

RYE ZONING BOARD OF ADJUSTMENT

**Wednesday, June 6, 2018
7:00 p.m. – Rye Town Hall**

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

I. Call to Order and Pledge of Allegiance

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

II. Approval of Minutes:

- **March 14, 2018**

Motion by Shawn Crapo to approve the minutes of March 14, 2018 as amended. Seconded by Burt Dibble. All in favor.

- **May 2, 2018**

Motion by Patrick Driscoll to approve the minutes of May 2, 2018 as amended. Seconded by Burt Dibble. Vote: 4-0-1 Abstained: Shawn Crapo

III. Applications:

Motion by Burt Dibble to continue applications 10 and 11 on the agenda, for Tuck Realty Corp., to the July meeting. Seconded by Shawn Crapo. All in favor.

- 1. Splitrock Cove Limited Partnership & James P. Nadeau, Jr. of 507 State Street, Portsmouth, NH for property owned and located at 135 Wentworth Road, Tax Map 24, Lot 30 and 30-1, along with the McKenna Revocable Trust of 2004 from property owned and located at 139 Wentworth Road, Tax Map 24, Lot 32, requests variances from Section 203.3B side yard setback and from Section 203.3F lot area per family due to an application for a lot line adjustment between the properties by reducing parcel 30 from 2.526 acres to 2.403 acres and increasing parcel 32 from 0.438 acres to 0.560 acres and which has a mixture of some nonconformities becoming less nonconforming but other nonconformities becoming more nonconforming. Parcel 24-32 does not have street frontage and parcel 24-30 does not meet side yard setbacks. Property is in the Single Residence District. Case #14-2018.**

J.P. Nadeau, speaking on behalf of McKenna Revocable Trust of 2004 and Splitrock Cove Limited Partnership and himself, presented the proposal for a lot line adjustment. (He pointed out on the plan the land that is conveyed by deed to the McKenna Revocable Trust of 2004, which is 5,969.39sf. He also pointed out the area that will be conveyed to McKenna Trust from Splitrock Cove and Nadeau, which is 629.56sf.) He noted that they want to effect on their deeds what has existed in essence on land for the past forty years. He continued that the side yard setback is not met now and will not be met after the adjustment. The lot area per family is not met now nor will it be met after. There is a letter from the building inspector stating that what is being proposed is better than what exists.

Member Durkin asked why the lot line adjustment is being done.

Mr. Nadeau explained that the parcel is on Splitrock property; however, it is right in front of the McKenna home and is used historically by McKenna. This is being done so there will be no question in the future about who owns the land the McKennas are using.

Chair Weathersby questioned the side yard setback that is not being met.

Mr. Nadeau stated that he believes the side yard effects both properties because of the buildings. The lot area only effects the property with three units on it. The area of land is substandard for three families and will be substandard after by 629sf.

Chair Weathersby asked if the side yard setback is improving for the Splitrock property.

Mr. Nadeau confirmed.

Chair Weathersby noted that the side yard setback for McKenna is currently 21ft, which meets the requirement. She asked if the setback will be decreasing.

After reviewing the plan, Mr. Nadeau stated the side yard setback for McKenna is not decreasing. It is 21.48ft.

Chair Weathersby clarified that the side yard setback is actually improving. The McKennas are still going to meet their side yard setback and the Splitrock side setback will be improving.

Mr. Nadeau agreed.

Chair Weathersby noted that other non-conformity is the size of lot are per family. She pointed out that there is still enough land to satisfy the 66,000sf that is required. The lot is 2.4 acres.

Mr. Nadeau replied yes. He commented that he is going by the building inspector.

Vice-Chair Crapo stated that it seemed like someone was making the interpretation that since there were three condos on the Splitrock parcel that it should be 66,000 x 3 and that becomes the area that is needed. That seemed to be the math that was used. He is not sure if this is proper or not.

Mr. Nadeau stated that he has submitted the criteria for granting the variances with his application for the Board's review.

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

Ralph Woodman, 35 Harborview Drive, stated that he has lived in the area of this property for forty years. He thinks there is a safety factor that will be addressed as a result of granting these variances. McKenna and any emergency vehicles going to the house will have an easier time getting to the house if the McKennas are officially allowed to own this property. He noted that this is the way the property has been used for more than forty years. He is favor of the proposal.

Chair Weathersby opened to the public in opposition of the application. No comments were heard.

Chair Weathersby noted that to Mr. Woodman's point, the McKenna's driveway ends at that parcel that is being conveyed. If they are barred from using that land, she has no idea how they would get access because they would have no frontage at all on Wentworth Road.

Vice-Chair Crapo asked if the properties were all one in the past.

Pat McKenna explained that his grandfather purchased the property in 1949. Over the years, the land has been subdivided and sold. He noted that his parents' property was a small postage stamp lot when they purchased it from his grandfather. They are just trying to get the deed straightened out after all these years.

Hearing no further comments, Chair Weathersby closed the public hearing at 7:31 p.m.

Member Dibble stated that the way the driveway is blocked by the parcel, it leaves an opportunity for unhappiness down the road if there is any ill will amongst the neighbors. He thinks that is reason enough to grant this.

