

RYE ZONING BOARD OF ADJUSTMENT

Wednesday, August 1, 2018

7:00 p.m. – Rye Town Hall

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

I. Call to Order and Pledge of Allegiance

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

II. Approval of Minutes:

- **July 11, 2018**

Motion by Burt Dibble to approve the minutes of July 11, 2018 as amended. Seconded by Shawn Crapo. All in favor.

Motion by Burt Dibble to continued application #4 to the September 5, 2018 meeting. Seconded by Tim Durkin. All in favor.

Chair Weathersby noted that the applications will be called in order. The applicant will have a chance to present their application and all the reasons it should be granted. The Board may ask questions and then it will be opened to the public for a chance to speak. The applicant will have a chance to address anything that was raised by the public. The public session will be closed. The Board will deliberate and make their decision. If it is found that more information is needed the Board can continue an application. The Board can approve the application and add conditions of approval. The Board may also deny an application.

She continued that at the previous meeting there was discussion at the end of the meeting regarding the applications coming in and issues with those submittals (see minutes of 7-11-18). Since that time, the process has been worked out a bit. The applications will now be submitted to the Planning and Zoning Administrator, Kimberly Reed, so she may review them. She noted that at the end of this meeting she would like to propose an amendment to the ZBA's Rules of Procedure concerning the completeness of applications.

No new applications will be taken after 10:00 p.m., unless there is agreement by the Board to continue.

III. Applications:

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

The application was presented at the July 11, 2018 meeting. The Board requested more information on exactly what part of the structure was above 28ft. More information was also requested in regards to the other homes in the neighborhood. The application was continued to this meeting.

Patricia Panciocco, representing the applicant, addressed the Board.

The Board reviewed the plans showing the elevations, which were submitted by the applicant's representative.

Chair Weathersby commented that she was hoping to see a line on the plan showing 28ft. She wanted to see the amount of the structure that is over 28ft; the bulk and dimensions. She asked how much of the roof will be over 28ft.

Ms. Panciocco replied at least two-thirds. She noted that the whole top triangle is over 28ft.

Vice-Chair Crapo stated that this was continued for accuracy and the Board does not have that.

Motion by Shawn Crapo to continue the application to the September 5, 2018 meeting for more information.

Chair Weathersby reviewed the minutes from the July 11, 2018 meeting. She noted that Member Durkin wanted to know the heights of the other homes. He also wanted to know which of the renderings of the height were correct because there were two different versions. The Board said that they would like to see a set of final plans with clarification on how much relief is being requested. She asked Ms. Panciocco if they have a set of final plans showing how much relief is being requested.

Ms. Panciocco replied that they are asking for 7ft above what is allowed.

Chair Weathersby stated that they were hoping to have diagram of that.

Referring to the plan, Vice-Chair Crapo pointed out that the 35ft that is shown is not measured from proper grade.

Ms. Panciocco replied that they will adjust the plan to bring it down to the 35ft grade.

Member Durkin noted that he wants to see that plan.

Vice-Chair Crapo stated that they need to see where the grade is being measured from to be sure the building inspector is going to agree with the measurements. He noted that the ordinance has three definitions of grade. One of them is going to determine a benchmark spot for this property, which is measured prior to construction. The plan is showing the measurement being from the bottom of the first floor joist. Right beside that is a little dark line which he believes is supposed to represent the ground grade but it is not tied to that. The measurement for relief in this zone is 28ft from the proper measuring point of grade. With the information that Board has in front of them, they cannot ascertain how much of the structure is going to need relief.

Speaking to Ms. Panciocco, Member Patten asked if an engineer came in, prior to demolition, to establish the actual first floor grade. Is there a pin on the property that the new construction can be measured from?

Mr. Zohdi, applicant, stated that he met with the building inspector and everyone agrees that 22' is the benchmark.

Member Patten noted that there is a foundation already in place.

Mr. Zohdi confirmed.

Chair Weathersby asked if they received a building permit for a foundation.

Mr. Zohdi confirmed.

Chair Weathersby noted there is a motion on the floor to continue the application in order to receive a plan that shows grade and where 28ft fits across the elevations.

Member Patten stated that if 22' is baseline, and that happens to be at the top of current foundation, it would be good to know what happens at top of soil. Where they are measuring right now is from top of foundation. Maybe that is okay if that is 22'.

Vice-Chair Crapo commented that the grade that existed prior to construction is not where the final grading of this house will be.

Member Patten agreed. That is the big question. Where is 22' today?

Ms. Panciocco stated that the site plans that were submitted with the original package show the grades.

Vice-Chair Crapo explained this does not give them perspective of how it relates to the elevations.

Chair Weathersby stated that the Board had also asked for more information regarding the heights of other homes in the neighborhood. She asked if that information has been submitted.

Ms. Panciocco noted that the elevations are on the plan.

Referring to the plan, Vice-Chair Crapo stated that with the building at the top, there are three ground elevations on the plan and peak elevations. Those are all measured in elevation above sea-level. However, there is no correlation to grade. The height above sea-level does not necessarily determine whether that neighboring house is 29ft tall or 30ft tall.

Chair Weathersby asked if the elevations shown on the plan reflect the height of those buildings, as defined by the town's ordinance.

Ms. Panciocco replied yes. The measurements that were taken were according to the ordinance. In looking at the ground level grade and the peak of the roof grade, the difference between those two numbers is the height of the building from the grade to the top of the roof.

The Board reviewed the plan and discussed the height of the houses abutting the property.

Referring to the neighbors' home on the plan, Vice-Chair Crapo asked if their front yard is more or less than 100ft.

Ms. Panciocco stated that she would say it is less than 100ft.

Vice-Chair Crapo commented that they do not know for sure. If theirs is more than 100ft, then the grade is the average of the elevation of the ground around the building.

Ms. Panciocco explained that there was a belief at the time that these buildings were taller. There is only one that is actually taller than what is allowed under the ordinance. That is the home on Lot 75.

Member Durkin asked if they came for a variance.

Ms. Panciocco replied that she does not know for sure.

Planning/Zoning Administrator Reed noted that no other homes on Winslow Way have come for a variance for height.

Ms. Panciocco noted that the plans are stamped by a survey who is licensed in the State. She thinks the plans are accurate.

Tim Durkin seconded the motion on the floor to continue the application to the September 5th meeting.

Chair Weathersby stated that she is probably going to vote against the motion because she would like to see what they can come back with in an hour. It may still be insufficient. She called for a vote on the motion.

Vote: 4-1 Opposed: Patricia Weathersby

Chair Weathersby summarized that the more information that can be provided for the Board the better. The Board wants to see elevations, grade and where 28ft comes in from different perspectives.

Member Dibble pointed out that the Board needs to see where the 28ft is being measured from. It is apparent that the Board does not think the surface of the first floor is the correct place to measure from.

Member Patten explained the Board needs to see the baseline and where grade is being measured from. They want to know what the measurement is and where 35ft is on the plan. The plan should also show a cross section where 28ft is located so the Board can compare what the ordinance requires to what is being requested.

Speaking to Ms. Panciocco, Chair Weathersby encouraged her to work with Mrs. Reed so they will be sure to have all the information needed for the next meeting.

