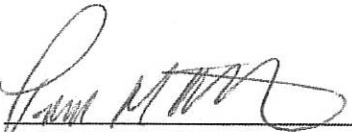
Date of decision:

October 3, 2018

Decision:

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

- Section 203.3B for a generator 12.5' +/- from the side property line and
- Section 301.8B (1) & (7) for a generator 58' from the marsh.



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: October 3, 2018

Decision: The Board voted 5-0 to continue the application to November 7, 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

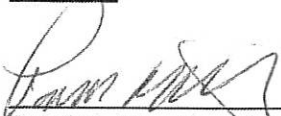
Applicant/ Owner: Grace Sheehan (Wieczorek) of 7 Piccadilly Court, Manchester NH

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: October 3, 2018

Decision: The Board voted 5-0 to continue the application to November 7, 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

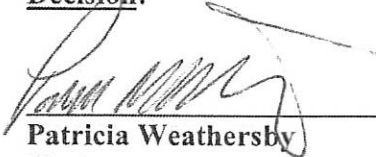
Applicant/ Owner: Richard & Theresa Carey, Trustees, Richard & Theresa Carey Revocable Trust of 11 Robandy Street, Andover, MA

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: October 3, 2018

Decision: The Board voted 5-0 to continue the applications to November 7, 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.