Member Durkin stated that he is fine with the proposal.

Vice-Chair Crapo stated he agrees in principle. If there were adversary owners later, someone could put a fence right across where the McKennas are trying to access their property. He continued that he is in favor of what they are trying to do. He is in conflict with whether the Board needs to give a variance for the lot area.

Chair Weathersby stated that she does not think they need relief for the side yard setback. One setback is not changing and the other is improving. When a non-conformity is improving, a variance is not needed. The lot area, (area of lot per family), was interpreted as requiring 66,000sf per dwelling unit and there are three on the Splitrock property. Reviewing the current size of the McKenna lot, she stated that they do not meet the 66,000sf; however, that non-conformity is improving. She does not think they need relief from that. The only relief that may be needed is if the Splitrock parcel needs to have 66,000 x 3. The parcel does not meet that and

is getting smaller. She continued that it depends on how the Board wants to interpret Section 203.3F. She asked the Board if the applicant needs 66,000sf for each dwelling unit.

In reviewing the plan, Member Driscoll noted that there are two adjustments to the side yard line and the Board was only looking at one. (He pointed out on the plan the location that may need a variance for the side line setback.)

Speaking to Mr. Nadeau, Vice-Chair Crapo asked if the dwelling units, on the Splitrock parcel, are condos.

Mr. Nadeau replied yes.

Vice-Chair Crapo asked if a lot area variance was granted for the parcel at the time the condominiums were approved.

Mr. Nadeau explained that all the elements for the condos were satisfied and it was approved.

Vice-Chair Crapo commented that at that point, whoever reviewed it, did not make the interpretation that they needed three times 66,000.

Chair Weathersby stated that she thinks condo conversion happens even if it is non-conforming. She called for a poll of the Board on whether they want to interpret area of lot per family as requiring the entire parcel to be 66,000sf or 66,000 times each dwelling.

Vice-Chair Crapo stated this is a joint application. On the McKenna side, even though they are receiving land, it still does not make them meet the 66,000. They need the relief.

Chair Weathersby noted that they don't because the non-conformity is improving.

Vice-Chair Crapo pointed out that the building inspector's letter does not say how he is interpreting 203.3F. He thinks that the lot needs two times the 66,000sf at most. He thinks an argument could be made that it just needs 66,000. Section 203.3F does not contemplate condominiums or multiple dwellings. He pointed out that 204.3F does.

Member Driscoll asked what they would risk by being conservative and voting on the application as it is.

Chair Weathersby explained that he'll get some relief that he may or may not need and will be totally covered. The downside is that the Board will have made this determination that this is what that section says.

Member Driscoll commented that it could be flagged for more clarity and be changed for the next one. His path would be to give them their relief, be conservative, flag it and discuss it in the future for the next town ballot.

Chair Weathersby stated this is a prudent way to go. It doesn't matter if it needs 66,000 times 2 or 66,000 times 3.

Member Dibble stated that whether the dwellings are condominiumized or not, does not matter. It is about the lot, not the character of the ownership of the buildings. Before they were condominiumized, it was one lot.

Chair Weathersby stated that she thinks relief is needed from two variances, both for the Splitrock property.

Chair Weathersby called for a vote on relief for *Section 203.3F, as the parcel has 2.403 acres and more is required, and Section 203.3B, for the side setback (in the front corner):*

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

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

2. The spirit of the ordinances is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to grant Splitrock Cove Limited Partnership and James P. Nadeau, Jr. of 507 State Street, Portsmouth, NH for property owned and located at 135 Wentworth Road variances from Sections 203.3B and 203.3F. Seconded by Shawn Crapo. All in favor.

Attorney Tim Phoenix noted that his clients would like to continue their application to the July meeting.

Motion by Shawn Crapo to continue application 9 for Thomas and Laurie Glasrud to the July meeting. Seconded by Burt Dibble. All in favor.

- 2. Susan & Kevin Duplisea for property owned and located at 31 Parsons Road, Tax Map 20.2, Lot 47,** request a variance from Section 204.3C for a 30'x26' garage 18' in front setback and from Section 301.8B (1)(2) & (7) for a 30'x26' garage 16.3' +/- within 75' wetland buffer. **Property is in the General Residence and Coastal Overlay District. Case #15-2018.**

Alex Ross, representing the applicants, presented to the Board. He stated that back in 2015 the Board approved a 30x26 garage. The applicants came back before the Board in 2016 for some adjustments for a smaller garage. In January of this year, there was an accident and a mail delivery truck crashed into the small garage. The proposal is to remove that small garage and go back to what was approved in 2015. He reviewed the criteria for granting the variances:

- Not contrary to the public interest because the proposed garage is more distant from the front line than the existing house. This affords adequate air, light, views and wetland protection.
- It does not alter the essential characteristics of the neighborhood nor does it threaten public health, safety or welfare.
- Substantial justice is done because the garage is a reasonable addition where a small structure currently exists.
- The proposed improvements will enhance the value of the property and will not diminish the values of surrounding properties.
- Lots in this area are very small. The size and location of the existing home dictate the location of improvements. Virtually, the entire property is within the wetland buffer. No improvements can be made without some relief.
- Setbacks protect air, light, views and neighbors, which more than adequately exists under the proposed conditions.
- The proposed use is reasonable because this is a single family home and it will remain as such.