2. **Stevan E. Huff for property and located at 1611 Ocean Blvd**, requests variances from Section 603.1 for expansion of a non-conforming structure, from Section 204.3B for a deck and spiral stairway 9.8' from the south side boundary and 6.3' on the north side boundary where 20' is required; and from Sections 301.8B (1) (2) & (7) for construction 50 +/- within 100' tidal wetlands buffer. **Property is in the General Residence and Coastal Overlay Districts. Case #25-2018.**

Bob Dockham, Dockham Builders, representing the applicant, presented the proposal. He explained the existing property is on a non-conforming lot. The proposal is to add a 12x12 deck to an existing flat rubber roof on the back of the house. The deck will not be expanded beyond the existing footprint of the house. The spiral staircase is being proposed to keep the confines within the existing deck and meet all code requirements. Mr. Huff has met with the Rye Conservation Commission who has recommended some plantings across the back of the property, which the applicant has agreed to do. The property was originally approved for a two-story home in 2006. He summarized that they are looking to add the deck to the roof, on a non-conforming lot and not exceed any of the existing setbacks. He pointed out that stairs stay within the confines of the boundary of the deck.

Chair Weathersby clarified the stairs go from the first floor deck to the proposed deck on the second floor.

Mr. Dockham confirmed. He noted that the home next door has a rooftop deck. Also, there is nothing behind this property so there would be no obstruction of anyone's view.

Chair Weathersby read letters of support from:

- John & Gale Merrigan, 1609 Ocean Blvd.; and
- Gardner Warr, 1613 Ocean Blvd.

Vice-Chair Crapo stated that when the house was built, it was probably not contemplated that there would be a deck above the first floor deck. He asked if it will be reinforced.

Mr. Dockham explained the posts will be buried on the outside walls. They will come down on the outside frame walls but nothing will be extended beyond the existing drip edge. There is a full 4ft foundation underneath so it is point bearing all the way through.

Chair Weathersby noted that the Board received a letter from the Conservation Commission regarding their site walk of the property. She pointed out that there was a request for relief from three sections of the ordinance for wetland buffer disturbance. It does not seem that the ground is going to be touched in any way.

Mr. Dockham confirmed that there will be no ground disturbance.

Chair Weathersby opened to the public in favor or in opposition to the application. Hearing no comments, she closed the public hearing at 7:52 p.m.

Member Dibble stated it looks okay to him.

Member Durkin agreed.

Vice-Chair Crapo agreed. It is utilizing space above existing space. No new runoff will be generated. He thinks it is a reasonable request.

Member Dibble stated that the bottom line for him is that the project, with the agreement of the Conservation Commission's recommendations, actually improves the property.

Vice-Chair Crapo stated the agreement with the commission is a 10ft buffer of native plantings between the rear of the yard and the abutting marsh.

There was discussion with the applicant to clarify the location of the plantings.

Chair Weathersby stated that she agrees with the other members. The proposal is reasonable and they are not adding a lot of bulk. The wetlands are not being disturbed and they will actually be improved. There are no septic issues. In looking at the relief request, 301.8 B(1), surface alteration, in her opinion that is not needed. The request from 301.8 B(2), septic being

prohibited, is not needed as this has nothing to do with septic. The request from 301.8 B(7) is for all other uses being prohibited.

Vice-Chair Crapo commented that he would not want to leave off 301.8 B(1). They need to be able to do the plantings and fix the yard if they need to.

Chair Weathersby noted they should do 301.8 B(7) for the deck use. She summarized that the condition will be that they implement and maintain the condition suggested by the Rye Conservation Commission in their July 16th meeting minutes.

Chair Weathersby called for a vote for relief to *Sections 603.1, 204.3 B and 301.8 B(1) & (7)*:

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve the application of Stevan E. Huff for property owned and located at 1611 Ocean Blvd, for variances to Sections 603.1, 204.3B, 301.8 B(1) and 301.8 B(7) for construction of a deck within 100' tidal wetlands buffer; conditioned on compliance with the recommendations of the July 16, 2018 letter of the Rye Conservation Commission. Seconded by Shawn Crapo. All in favor.

- 3. KRD Builders, Inc. – c/o Ken Dionne of 106 Chestnut Hill Rd, Amherst for property owned by Bradford S. Sterl of 3 Hollow Rd, Bow, NH and located at 8 Old Ferry Landing Rd, Tax Map 24, Lot 97, requests an equitable waiver per Section 701.4 of the RZO for a house height that exceeds maximum height of Section 203.3G by .67 ft. where 35' is required. Property is in the Single Residence District. Case #26-2018.**

Corey Colwell, MSC/TF Moran Engineering, representing the applicant, spoke to the Board. He explained that the applicant constructed this home recently at Old Ferry Landing Road. Upon its completion, the building inspector required an as-built survey to make sure the home complied with the various setbacks and height. The as-built survey was completed a few months ago and it was discovered that the height of the building exceeding the maximum by 0.67' or 8". Upon the discovery, an equitable waiver was filed with the Board. The application was intended to be heard in July but was postponed due to the length of the agenda. He stated that Black's Law Dictionary defines "equitable" as "just; conformable to the principles of justice and right". He stated that this was an honest oversight. There is no harm to the public or community with this building exceeding 8" in height.

He explained that this property was the subject of many different plans and permits. The permitting on this property started around 2010 and it took about five to six years. There are many drawings associated with this property for construction of this home. The builder met with the building inspector in an effort to compile all the permits and drawings. In doing so, was given the septic design by the building inspector, which showed the grade elevation identified by MSC/TF Moran as being 21.33'. The builder used this grade to measure the height of the building. Unaware to the builder, about a year after this plan was done, there was a variance plan where the grade changed. The reason for the grade change was because there was a slight change to the building in size and its location changed in size. In this case, the ordinance defines grade as the center of the front wall at existing ground, if there is less than 100' between the road and the building. That grade was measured regularly but because the building shifted and changed slightly in size, the grade to the center of the front wall had to shift. The grade went from 21.33 to 20.84 as identified on the variance plan. He noted that the builder was not made aware of this plan, nor did he know it existed. He relied on the 21.33 grade. As a result, the building ended up 8" too high.

Mr. Colwell stated that in order for an equitable waiver to be granted, the Board must find;

- 1) *The request involves a dimension requirement.***
This involves a height dimension.
- 2) *The violation has existed for 10 years or more with no enforcement action, including written notice being commenced by the town, or the non-conformity was discovered after the structure was substantially completed or after a vacant lot in violation had been transferred to a bonafide purchaser.***
The non-conformity was discovered after construction was completed.
 - ***The violation was not an outcome of ignorance of the law or bad faith but resulted from a legitimate mistake.***

The builder was not aware of the second plan that identified the grade as being slightly different than the first plan, which was an honest oversight.

3) ***The non-conformity does not constitute a nuisance nor diminish the value or interfere with the uses of other property in the area.***

The small 8" exceedance in height is minor and does not negatively affect surrounding properties. If the peak of the roof was lowered by 8" it would have no effect on anyone's view.

4) ***The cost of correction far outweighs any public benefit to be gained.***

The cost of correction would be quite substantial. It would require the whole removal of the roof, perhaps the walls, and it would have to be reconstructed just to make up the 8" difference.