Member Durkin asked about the reference to the new septic.

Mr. Ross explained that in 2015 there was an old septic that was in disrepair that was very close to the wetlands. One of the improvements that was approved back in 2015, was to put in a new septic, along with the garage and new driveway. The septic was put in back in 2015.

Member Driscoll asked for the measurements for the garage to the front lot line.

Mr. Ross noted that Sheet 3 shows the setbacks. The corner of the house is 21ft but there is a deck and stairs that are at 17ft.

Vice-Chair Crapo commented that the corner of the angled garage is actually closer to the street than the dripedge on the house.

Mr. Ross agreed.

Chair Weathersby asked if what is being proposed is exactly the same as 2015.

Mr. Ross stated that it differs very slightly. In 2015, the proposal was to have a garage with space underneath with a walkout. This garage will be a slab on grade. He continued that for this proposal they have been in discussions with the building department, as well as the Conservation Commission. They do anticipate going to a Conservation Commission meeting to review proposed plantings.

Vice-Chair Crapo asked if the retaining wall will change or remain the same with the slab on grade.

Mr. Ross explained that part of this garage will go over the retaining wall that was approved. Part of that footprint disappears because the garage has a twist. Otherwise, the retaining wall will remain.

Member Dibble stated that when he looked at the damaged garage, it looked like there was a significant slope underneath. He asked if they were going to put in a concrete retaining wall and fill so the floor of the garage is on grade.

Mr. Ross confirmed. The actual foundation of the proposed garage will act as a retaining wall.

Member Dibble noted that the proposed garage looks like it has a room upstairs with a bathroom.

Mr. Ross confirmed. He commented that this was the same as the proposal in 2015. The space of the garage is not a dwelling or a bedroom. It is going to be used as a bonus room.

Chair Weathersby stated that the previous approval was conditioned upon the room not being used as an apartment or bedroom. She asked if the applicants are fine with that condition remaining.

Kevin Duplisea, applicant, replied yes.

Mr. Ross explained that they have been in contact with Sally King and Suzanne McFarland from the Conservation Commission. They were concerned about the plantings for the original proposal. There is an upcoming Conservation Commission meeting and the application will be presented to them at that time.

Chair Weathersby asked if they would adhere to the recommendations of the Conservation Commission if this was approved with a condition about plantings.

Mr. Ross stated that they have to apply for the building permit with proper plans. If the building department wants an updated stormwater management plan that would have to be done. He reiterated that they are already planning to meet with the Conservation Commission and will review what they need.

Mr. Duplisea stated that they have planted hundreds of plants. The commission might be unsure what those plants are and where they are located but they will work with them.

Member Driscoll noted that typically the Conservation Commission weighs in before the ZBA votes so that they have the ability to look over the recommendations of the RCC. On something like this, where the Conservation Commission hasn't had say and they want to, the typical protocol is to condition it upon abiding by what the commission says.

Planning Administrator Reed explained that the applicant reached out to the Conservation Commission back in May. The chair was on vacation and the ball got dropped. It was not the applicants' intent to ignore them.

Chair Weathersby asked if the application went to the RCC in 2015.

Mrs. Reed confirmed.

Vice-Chair Crapo noted that procedurally they make it a condition of approval that the applicants will work with the RCC and come up with something agreeable. If the RCC were to hold their ground and ask for something the applicants do not want, they could ask the ZBA to modify the condition. There is a remedy on both sides to not hold up the project.

Speaking to the applicants, Member Durkin asked if they would be okay with that condition.

Mr. Duplisea replied yes.

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

Steve Colen, 39 Parsons Road, stated that the Dupliseas moved in three years ago and have done nothing but beautify the house. He has no objection to the proposal.

Chair Weathersby asked if he is the abutter to the side where the proposed garage will be located.

Mr. Colen confirmed.

Chair Weathersby opened to the public in opposition to the application. Hearing no further comments, she closed the public hearing at 8:07 p.m.

The Board did not have any issues with the proposal with the conditions discussed.

Chair Weathersby summarized there are two conditions that were discussed. First, the applicants will adhere to the recommendation of the Conservation Commission. The second condition is the garage not being used as a separate apartment or bedroom. She stated that she does not have a problem with the proposal. It is very similar to what was approved before. She asked for the exact measurement of the intrusion into the wetland buffer.

Mr. Ross explained that 16.3ft is the rear corner to the wetlands.

After reviewing, Member Dibble noted that it intrudes into the wetland buffer 63.7+/-.

Chair Weathersby called for a vote for relief to *Sections 204.3C and 301.8B (1), (2) and (7)*:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

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

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

Motion by Burt Dibble to approve the application of Susan and Kevin Duplisea for property located at 31 Parson's Road for variances from Sections 204.3C and 301.8B (1)(2) and (7) for a garage that intrudes 58.7ft into the wetland buffer; conditioned upon compliance with the Conservation Commission's recommendations and the exclusion of the upper room for dwelling purposes. Seconded by Patrick Driscoll. All in favor.