Mr. Colwell summarized that for all these reasons an equitable waiver is just. There is no benefit to the public in lowering the height 8". It does not affect anyone's view. It was an honest oversight due to the complexity and the number of drawings for this project.

Vice-Chair Crapo asked where the original 21.33 would be on the new structure.

Mr. Colwell noted that the elevation would be very close to the center of the garage, as shown on the drawing.

Vice-Chair Crapo commented that if the structure had gone up without the garage and the building was turned that would be the grade that would've been used and the current height would not be an issue.

Mr. Colwell confirmed.

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

Francis Dreznek, Frontier Street, stated the he and his wife are direct abutters. They have no problem with the request at all. The applicant has done nothing but improve the area. The house does not affect their view at all.

Chair Weathersby opened to anyone in opposition to the application. Hearing no further comments, she closed the public hearing at 8:11 p.m.

Vice-Chair Crapo stated that if the house had no garage, was turned and constructed the exact same way it is today, it would be the same height and would have the same effect on any views for abutters. There is no public benefit that would be gained by making them take it down.

The Board agreed.

Member Dibble commented that he thinks they meet the requirements demanded by an equitable waiver.

Chair Weathersby polled the Board on the following findings:

- 1. The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official until after construction of the violation had been substantially completed.**

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

- 2. The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation or bad faith on the part of any owner, owner's agent or representative but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent; or error in ordinance interpretation applicability made by a municipal official in the process of issuing a permit of which that official had authority.**

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

- 3. The physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of any other property in the area or interfere with or adversely affect any present or permissible future uses of such property**

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes
Patricia Weathersby – Yes

- 4. Do to the degree of past construction or investment made and ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained and would be inequitable to require the violation to be corrected.**

Shawn Crapo – Yes
Rob Patten – Yes
Tim Durkin – Yes
Burt Dibble – Yes

Patricia Weathersby – Yes

Motion by Burt Dibble to grant the equitable waiver as advertised. Seconded by Shawn Crapo. All in favor.

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

- Continued to the September 5, 2018 meeting (see motion above).

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

Timothy Sanborn, applicant, presented to the Board. He stated that the proposal is to square off the building. It is taking a non-conforming building and making it no more non-conforming. There is a proposed 16x9 deck in the front easterly corner and a 7x20 addition in the rear southwesterly corner. There is also a request for a variance from the highwater table on the septic system. He continued that in terms of the five criteria, it is not contrary to the public interest. The proposed deck and addition square off the house. It does not come any closer to the abutting property lines or the street. The spirit of the ordinance is observed because no further encroachment is occurring. He noted that he owns the property on the southerly side. Substantial justice is done because the property is located across the street from the ocean. The deck provides justice to the house making it more functional. The values of surrounding properties are not diminished. Adding value to this property only increases value to surrounding properties. There are special conditions that distinguish it from other properties because it is a non-conforming lot and is located across the street from the ocean. This increases functionality. There is no fair and substantial relationship between the general ordinance provision and the specific application of the property because it is a single family residence and the setback variance has no impact. The proposed use is a reasonable one because the deck of the existing porch from the front and the change to the rear provides reasonable functionality. Therefore, literal enforcement of the ordinance would result in unnecessary hardship because the property

cannot be optimality or functionally used otherwise. He thanked the Board for their consideration.

Planning/Zoning Administrator Reed noted that when the application was submitted it was not complete and she told Mr. Sanborn it was not complete. He worked with the building inspector's office to try to make the application complete. Mr. Sanborn worked hard to get the application in before the deadline but he did not have a denial letter. The building inspector usually has thirty days to issue a denial letter but put out a denial letter within 12 hours for this case. After that time, it was discovered that the septic had failed and new legal notices were needed. The building inspector wrote a second denial letter and a second legal notice was issued.

Speaking to Mr. Sanborn, Chair Weathersby asked if he has a septic plan.

Mr. Sanborn submitted a plan to the Board.

Vice-Chair Crapo asked if a permit has been approved for the septic.

Mr. Sanborn explained that this is a situation where the town issued a failure notice to the extent that a variance was needed. There was a DES approved system on file when the property was conveyed to him by the former owner in 2014; however, the occupancy certificate had been revoked and the property was vacant for three months. He spoke with DES on whether a repair and replacement could be done on the existing system. He was told by the septic reviewer, the building inspector and DES that because the system had been repaired and replaced in-kind in 2000 did not have operational approval, a new design would be needed for the replacement. The septic plans that were submitted is for a design of a new system in basically the same area as the existing system. He stated that the property lines come back almost 10ft off Ocean Blvd. and 6ft from the pavement off Pollock Drive. There is 7ft on the Pollock Drive side and 8.5ft on the Ocean Blvd. side.

Vice-Chair Crapo stated that what they have only shows the existing subsurface disposal. It is really not a septic design.

Mr. Sanborn explained that this was given so the Board could have an idea of what he is talking about.

The Board reviewed the plan.

Chair Weathersby noted that it is a preliminary plan and it is not stamped. She asked if this is the most up to date plan.

Mr. Sanborn confirmed.

Vice-Chair Crapo asked if the new plan has gone to the state.

Mr. Sanborn replied no. He noted that he was told that the zoning board variance was necessary to submit it for approval.

Vice-Chair Crapo commented that the prior approval was four years ago. Speaking to Chuck Marsden, Building Inspector, he stated that during that four years, there has been a heightened scrutiny at this end of town with the Berry's Brook Watershed. Is this a property that could be affected? Is there a risk that the state would not approve this anymore?

Mr. Marsden explained that the plan that is in the history folder, that will expire August 8th, is a viable plan and can be installed. It has to be substantially under construction by the expiration date of August 8th or it expires. The designer has the option of applying for a ninety day extension for that design. If the owner decides to not use the design that was approved four years ago, then a new design has to be submitted for town and state approval. Regarding the design that is being reviewed, which has not been approved by the town or the state, he stated that they have no idea where the system can go on the lot or where the test pits are, until they see the design. He is not sure what plan the Board is looking at.

Speaking to Mr. Sanborn, Chair Weathersby asked if the plan the Board has is the same as the August 8th (four year ago) plan.

Mr. Sanborn replied no. He explained that because of the DES Section 1004.22, which allows for the system to be replaced in the existing leachfield within twenty years, he was trying to get approval with this plan to expedite the process in case he was not able to get in front of the Board at this meeting.

Chair Weathersby asked which plan he is going with.

Mr. Sanborn replied this plan. He would ask the Zoning Board for a conditional approval based on acceptance from the septic reviewer and the state.

Referring to the August 8, 2014 plan, Vice-Chair Crapo asked where the septic was located.

Mr. Sanborn replied that the leachfield was in the backyard.

Member Durkin clarified this is an entirely different design location.

Mr. Sanborn confirmed.

Chair Weathersby asked if this was the subject of the building inspector's denial letter.

Mr. Sanborn explained it is to the extent that the highwater table is the same. The test pits and leachfield are within thirty feet of one another. The soils were pretty much the same, in terms of percolation. A variance is still needed for the 24" versus the 48".

Chair Weathersby asked if a variance is needed for a 7ft and an 8.5ft setback.

Mr. Sanborn replied yes.

Chair Weathersby noted that those have not been asked for tonight.

Mr. Sanborn stated he is asking for conditional approval for the setbacks and DES approval.

Vice-Chair Crapo stated that if there is additional relief needed for setbacks, the Board cannot grant that because it has not been denied by the building department yet. He asked if the other work that is being requested would have to change if this septic plan were to fail and the designer filed an extension for ninety days to put in the first design. Would it interfere with the other construction that is being proposed?

Mr. Sanborn explained that the former owner had designed the plan with the leachfield in the backyard without regard to the fact that this property abuts his other property. That is the only egress to his backyard, if and when he needs to do work on his septic system. That is why it is in everyone's best interest to approve this plan so that the leachfield is in the front.

Speaking hypothetically, Chair Weathersby asked if relief was granted for the decks, if it would interfere or in any way affect the septic design.

Mr. Sanborn replied no.

Member Durkin stated he does not see how the Board can do anything on the septic design.

Chair Weathersby noted they need setback relief. A final plan is needed. The Board needs a real septic plan that has to be reviewed by the building inspector. The septic proposal needs more refining. She opened to the public in favor of the application. She opened to the public in opposition to the application.

Charles Arcidiacono, 52 Pollock Drive, stated that he has some concerns if the variances are granted. He asked if the house is even structurally sound enough to carry the decks. There are cinderblocks up on the roof. Many times the façade on the front and the siding has been falling off. The house has had little to no work done in many years. The building inspector should check to see if the house is sound enough for anything to be added to this property. In regards to the septic, he does not see why Mr. Sanborn is here with a new design if he hasn't even applied to the town or state. He is not in favor of the variances being granted.

Tony Costanzo, 21 Pollock Drive, stated that he also has concerns. He would like to see a decent septic system for the property, not something that has not been approved by the state. In the years he has lived on Pollock Drive, he has noticed that this is definitely a high water area. During the storm of 1978, he helped carry people out of that home to safety. Then there was the October storm where the seawater came over the seawall. The most recent storms of this past winter, the flooding came in to Pollock Drive from the street. He does not want to drive his car

up and down Pollock Drive with a septic 6ft from the road. He would like to see a decent septic system that fits. He noted that there is a drainage sewer on Ocean Blvd. He asked if the septic is going to accommodate that sewer right across from the house. He does not want to have to smell anything.

Chair Weathersby opened to Mr. Sanborn for response.

In regards to Mr. Arcidiarmo's concerns, Mr. Sanborn stated that he is waiting for edging for the front that matches the rest of the house. The cinderblocks on the roof are there just temporarily. To Mr. Constanzo's concerns about the distance, there is a 6ft easement from the edge of the pavement back to where the property line begins and the septic is 7 or 8ft back from there. It is a good 15ft or so from the edge of the pavement.

Chair Weathersby asked for a better description of the rear addition.

Mr. Sanborn explained the 7x20 one-story addition, which is tying in to the existing roofline.

Vice-Chair Crapo asked what is driving the need for a septic system.

Mr. Sanborn explained that he received a notice stating that his system had failed because the distribution pipe was clogged. He commented that he needs to be able to occupy the property. He noted that he had a separate septic company do an analysis of the existing system. When the distribution pipe was vacuumed out, they ran water and said that the system was working and able to distribute water effectively. Part of his request, would be for him to occupy the property temporarily until he can get the existing system working.

Chair Weathersby noted that the Board has no power over that. A letter has been issued by the building inspector saying that the system is in failure. That decision can be appealed and that will then go to the Board. The Board is here to review the variances and building code relief that has been requested.

Vice-Chair Crapo stated that there is a rule that if a non-conforming property is being expanded, there has to be a system on file that shows proper documentation or a system has to be approved. Here the system has failed and it has to be addressed for an occupancy permit before someone to be able to enjoy the new decks. He does not think they bifurcate it because even if the decks were put on it wouldn't be able to be enjoyed until the septic issue is remedy.

Speaking to Mr. Marsden, Chair Weathersby asked if he has issued a letter that the system is in failure.

Mr. Marsden confirmed.

Chair Weathersby stated that her inclination is to continue this for a final septic plan. She noted that setback relief will be needed, which has not been noticed. Relief is needed from 7.9.3.2 for

24", which has also not been requested or noticed. She commented that she is hesitant to deal with both additions where one is so close to the septic. She reiterated that her inclination is to continue the application for final plans and a final set of requests.

Mr. Sanborn stated that it is confirmed that the existing leachfield and the replacement system would not affect the deck. That was confirmed by the engineer.

Vice-Chair Crapo stated that even if the Board was to issue the variances for the deck, a building permit cannot be issued until the issue with the septic is resolved.

Mr. Marsden confirmed that a building permit cannot be issued until there is an approved septic system. An occupancy permit cannot be issued until that system is installed and operational.

Chair Weathersby opened to anyone else from the public who would like to speak.

Jeff Church, 51 Pollock Drive, stated that he drives by this house every day. It first has to be determined if the house is even safe. There are cinderblocks all over the roof and that is not a good situation. The front steps are in really bad shape. The garage is in really bad shape. He has a concern with the decks being built.

Mr. Sanborn pointed out that an approved DES system is going to address all the neighbors' concerns. It is his understanding that nobody on Ocean Blvd. reaches a 48" highwater table. The 24" is part of the fifty percent provision rules and most properties are accommodated by that.

Chair Weathersby closed the public hearing at 8:56 p.m.

Vice-Chair Crapo stated that even if the septic is approved the Board needs to see drawings for that corner. It sounds like it is going to be a mounded system. The Board needs to see if that is going to affect the decks because it is getting pretty close to the house.

Member Durkin agreed.

Chair Weathersby stated she is hearing there is consensus from the Board that the application should be continued for a final septic plan and a list of all relief that is required under that plan for the building improvements that are needed.

The Board agreed to continue the application with the applicant having the option of withdrawing and starting with a new application.

Motion by Shawn Crapo to continue the application to the September 5, 2018 meeting. Seconded by Tim Durkin. All in favor.

6. Ann & Barbara Bennett for property owned and located at 17 Pine Street, Tax Map 5.2, Lot 56, request a variance to Section 204.3A for stairs and a deck 10+/- in the rear set back where 30' is required to access an approved addition. Property is in the General Residence and Coastal Overlay District. Case #01-2018/30-2018.

Barbara Bennett, applicant, stated that she was before the Board in January and the plans she presented were approved unanimously. Everything was presented in full and in good faith. She noted that this is a safety issue because an exterior exit is required for a second floor apartment. The plan was shown to the fire department and they suggested a conventional staircase to the deck, as opposed to a spiral staircase as it is safer. This was after the meeting and after all the approvals. There are no changes to the plan that was presented in January and approved. She is not sure how the stairs were missed. She thinks it was an innocent mistake.

Chair Weathersby stated that she remembers the presentation from January. There was going to be an apartment over the garage with inside stairs. She does not remember a lot of discussion about the deck and the stairs to the deck.

Ms. Bennett explained that the deck was included with the plans. The deck is to house the stairs. The plans that were talked about involved the spiral staircase.

Chair Weathersby clarified that it is a stair landing deck, not rooftop deck.

Ms. Bennett confirmed.

Speaking to Mrs. Reed, Chair Weathersby asked about the roof deck.