3. **Lavoie Alice M Rev Trust, Alice M Lavoie Trustee of Epping, NH, for property owned and located at 0 Richard Road, Tax Map 5.2, Lot 156, requests variances from Section 601 to build on a non-conforming vacant lot; from Section 304.3 for construction on a non-conforming vacant lot in the Coastal District; from Section 204.3F for lot size of 8,395sf where 44,000sf is required; from section 301.8A (2) for permanent disturbance of 45sf within the 75' wetlands buffer; and from Section 204.3C for a walkway within the 30' front yard setback. Property in the General and Coastal Overlay Districts. Case #47-2017/#22-2018.**

Attorney Ralph Woodman, representing the applicant, presented to the Board.

Speaking to Attorney Woodman, Chair Weathersby noted that there was a suggestion in some of his materials that Member Crapo recused himself. It is her understanding that the relationship that Member Crapo had with the abutter that was referenced was over two years ago. That reason for recusing himself is no longer present. She asked Member Crapo if there is any other reason he feels he should recuse himself.

Vice-Chair Crapo replied no.

Attorney Woodman introduced the members of the team who worked on the application. He stated that the last time they were before the Board there were issues that came up in regards to water and drainage. The suggestion was made that the application go to the Rye Conservation Commission and this was done. In addition, it turns out that there is a permanent disturbance on the lot of 2sf within the 75ft wetlands buffer and 450sf of permanent disturbance. That variance was not requested the last time and it is now part of the package.

Vice-Chair Crapo pointed out the notice asks for 45sf.

Attorney Woodman explained that on the lot itself it is 2sf of permanent and 43sf is between the lot and the street (off lot). He continued the lot is shown as Lot 11 that was part of a subdivision approved by the Planning Board in 1953. A total of 23 lots were approved at that time. The lot that is before the Board tonight is Lot 11, shown on Exhibit #1. Exhibit #2, shows the property card of these lots. It shows that there are currently 19 single lots of the original 23. The other 4 lots were combined in single ownership as two lots so there is a total of 21 different owners. He noted that Exhibit #2 also shows the square footage of the lot. The lots closer to the beach are 7,000sf. This lot is 8,395sf and there are some other lots that are 10,000 to 13,000sf. This lot size is right in the middle of the other lots. The lot is significant today, in that, it is the only single lot on which there is not a dwelling. It is the only lot that does not have a house built on it even though it has been in the same ownership since 1966. If the variances are approved, it will allow the applicant to build a modest 2,000sf home on the lot. Exhibit #3 is a letter from the Conservation Commission. They make some suggestions and the applicant is 100% on board with the suggestions. The RCC reviewed the drainage analysis and the sediment and erosion control plan. The Commission was satisfied with the plans. He noted that the fourth attachment in the packet is the memo from the building inspector in regards to the grading and the drainage plans, which he felt should be adequate. There is also an email Dennis McCarthy, DPW, who was happy with the drainage analysis. Mr. McCarthy made a note about a foundation drain and a pipe that was shown on the plan in the middle of the lot. The pipe is no longer there and this is going to be on a slab so there will be no need for a foundation drain. He reviewed the criteria for the variances:

- This is a single family home in a neighborhood of single family homes. The applicant is asking to be allowed the same use of their lot as all the others in the neighborhood. It would be consistent with the uses in the neighborhood. Today there are much larger requirements for building lots; however, there are provisions stated in the Rye Zoning Ordinance that allows a property owner to come before the ZBA and request a variance. It is not going to be contrary to the public interest and it complies with the spirit of the ordinance.

- Substantial justice will be done – This is taxed as a buildable lot. It is of the same size as the others but it is the only lot that has not been built on of the original 23 lots.
- The values of surrounding properties will not be diminished in this instance.
- Unnecessary hardship is defined as special conditions of the property that distinguish it from other properties in the area. One of the things that distinguish it from other properties in the area is that it is the only lot that does not have a house on it. In that way, it is different than other properties in the area.
- It is in the residential zone and is a reasonable use.
- In addition, there is a unique feature in the zoning ordinance that applies to non-conforming lots in the Coastal District. The zoning ordinance sets out certain criteria and if they are met, then the applicant meets the legal requirement of public interest and/or the spirit of the ordinance.
 - 304.3A – The lot is greater than 7,000sf (8,395sf)
 - 304.3B – This lot is not materially smaller than developed lots in the surrounding areas.
 - 304.3C – There are no drainage problems. Sheet C-3 was revised May 1, 2018 in response to the Rye Conservation Commission comments.
 - 304.3D – The lot has frontage on the street.
 - 304.3E – There is sufficient sewage treatment capacity on this lot (public sewer).

In looking at this section of the Rye Zoning Ordinance, which applies to a vacant non-conforming lot in the Coastal District, it meets all of those requirements.

Attorney Woodman stated that they are asking for a variance from the front setback because there is a walkway that comes out from the front door. It is the same kind of walkway the neighbors have for their houses. It is within the 30ft setback, similar to many others on the street. He hopes the Board will find it proper to grant a variance for that.

Referring to the drainage pipe, Chair Weathersby asked if that has all been cleared up.

Attorney Woodman explained that this was cleared up as a result of a separate law suit. It is not affecting the lot now.

Vice-Chair Crapo stated that at some point there was a question on the rear lot line with Mrs. O'Brien.

Attorney Woodman noted that the lot line adjustment is reflected on the plan and Mrs. O'Brien is happy with the result. It also favorably effects the neighbors to the east.

Chair Weathersby noted that there is work proposed for the town right-of-way. She asked if they have spoken with anyone in the town about that work.

Attorney Woodman commented that when the original application was submitted to the building inspector he did not raise a problem with it.

Chris Albert, Jones & Beach Engineering, noted that Dennis McCarthy has seen the plans.

Member Driscoll asked about the basement.

Attorney Woodman stated the house is on a slab with no basement or crawl space.

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

Sarah O'Brien, 56 Perkins Road, stated that the majority of the rear lot line of the property abuts her property. There was a question about the original lot line. She continued that the Lavoie Family has since acknowledge her lot line. She thinks the proposal will enhance the neighborhood. The proposal is in keeping with all the other cute little houses in the neighborhood and will enhance the values.

Chair Weathersby opened to the public in opposition to the application.

Bill Christo, 12 Richard Road, stated that he would like to thank the Lavoies for doing their due diligence on the drainage and the questions he had. He feels more comfortable with the proposal now. He does not feel the special conditions and the hardship are met; however, looking at properties closer to the beach, hardships are going to be looked at a little bit different. He doesn't have a problem with the proposal. He would like to have a little more clarification on the cellar. He would also like to know what the timeline for building might be.

Chair Weathersby explained the proposal is for a slab on grade. Hearing no further comments at that time, she noted that letters were received from

- **Carol Hajar, 48 Perkins Road** – in opposition to the proposal.
- **Sarah O'Brien, 56 Perkins Road** – in support
- **Susan Paciello & James Woodward, 18 Richard Road** – Sept. 2017 letter in opposition resubmitted for this application.

Speaking to Attorney Woodman, Chair Weathersby asked when the home will be built.

Attorney Woodman replied that he does not know. It will be within a two year period. He continued that the house is going to be on a slab with no basement. The mechanicals will be somewhere in the house but it will not change the house that is being proposed in the plans.

Member Dibble stated that he did not see an allowance on the plan for a generator or a/c pad.

Attorney Woodman stated that if a generator or a/c pad is not shown and it is necessary, the property owner would need to come back before the Board.

Referring to the letter from the property owners of 18 Richard Road, Chair Weathersby noted that the abutters to the right had requested privacy with shrubs or a fence.

Attorney Woodman stated that the right side was carefully scrutinized by the Rye Conservation Commission. There is a drainage easement along that side of the house. He understands their

request; however, the applicant is not voluntarily going to plant a row of trees. He noted that this will not be different than any of the other houses in the subdivision.

Member Durkin asked about the recommendations in the Conservation Commission's May 8th letter.

After review of the letter, Attorney Woodman stated that they are okay with the recommendations.

Member Durkin clarified that they would be okay with this as a condition.

Attorney Woodman confirmed.

Mr. Albert pointed out that a note has been added to the revised plans to reflect the recommendations of the RCC. It is listed as note #17 on Sheet C-3.

Hearing no further questions, Chair Weathersby closed the public hearing at 8:54 p.m.

Chair Weathersby stated that when the original plans were presented in December, the Board was pretty much on Board with the size of the lot and the house. However, there were some concerns about the drainage and the wetland that had been identified in the front corner. The applicant was sent back to come up with a stormwater management plan and to delineate the wetland. She continued this is a new and improved application that gives the Board all of that information and a little more details on the proposal.

Vice-Chair Crapo asked if the first application was fully withdrawn.

Chair Weathersby replied yes. This is a new application. She stated that she does not have a problem with the proposal. The guidance the zoning ordinance gives is fairly clear on how to proceed with non-conforming lots in the Coastal District (304.3). She commented there is a front setback variance requested for the walkway. There is also the issue with a small permanent and temporary disturbance within the 75ft buffer from the wetlands that is across the street.

Member Durkin stated that he thinks they have met the concerns about the drainage, stormwater runoff and the Conservation Commission's concerns. He thinks it is a reasonable proposal.

Member Driscoll agreed. He gives a lot of credit to both sides. At the last meeting, there were conflicting points from both sides. He thinks this is a good compromise to look out for the health of the environment around the property, the neighbors and the property owner as well. He likes to see that there is no basement. That is a huge improvement. He might like to see a condition on the approval that it be a slab on grade. He does not see too many challenges with getting mechanicals into an area that is not existing living space. It seems it is going to be a larger house than most of the abutters but it's not terribly large and it is attractive. In general, he is in favor of the proposal.