Mrs. Reed explained the deck was part of the original plan back in January. The deck was discussed and approved. She continued that she and the building inspector have gone through the plans more than once. Nothing on the plan has changed. It is identical to what the Board approved back in January.

Chair Weathersby commented that relief was clearly not given for the stair and the stair landing. There was objection from the abutters concerning the roof deck itself.

Mrs. Reed noted that she watched the live stream regarding this case when it was presented in January. It was said to her by Chair Weathersby that if this was approved in a motion "as presented" they would not have to come back to the Board but it was not approved that way. The motion was made as the denial letter was written and unfortunately the stairs, nor the landing, were called out.

Chair Weathersby asked if she recalls hearing discussion on the deck itself.

Mrs. Reed confirmed.

Member Durkin asked if the only way to access the deck is with the exterior stairs.

Ms. Bennett replied yes; however, it is not about accessing the deck. It is about providing an exterior exit for safety and it is required from the second floor.

Chair Weathersby clarified there will be stairs from the ground to the second floor apartment, both inside and outside for safety purposes. At the same time, there will be a spiral staircase to the deck.

Ms. Bennett noted that she also has an alternate plan if the Board prefers the conventional set of stairs, as mentioned by the fire department.

Member Patten asked if the lower stairs required by fire code for two means of egress.

Mr. Marsden explained that in a single family dwelling, there needs to be one way out of the building by means of stairs or conventional egress. There needs to be a second means of escape, which could mean an egress window or a door. There is no requirement that a second way out has to be a stairway. It is definitely a better way but it is not a required way.

Mrs. Reed asked if this is considered an accessory dwelling unit.

Mr. Marsden replied that it is still considered a single family dwelling but there are two single dwellings on one lot.

Chairman Weathersby opened to the public in favor or opposition of the proposal.

Paula Shea, 16 Spruce Ave., stated that she is not willing to live with a 10ft setback. That makes the construction feel like part of her yard. It cuts the depth of the setback back to 10ft. It intrudes on her yard and inhibits her privacy. There are several sets of stairs in the house and in the garage that go to her unit. There is a door on the back side of the garage. She also has egress through her front porch that is attached. She does not see the need for the stairs.

Tim Townsend, 16 Spruce Ave., stated they were enlightened by Mr. Marsden about the emergency egress. A window and rope ladder can be used. The stairs are unnecessary. He adamantly opposes the further encroachment caused by the stairs and landing, which will bring it out to 10ft from his immediate property line. The proposal is not going to increase the values of surrounding properties. The stairs and roof deck is basically an eye sore. The bottom line is the encroachment to 10ft from the property line and the diminishing of property values.

Speaking to the abutters, Member Dibble asked how far their home is set back from the property line.

Ms. Shea replied 25ft from the rear lot line.

Vice-Chair Crapo stated that the plans the Board had from November show a shed that was right on the lot line, which has now been removed.

Mr. Townsend stated that the shed sat on the property line for years and they never said anything about it.

Vice-Chair Crapo pointed out the shed is gone and the potential stairs are not necessarily as close as the shed used to be. There is visually a little more open space.

Margaret Shea, 12 Spruce Ave., stated that she is an abutter but the stairs are not close to her property. Her concern was with the roof deck and the access that they will have on the roof deck. She noted that she only has a backyard for entertaining space. She has family that visits quite often in the summer.

Ms. Paula Shea asked what happens when the unit is no longer an accessory dwelling unit.

Chair Weathersby explained that right now it is an accessory dwelling unit. It has to meet all the requirements of an accessory dwelling unit forever, unless they come back to the Board and ask it to be changed.

Mr. Townsend stated that they feel they have been generous enough in allowing the 18ft setback. They are vehemently opposed to the 10ft setback.

Chair Weathersby noted that an email in opposition to the proposal was received from **Robin and Leanne Wehbe, 20 Spruce Ave.**

Speaking to the applicant, Vice-Chair Crapo asked if there was another way to have access to the deck, besides the spiral staircase.

Ms. Bennett noted that the stairs are in the back and the reason why is because of the location of the fuel tank. She continued that with the alternate stairway on the back, it is actually about 1.5ft less in depth. There are no windows in the back of the dwelling. There is one little window and it is up high. It is only for light. She reiterated that on the back of the house there are no windows on the second floor, except for the little window for light, which is located right at the stairway inside. (She submitted a photo from her back door looking over to the abutters' property from the second floor.) She noted that all the trees, except for one, stay green and are on the abutters' property. The trees are way above the second floor.

Vice-Chair Crapo stated a roof deck would be at least 10 to 12ft higher.

Ms. Bennett replied that it is 8ft and the trees are much higher than that. She stated that both the sisters (abutters) have sheds "eyesores" about 4ft away from the property line.

Chair Weathersby closed the public hearing at 9:25 p.m.
Member Durkin asked if the roof deck was approved.

Mrs. Reed confirmed. She noted that everything was approved except for the accessory stairs and the landing.

Member Patten asked how access to the deck was proposed at the time the application was presented.

Chair Weathersby commented that the plan shows the building setback 18.55ft. back. Nobody picked up that this wasn't to the stairs it was to the building. Speaking to Ms. Bennett, she asked the width of the stairs.

Ms. Bennett replied that the stairway that is coming from the ground up is a standard stairway. It is just enough away because against the house on the base is the fuel tank.

Mrs. Reed stated that the plans from October 2017 is the original submission. Ms. Bennett was on the agenda for November and was not heard. Her case was pushed into the new year. She continued that it was part of the original plan. It was part of the discussion, as heard on the live stream.

Referring to drawings labeled SG-3, Member Durkin stated there are two sets of stairs. There is one set going up to the landing and there are spiral stairs going to the roof deck. He asked if the stairs were on the original design that was approved.

Chair Weathersby stated that this is the original submission.

Mrs. Reed confirmed that everything the Board has is part of the original submission. Ms. Bennett has not submitted anything new.

Chair Weathersby explained the application was approved but the Board used the dimension to the building and not the dimension to the stairway.

Speaking to the applicant, Mr. Marsden asked if the fuel tank is already installed.

Ms. Bennett replied that it is already on the property on a concrete slab but it is not positioned yet; however, the line is running into the furnace.

Chair Weathersby asked if the tank was in the same location previously for the existing house.

Ms. Bennett replied yes.

Mr. Marsden stated that the fire department has to look at that tank to approve the proposed location for the stairs anyways. The tank can't just be put back now because there is a building

there. The fire department will have to look at that and approve it. He continued that the original plot plan that was dropped off did not indicate the rear setback for the stairs, as it should have.

Chair Weathersby stated it is unfortunate because the abutters were notified and have looked at the plans. She understands that they thought it was a building with a 18+ft. setback.

Member Durkin pointed out it was approved on the basis of an 18ft setback.

Chair Weathersby commented it was based on these plans.

Member Durkin stated that the Board did not have the correct information.

Chair Weathersby explained that the Board had the plan but it was not noticed that the setback was not to the closest point.

Member Durkin asked what the protocol is if a variance is approved in hindsight with incorrect information. In this case, the setback was significantly off.

Chair Weathersby pointed out that what was approved was the building being that far but not the stairs. The stairs were before the Board. The Board had discussed it.

Vice-Chair Crapo stated that Mrs. Reed and Mr. Marsden have researched and found that the original plans had the stairs and the deck. Part of the abutters' objection letter indicates that this is a new addition that wasn't in the original proposal. They said that "adding an exterior staircase and roof deck"; i.e. does not exist. He wants to make sure they are not interpreting it wasn't in the original proposed set of plans. The Wehbes are contending that the deck and stairs are new material since that meeting. It's not new material.

Chair Weathersby noted that the stairway was on the plans but it wasn't given approval. It can be cleaned up by giving it approval. If the Board finds it is not necessary for access to the areas that have been approved, it can be denied. She is not sure how they would access the deck.

Speaking to the applicant, Member Durkin asked what is more important. Having the entire design or eliminating the deck and the spiral staircase with the side stairs going to the landing remaining?

Ms. Bennett pointed out that there is an alternate stairway to the deck so it is not protruding up, which was presented.

The Board reviewed the alternate stair proposal for the deck.

Vice-Chair Crapo pointed out that the spiral stairs make it tighter to the building.

Member Patten agreed.

Chair Weathersby pointed out that Member Durkin's question was what is more important. The stairs going to the dwelling unit or the stairs going to the roof deck?

Ms. Bennett commented that it is important that she can get outside immediately and not have to jump out the front.

Member Durkin asked if the roof deck is needed.

Ms. Bennett replied that it is already up there. There is also an exit door already in place on the second floor.

Chair Weathersby re-closed the public hearing at 9:40 p.m.

Member Patten commented that it seems there is a lot of water under the bridge.

Chair Weathersby stated that most of it has been approved already, except for the stairs.

Member Patten stated that the way he reads the letters, they thought Ms. Bennett was coming back to do something additionally but clearly she's not. It can be seen that it was all part of the original plan, even if the dimension line wasn't pulled for the stairs at the time. It was all part of the original deal.

Vice-Chair Crapo agreed. The letter made it seem like this was project creep and it's not.

Member Patten stated that at the time this was presented the abutters had the opportunity to look at this. This is not just the Board's fault. It was everyone who was here at the meeting. No one picked up on it.

Member Durkin stated that there is collective responsibility with the abutters. If he is looking at it and it says 18ft, how is it known that it is 18ft or 10ft if the person is on the other side of the fence, until they go out and measure? He continued that this is a material difference in the setback. It is going from 18ft to 10ft, which is a lot.

Member Dibble stated that his concern is the privacy intruding. It doesn't seem that the stairway would be a privacy intrusion. It is the deck that is the privacy intrusion. The deck was already approved. That is not what is before the Board. Whether the stairway is intrusive is what is before the Board. This is a very compact neighborhood. He does not think it's inordinate, especially with a tree barrier, to think that there is 35ft between the stairway and the next house. He does not feel so strongly that the stairway represents something that is contrary to the spirit of the zoning ordinance because it interferes with air and circulation.

Chair Weathersby stated that the roof deck has been approved and that complied with the 18+ft setback. The question is whether the stairs are reasonable and meet the criteria for granting a

variance. She understands why the applicant would want another way out. The stairs to the roof deck are probably more objectionable because they allow people to use the deck; however, it has been approved and there should be a way to get there. She noted that she feels badly and will take responsibility, as chair, of not catching that the notice was off and the Board's decision was off. There was not a full discussion about the stairway. She continued it was on the plans that were presented in January. She has a hard time saying "no" when the Board basically approved that plan, although the stairs were not spelled out. She reiterated that she feels badly the notice did not have the right requirement and maybe that would've triggered more review. That goes back to the Board and the Building Inspector's office that really have to be careful with the notices and the denial letters.

Member Durkin stated that the Board has to rely on the setbacks on the plan. Otherwise, how is the Board going to approve or evaluate anything if they can't rely on those? The plan did not show the correct setbacks.

Referring to the deck, Member Patten stated that unless there is an ocean view, these rarely ever get used. It causes him to wonder if the privacy of the abutters will rarely be violated and whether or not the applicant even wants to build it.

Chair Weathersby commented that they have to assume that it will be used. She continued that she is thinking of a condition that the oil tank is moved, if this is approved. The stairs and landing could be brought in closer to the house. If there is an approval for the stairs and the landing, up to 10ft from the side property line, it could be conditioned that if it is possible to bring the stairs in closer, due to the relocation of the oil tank, that should be accomplished.

Member Dibble stated that a condition has to be certain.

There was discussion on a possible condition.

Chair Weathersby explained that right now the oil tank has been there, it is on a concrete slab and is probably full of oil. She does not think the Board is going to require them to move it. However, if it is required by the fire department or the building inspector, for code reasons, to be moved, those stairs could be brought in. Speaking to the applicant, she asked if the location of the tank that is shown on the plans is the same location as a year ago.

Ms. Bennet replied yes but it got moved 3ft out.

There was discussion on where the tank was originally located.

Mr. Marsden stated that maybe the fire department should look at an alternative location because where the tank is now wasn't approved.

The Board reviewed the stairs on the plan and whether they could be brought in closer to the house.

Vice-Chair Crapo noted that they may be able to gain a foot or two.

Member Dibble stated that his concern was intrusion into the neighbors' space. It doesn't make any difference to him whether it is 1.5ft or 2.5ft. It's the intrusion question, not the number of inches. He does not think moving the stairs one way or another is going to make much difference in the intruding question. The Board may well have erred in January but that is why people have an opportunity for recourse. The Board just needs to make their best decision.

It was the consensus of the Board to vote on the application under the assumed condition that "in the event that code requires the tank to be moved, the stairs from the ground to the second floor shall be brought in closer to the building".

Chair Weathersby called for a vote for relief to ***Section 204.3 A, for stairs from the ground level to the second floor unit (ADU), deck landing, and spiral staircase, none of which can be not more than 10ft to the rear boundary line; with the condition that if the oil tank is required to be moved, the stairs from the ground to the second story are moved in as close to the house as code permits.***

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

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

Shawn Crapo – Yes
Rob Patten - Yes
Tim Durkin – No
Burt Dibble – Yes
Patricia Weathersby – Yes

Motion by Burt Dibble to approve a variance application by Ann & Barbara Bennett for property owned and located at 17 Pine Street from Section 204.3A for stairs, deck and spiral stairs 10+/- in the rear set back where 30' is required to access an approved addition; with the condition that if the oil tank requires repositioning, the construction of the stairs be as close to the house as possible. Seconded by Shawn Crapo.

Vote: 4-1 Opposed: Tim Durkin

At 10:07 p.m., the Board agreed to hear one more application.

Motion by Shawn Crapo to continue applications #8 and #9 to the September meeting. Seconded by Rob Patten. All in favor.