Vice-Chair Crapo stated that fill will still be brought in. The first floor elevation will still be at the same height as with a foundation hole.

Member Driscoll commented that a pump would be running constantly in a basement.

Vice-Chair Crapo stated that he is concerned about water being displaced to the neighbors. He thinks they have taken great efforts to address a lot of the water issues. In principal, he does not see this lot supporting the water calculations and not negatively affecting the water situation in the neighborhood. The center of the lot is still being filled with a house being built on it.

There was some discussion on the drainage.

Vice-Chair Crapo stated that the only thing that was presented as being a special condition was that the lot was not built on yet. He asked if this is enough to satisfy a special condition.

Chair Weathersby stated that the lot is like the other lots in so many ways, except that it has not been built on. There were other points made about its topography, proximity to wetlands and drainage. She thinks it is a reasonable proposal. She likes the native plantings. Those will need to be maintained and that will be a condition of approval. She does not think they need to require the applicant to put up a fence or a row of trees. That might contradict what the RCC is asking to be done. If the neighbors would like more privacy, there is nothing stopping them from planting on their own lawn.

Referring to the front walkway, Vice-Chair Crapo commented that he does not have a problem with this but he does not feel it needs to be before the Board. The Planning Board should amend that section because it is customary for people to have a walkway from their driveway to their house. That section should be rewritten to exempt front walkways.

Chair Weathersby asked for the setback distance to the stairs and walkway.

Patrick Bogel, engineer, pointed out that it is 15ft to the edge of the walkway and 22ft to the first step.

Chair Weathersby summarized the conditions of approval:

- Follow the recommendations set forth in the May 8th RCC letter to install and maintain native plantings;
- There shall be no basement and built on slab; and
- In accordance with the plans submitted.

She noted that no relief is needed for Section 304.3. This gives guidance to the Board on things that should be considered. The criteria has been applied.

Vice-Chair Crapo clarified that Section 304.3 gives the rationale for applying Section 601.

Chair Weathersby called for a vote for relief to *Sections 601 and 204.3F*:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote for relief to *Section 204.3C*:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

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

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

Motion by Burt Dibble to approve the application of Lavoie Alice M Rev Trust, for property owned and located at 0 Richard Road, for variances from Sections, 601, 204.3F, 301.8A (1) & (7) and 204.3C; conditioned upon adherence, with proper maintenance, to the recommendations of the Rye Conservation Commission, and the home will be constructed with a slab on grade and there shall be no basement, according to the building plans presented. Seconded by Patrick Driscoll.

Vote: 4-1-0 Opposed: Shawn Crapo

4. **Richard Corrente, Trustee of the Barbara Corrente Rev Trust of 1997 for property owned and located at 61 Washington Road, Tax Map 17, Lot 72**, requests an equitable waiver per Section 701.4 of the RZO for a pre-existing shed, deck and garage and from Section 801.2 for a permanent shed where the building permit stated temporary; from Section 203.3B for the shed 7.6' +/-, garage 15' +/- and deck 18' +/- in the side setback where 20' is required. **Property is in the Single Residence District.**
Case #16-2017.

Richard Corrente spoke to the Board. He stated that he is requesting an equitable waiver for three conditions on the lot that are described in the plan before the Board. He noted that the corner of the garage intrudes into the side lot setback, along with part of the deck. The house was built about 40 or 50 years ago and it has been that way right along. He continued that he and his wife bought the house 23 years ago. At that time, they commissioned a shed and the builder drew a permit for it. It has recently been pointed out by the building inspector that the shed was to be temporary. He noted that they had never intended for the shed to be temporary and it has been there for 23 years through several abutters without any issues. It would be highly inconvenient to move the shed because it would involve a heavy piece of equipment going over the leachfield. The building is not an eyesore and is well maintained.

Member Driscoll asked how the violation notice came about.

Mr. Corrente stated that he believes the abutter may have pointed it out to the building inspector who notified him of the violation. He commented that a couple of neighbors had volunteered to come to this meeting in support but he did not think it would be necessary.

Chair Weathersby opened to the public for comments.

Amy Shafmaster, 45 Washington Road, stated that she opposes Mr. Corrente's application. She lives next door and is directly affected by the encroachment of the shed and garage into the setback area. It is not just a few feet. It is almost on the property line, especially in case of the shed. She questions the measurements in the application, as well as the circumstances which the shed and garage were approved. She noted that the Corrente's purchased the home in 1994 and at that time the house was only 13.8ft from the property boundary where the setback requirement was 20ft. Thereafter, the Corrente's agent submitted an application for a temporary shed. No one ever approved permanent placement of this shed within the side yard setback. As a result, Peter Rowell issued a notice of violation on this matter in December 2017. After the application for the shed, Mr. Corrente and his agent filed an application in January of 1995 to expand the one stall garage and do some work on the deck. All the work was supposed to be performed in the present building envelope. However, the work was completed outside the building envelope with further encroachment into the side yard setback. The encroachment closer than 13.8ft should not have been approved without a variance. While Mr. Corrente may be relieved of his obligations to demonstrate that the violation was not noticed or that it was a good faith error, this should not result in an equitable waiver over an abutter's objection, particularly, where Mr. Corrente's actions caused the encroachment. He and his agents failed to provide appropriate plans to the building department prior to the approval for the shed and garage. She continued that the proximity of the garage and shed are a nuisance to her, particularly in the light of Mr.