- 7. Tyler McGill for property owned and located at 0 Perkins Road, Tax Map 5, Lot 51-001, requests an Administrative Appeal pursuant to Section 701.1 from the Building Inspector's letter dated May 23, 2018 that parts of the fence installed appeared to not be in compliance of the 6' as required from Section 510.3 for height. Property is in the General Residence District, Coastal Overlay District. Case #29-2018.**

Tyler McGill, applicant, addressed the Board. He stated that he is aware that he bought a property that has never had anything built on it and the residents have been in the area for longer than he has. A building permit was received for a fence. He has tried to be accommodating to the neighbors and went door to door to tell them about the privacy fence. During construction, the Dockhams reached out to the building inspector and said that it appears the fence is higher than 6'. The building inspector visited the site, reviewed the installation and said it was okay. A letter was sent to the abutter saying that the fence was up to code. He noted that he then received a letter saying the fence was not to code. He was exceptionally cautious when building this fence because it is pond front viewing and everyone is careful about their land. He told the contractor to sway on caution when building the fence. The fence is 14" inside his property. The property is flat. On the right hand side are trees. The root system is higher and then it drops off. The goal is to keep the fence at exactly 6' but not have the fence dip and drop. He noted that the property has not been leveled because nothing has been built yet. When the property is leveled, the fence will be lower than 6' at every section along there. In looking from his property towards the fence, the area that is in question is exactly 5'2". When the property is leveled for the house, the fence will be well below 6'. He tried to build something that was beautiful and non-obtrusive.

Member Patten asked how the grade was established. He stated that he observed what looked like an old elevation datum point nailed into a birch tree. The property looks like it may be a foot higher in elevation now than the yards behind.

Mr. McGill stated the reason for building the fence now was to weather the fence and let natural foliage grow. Eventually, there is going to be a building there and he is sure the neighbors would rather see the fence. That is the reason the fence was built before the main structure. He noted that if he had graded the property prior to building the fence, it would be 10" higher along every section and it would be worse for the neighbors.

Referring to Section 510.3, height, Chair Weathersby stated that it says "fences and walls shall not exceed 6' in height". The definition of height is "see definition of building height". The building height is "the height of the distance from the vertical distance from the grade elevation to the highest point of the roof". It could be said that the fence height is "the vertical distance from the grade elevation to the highest point of the fence" but then there is grade, which is basically pre-alteration. In following those dots, it would result in a fence that was uneven.

Member Durkin stated that in looking at the difference in the grade, it is pretty obvious (starting from the third post to the left) that the height is going to be lower than the height at the very right because of the change in grade. To him, this is unavoidable.

Vice-Chair Crapo stated that the fence is still going to be 6' starting with the tape measure on the ground to the top of the fence. If the fence touches the ground it will be 6'. If there is a 1" gap under the fence, then it will be 6'1".

Member Dibble asked how tall the fence panels are.

Mr. McGill replied 6'. He stated that he looked at the neighbors' property and the highest section on that property line is 8.5" above grade. He noted that at the Dockham property he cut the fence around a tree that is on his property. People have cut down trees on his property and there is a stone garden on the property. He didn't rip the garden out. He built a fence along that section.

Chair Weathersby opened to the public for comments.

Jane Dockham, 6 Bernard, asked if abutters have rights. The lots are very small and the houses are very close together. It has never bothered her because she could always get a view of the ocean and Eel Pond. Mr. McGill did come by in April to say that he was installing a fence. In her mind, she thought it was a 4' white picket fence. To her, this isn't a fence. It's a wall. She cannot enjoy her backyard now because she sees this fence. She noted that her son is 6'4" and he cannot see over the top of the fence. One of the neighbors has a 6' fence and it can be seen where his fence is higher.

Chair Weathersby asked the grade of her property as compared to Mr. McGill's property.

Russell Dockham, 6 Bernard, stated that there is an increase in elevation. There is a taper from the lot line to Mr. McGill's property somewhere around a foot or so. There is a big tree on one side so the grade builds up a bit in that area because of the base of the tree. The rest of the property is fairly flat.

Chairman Weathersby clarified that Mr. McGill's property is higher.

Mr. Dockham replied yes. All the properties on that line are lower than that property. He continued that he measured the fence and it is on Mr. McGill's property by about a foot. In measuring from the ground up, it is 7' to 7'2" in some areas. There is a pretty good gap beneath

the bottom of the fence for the grade. -It has taken the whole view out of the back of his mother's yard.

Speaking to Mr. McGill, Member Dibble asked how large his lot is.

Mr. McGill replied 0.70 acres.

Member Dibble stated that he would assume that if someone is standing in the neighbors' yard looking into the lot, it is a pretty clear sight line.

Mr. McGill replied that they can see right through to the neighbors' house.

Member Dibble stated this would explain why the loss of view is a matter of concern.

Mr. McGill stated that when he bought the lot there was forty years of overgrowth. It's been two years since he has taken down the diseased trees and sumac. There was no view. There were trees. There are still trees and now a fence. He continued that NH Law states that "view" is not something that the neighbor is entitled to. He reiterated that he is going to build a home there. He does not think they want to see the back of his house. He is not trying to be a bad neighbor.

Hearing no further questions, Chair Weathersby closed the public hearing at 10:27 p.m.

Member Patten stated that the problem is that the neighbors' lot is lower and it compounds the problem on the opposite side. That doesn't necessarily mean that Mr. McGill has done anything wrong as it relates to grade on his side.

Chair Weathersby stated that a person is entitled to put in a 6' fence on their property. If it is a sloping lot, the fence could appear much higher.

Vice-Chair Crapo stated that people have put up 8' fences to purposely block neighbors, which is called a "spite fence". He does not view that this is the case here. The building inspector probably bounced it to the Board for how this was going to be interpreted. Is it panel by panel? Would it be from the ground? The strictest interpretation would have the fence touching the ground.

Chair Weathersby commented that there has to be some limitation on a lot that slopes with someone wanting to do a straight fence. There can't be 2' gaps. There has to be some reasonableness factor. Does this get there?

Member Dibble stated that the building inspector is asking for the Board to establish precedent here. They want to know how they will be looking at fences going forward.

Vice-Chair Crapo commented that every case is different.

Member Dibble pointed out that some fences are level on top. The top of the fence is parallel to the roofline. This is a level fence that runs along the ground. The ground undulates some and it was constructed as a level fence. Sometimes the land falls off. The fence is either going to require a variance to stay level or it can be constructed to follow the land. Does the fence comply with the spirit of the ordinance? What he is hearing is that the fence was intended to be 6' tall. The land undulates up and down. It is going to be shorter and taller in some places but as long as it is a good sight line, he thinks it is in compliance with the spirit of the ordinance.

Chair Weathersby called for a vote of the Board on **whether there has been an error in the building inspector's decision, as stated in his second letter of May 23, 2018, that parts of the fence, other than the support posts, are greater than 6' in height as allowed by the ordinance.**

Shawn Crapo – Yes
 Rob Patten - Yes
 Tim Durkin – No
 Burt Dibble – Yes
 Patricia Weathersby – Yes

Motion by Burt Dibble to grant the Administrative Appeal. Seconded by Tim Durkin. All in favor.

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

- **Continued to the September 5th meeting.**

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

- **Continued to the September 5th meeting.**

10. **Cellco Partnership d/b/a Verizon Wireless for property owned by Dolores F. Lintz and located at 120 Brackett Road, Tax Map 22, Lot 95-A, for variances from Rye Zoning Ordinance (RZO) § 305. § 505.3 and § 203.1 to permit a wireless telecommunications facility at a location within the SR District that is not within the Wireless Telecommunications Facilities Overlay District; (2) from RZO § 505.6 A.3**

to permit a wireless telecommunications tower to be located less than 120% of tower height from a residential building; (3) from RZO § 505.6 A.4 to permit a wireless telecommunications tower to be located less than 100 feet from wetland soils and marshes; (4) from RZO § 301.8 B.1 and § 301.8 B.7 to permit a wireless telecommunications facility to be located within the 100ft wetlands buffer. The ZBA will also hear the request for a Special Exception pursuant to RZO § 301.8 B.6 to permit a driveway within the wetlands buffer. **Property is in the Single Residence District. Case #49-2017.**

- **Continued at the ZBA/PB Joint Work Session, 7-31-18, to September 4, 2018.**

IV. Other Business

Chair Weathersby asked the Board to address amending the Rules of Procedure in dealing with incomplete applications.

Mrs. Reed explained that since the last meeting, she is now taking the applications. She is reviewing them and making notes to the Board on what is not complete. She noted that the applications are still coming in blatantly incomplete. By law, she does not have the right to deny an application. Whether the application is incomplete or not, the Board is the one who denies the application. However, Attorney Donovan stated that if there was something in the Board of Adjustment's By-Laws that said the Planning & Zoning Administrator had the right to deny an application if it is not complete that would be acceptable.

Vice-Chair Crapo stated that some time ago, there was an application that Mrs. Reed denied, or attempted to deny, because it was not complete. The attorney took it through an administrative appeal and what the Board determined, at that time, was that Mrs. Reed was deciding on the merits of the application. The Board decides at that time that it needed to go to the Board to determine if it was material enough to turn away or not. He thinks what they have observed recently, is there are some that they get into and realize something is needed to make a decision. When he brought this up last month, it was not his intention to turn that type of applicant away. His intention was to not spend forty minutes with someone who has something glaringly missing from their packet.

Chair Weathersby stated there is something different between denying an application and making a determination that the application is complete enough to come before the Board. She would like Attorney Donovan to draft a sentence, or two, that the zoning administrator may deem an application incomplete. The Board can then vote on it at the next meeting.

Member Dibble stated that he is on lots of boards that are much busier with greater responsibilities than this one and they grant their executive significant authority. It is his opinion that the wording on this matter ought to be in the realm of the authority of the land use administrator to require applications to be complete prior to being presented to the Board.

Vice-Chair Crapo commented that there are many applications where the substantive part of the application is there. What he is looking at are the things that are a “show stopper”.

Member Patten stated that his concern is too much authority being granted. He suggested that perhaps she could make notes on an application to the Board that she has concerns about the application not being complete and they can go right to that part to address it first.

Member Dibble stated that Mrs. Reed knows and she works for the Board.

Chair Weathersby commented that if someone is coming in for a septic approval and there is no septic plan that is pretty obvious. Mrs. Reed can go through and make a decision if it is missing information. If the applicant does not like the decision, they can appeal to the Board.

The Board agreed to have Attorney Donovan draft the language for their review and adoption at a future meeting.

Adjournment

Motion by Tim Durkin to adjourn at 10:53 p.m. Seconded by Burt Dibble. All in favor.

****All corresponding document and files 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: Tyler McGill

Property: 0 Perkins Road, Tax Map 5, Lot 51-001

Application case: Case # 29-2018

Date of decision: August 1, 2018

Decision: The Board voted 5-0 to grant an administrative appeal from the building inspector's May 23, 2018 letter.



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 Beauchesne & Patricia Ann Healy
of 46 Mountain Rd, Camden, ME

Property:

0 Cable Road, Tax Map 8.4, Lots 76-1 and 76-2

Application case:

Case # 27-2018

Date of decision:

August 1, 2018

Decision:

The Board voted 5-0 to continue the application to the September 5, 2018 meeting.



Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION


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

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

Application case: Case # 28-2018

Date of decision: August 1, 2018

Decision: The Board voted 5-0 to continue the application to the September 5, 2018 meeting so that the applicant could provide additional information.



Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

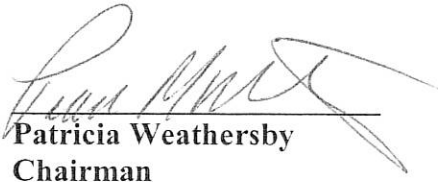
Applicant/Owner: Edward N. Herbert Assoc. Inc., for property owned by
Cara C. Zohdi 1998 Trust of 1 Frost Road, Windham, NH

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

Application case: Case # 20-2018

Date of decision: August 1, 2018

Decision: The Board voted 5-0 to continue the application to the September 5, 2018 meeting so that the applicant could provide additional information.



Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Chris Stafford


Owner: Elizabeth Hoffman

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

Application case: Case # 32-2018

Date of decision: August 1, 2018

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

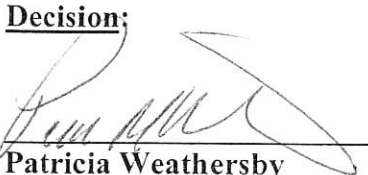
Applicant/Owner: William & Beverly MacLeod of 77 Sunset Rock Rd., Andover MA

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

Application case: Case # 31-2018

Date of decision: August 1, 2018

Decision: The Board voted 5-0 to continue the application to September 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: Stevan E. Huff

Property: 1611 Ocean Blvd, Tax Map 13, Lot 27

Application case: Case # 25-2018


Date of decision: August 1, 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 204.3 B for a deck and spiral stairway 9.8' from the south side property line; and
- Section 301.8 B (1) & (7) for construction 50 +/- within the 100' tidal wetlands buffer.

The variances were granted upon the following condition:

The applicant adheres to the recommendations of the Rye Conservation Commission in their July 16, 2018 letter.



Patricia Weathersby
Chairman

Revised 9-4-18

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: KRD Builders, Inc. of Ken Dionne of 106 Chestnut Hill Rd, Amherst

Owner: Bradford S. Sterl of 3 Hollow Rd, Bow, NH

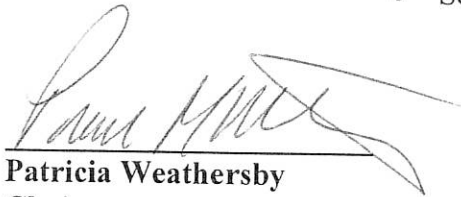
Property: 8 Old Ferry Landing Road, Tax Map 24, lot 97

Application case: Case # 26-2018

Date of decision: August 1, 2018

Decision: The Board voted 5-0 to grant an equitable waiver from the following section of the Zoning Ordinance:

- Section 203.3 for dwelling height of 35'8".



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: Ann & Barbara Bennett

Property: 17 Pine Street, Tax Map 5.2, Lot 56

Application case: Case # 01-2018/30--2018

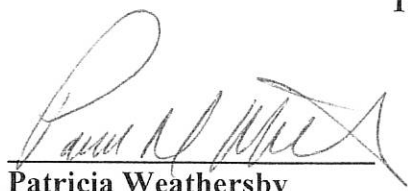
Date of decision: August 1, 2018

Decision: The Board voted 4-1 to grant a variance from the following section of the Zoning Ordinance:

- Section 204.3A for stairs and landing 10' from the rear boundary line.

The variance was granted upon the following condition:

1. If the oil tank is required to be moved, then the stairs are to be moved as close to the dwelling as the code permits.



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.