Corrente's repeated trips to the building department to oversee the development on her property. Finally, while the equitable waiver may weigh against any garage encroachment, it is not difficult to relocate the shed in the backyard.

John Shafmaster, resident of Rye and Ms. Shafmaster's father, stated that there are really two issues; the garage and the shed. The garage was simply built within the setback and the shed was not only built within the setback but done so under the guise of being a temporary structure. He continued that he does not see the equity for his daughter and her property in granting the equitable waiver or to the town's people of Rye. The town is known for having strict rules that are applied reasonably. The garage has been built but it would not be a big deal to fix by cutting off the corner of the garage. Secondly, this is a big piece of property. There is plenty of room to put the shed somewhere else. He noted that his daughter built her home and went through the process for a variance and equitable waiver. She went by the rules. It is very clear that there is an encroachment and a remedy. In terms of hardship, he does not think it is a huge amount of money to correct violations that were really malicious. They knew they were doing the wrong thing and it was done with deception. He thinks it is inappropriate to allow them to continue.

Mr. Corrente stated that he increased his garage from one stall to two stalls by cutting the breezeway in half in order to not go outside the dimensions of the building. He is asking that his case be measured and decided on its merits. It is long standing and through many abutters it has not been an issue.

Speaking to Ms. Shafmaster, Chair Weathersby asked when she purchased her property.

Ms. Shafmaster replied it was two years ago.

Chair Weathersby clarified that the situation with the shed and the garage was there when she purchased her property.

Ms. Shafmaster confirmed.

Speaking to Mr. Corrente, Member Dibble noted that it was said that the breezeway between the garage and the house was reduced in size and the extra bay for the garage was added. He asked if those were the same dimensions. Was the width of the reduction of the breezeway the same or more than the increase of the garage?

Mr. Corrente replied yes. The breezeway was cut in half.

Member Durkin clarified that the renovation stayed within the existing footprint.

Mr. Corrente confirmed.

Member Durkin asked what defines a temporary shed.

Chair Weathersby stated that when in doubt they should look at the ordinance. (She read the definition of temporary use or temporary structure from the ordinance.) She commented it is for not more than six months in any one year so it is seasonal.

Vice-Chair Crapo commented that the Board has seen other applications that any shed that was on blocks was considered "temporary" by the building inspector at that time.

Chair Weathersby noted that the 1994 application that was submitted by the contractor just said a shed 10x16ft. Bill Jenness, the building inspector at that time, used the word "temporary" shed, which is not what the application asked for.

Member Dibble asked when the deck was put on.

Member Durkin noted that it was in 1995.

Speaking to Mr. Corrente, Member Dibble asked if he was aware the deck extended beyond the 20ft setback.

Mr. Corrente replied no because he was not aware the garage extended into the setback.

Mrs. Reed explained that this was brought to her attention by the applicant who had a survey done and discovered the issue. The applicant had received a letter from Peter Rowell about the shed being temporary. He hired a surveyor to survey the property. He found out about the garage and deck at that time.

The public hearing was closed at 9:55 p.m.

Chair Weathersby noted the applicant is asking for an equitable waiver per 701.4. There are certain things that need to be found in order to give the equitable waiver:

I(A) The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official until after the structure in violation had been substantially completed or until after a lot or other division of land in violation had been subdivided in conveyance to a bonafide purchaser for value.

(B) The violation was not the outcome of ignorance of the law or failure to inquire, obfuscation, misrepresentation or bad faith on the part of the owner or owner's representative but was instead caused by good faith error in measure or calculation by the owner or owner's agent, or by error in ordinance interpretation or applicability made by municipal official in the process of issuing the permit of which the official held authority.

She continued that those can be considered or the statute states:

II. In lieu of those two findings, the owner may demonstrate to the satisfaction of the Board that the violation has existed ten years or more and no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or by the person directly affected.

She stated that her opinion on this case is that this has existed for ten years or more and the owner has demonstrated satisfaction of that. She continued that it also has to be found that

- C. The physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area, nor interfere with or adversely affect any present or principal future uses on any such property.
- D. Due 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 that it would be inequitable to require the violation to be corrected.

Chair Weathersby stated that II satisfies IA and IB. In regards to D, the cost of fixing the violation outweighs the public benefit to be gained. She thinks there is a little more of an issue on C that the physical or dimensional violation does not constitute a public or private nuisance nor diminish the value of other property in the area.

Member Durkin stated that he does not see how it diminishes the value of other property since the abutter's property was purchased three years ago and all this was in place then. She paid the price based on the structure already being there.

Chair Weathersby agreed.

Vice-Chair Crapo stated it is not preferable to Ms. Shafmaster to have the shed where it is. The comment was made that the shed could be moved out of the setback. That would put it in the middle of the yard and would be more in view to the neighbor. He thinks A and B can be satisfied by the building permit, as well as when they were built, which was over ten years ago. Not only was there no enforcement action on some of the applications in the past but also no permits. In this case, there were building permits and the process was followed and there was no requirement for a variance.

Member Durkin asked if this is in reference to the equitable waiver per 701.4

Chair Weathersby replied yes. She explained that if the equitable waiver is granted it allows these structures to stay in that location. The Board then has to determine if the shed can be permanent when it was declared temporary. If the equitable waiver is granted the Board does not need to address the variance to 203.3B. The variance to 801.2 is turning the temporary shed into a permanent.

Member Dibble stated that the construction of the original house apparently precedes zoning. The original garage was part of the original house so it also precedes zoning. The house and the two bay garage are on grandfathered property because the footprint existed prior to zoning. He thinks the corner of the garage is grandfathered. The corner of the deck might be negotiable. He thinks it would be helpful to think about the garage and the shed separately.

The Board suspended discussion on the application to discuss whether any new applications would be heard before the Board at this meeting because of the late hour.

Motion by Tim Durkin to continue applications 7 and 8 to the July 11th meeting. Seconded by Patricia Weathersby. All in favor.

The Board continued their discussion on the application.

Chair Weathersby called for a poll vote in regards to the findings for an equitable waiver for the garage:

- The violation has existed for ten (10) years or more and that no enforcement action, including written notice of violation, has commenced against the violation during that time by the municipality or by any person directly affected by the violation.

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

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

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

- Due 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 that it would be inequitable to require the violation to be corrected.

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

Motion by Tim Durkin to grant an equitable waiver per Section 701.4 for the garage in its present location. Seconded by Burt Dibble. All in favor.

Chair Weathersby called for a poll vote in regards to the findings for an equitable waiver for the deck:

- The violation has existed for ten (10) years or more and that no enforcement action, including written notice of violation, has commenced against the violation during that time by the municipality or by any person directly affected by the violation.

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

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

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

- Due 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 that it would be inequitable to require the violation to be corrected.

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

Motion by Tim Durkin to grant an equitable waiver per Section 701.4 for a pre-existing deck in its present location. Seconded by Burt Dibble. All in favor.

Discussion on the shed:

Vice-Chair Crapo stated that he has seen applications in the past where the shed was on blocks and Bill Jenness had deemed them as temporary. There is clear evidence that there was a building permit to place the shed. He can see the argument for wanting it moved into the building envelope area; however, the view of the shed might increase depending on where it was legally placed in the building envelope.

Member Driscoll stated that if the shed is on the other side of the property, it is far less of a nuisance. If it was to be located right at the setback, the nuisance would be no different, then as it is now, to any of the surrounding properties. He agreed it would probably be more visible at that point.

Chair Weathersby noted that it is a shed and is used for lawnmowers and garden equipment. It is not like it is used as a stage for music every night.

Chair Weathersby called for a poll vote in regards to the findings for an equitable waiver for the shed:

- The violation has existed for ten (10) years or more and that no enforcement action, including written notice of violation, has commenced against the violation during that time by the municipality or by any person directly affected by the violation.

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

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

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

- Due 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 that it would be inequitable to require the violation to be corrected.

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

Motion by Tim Durkin to grant an equitable waiver per Section 701.4 for a pre-existing shed in its present location. Seconded by Burt Dibble. All in favor.

Discussion on the shed being temporary versus permanent:

Chair Weathersby noted that 801.2 is how the applicant tried to address the temporary versus permanent situation for the shed. It would basically be changing the building permit and 801.2 seems to be the way to do that.

Member Durkin commented that he thinks granting the equitable waiver nullifies the need for the variance.

Vice-Chair Crapo agreed. He pointed out that the Board just reviewed and agreed that the shed has been there for a minimum of ten years. There is a section of the zoning that refers to temporary as being six months.

Chair Weathersby stated that just in case, she thinks the way to go would be to appeal the original building permit.

Member Dibble stated that it appears that they approved the shed where it is already. The question is whether this is a temporary or permanent structure.

Vice-Chair Crapo commented that in reading the equitable waiver, it refers to dimensional. There could be an argument that temporary versus permanent refers to use.

Chair Weathersby stated that the Board could grant a variance to 203.3B for a permanent shed in the side setback. She thinks that would be cleaner than trying to appeal the original building permit.

Chair Weathersby called for a vote for relief to *Section 203.3B: for a permanent shed 7.6ft +/- from the side property line where 20ft is required:*

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to grant a variance to Section 203.3B for a permanent shed where it is currently located. Seconded by Tim Durkin. All in favor.

5. Michael Reddington for property owned and located at 47 Frontier Street, Tax Map 24, Lot 61-11, requests a variance from Section 204.3B for a generator and AC unit 10' within the side setback where 20' is required. Property is in the Single Residence District. Case #17-2018.

Michael Reddington, applicant, spoke to the Board in regards to the installation of a generator, a/c unit and pad, on the east side of the house, 10ft from the side property line. He noted that there are trees that will hide the generator from the abutting property. The maintenance shed for the Wentworth by the Sea Country Club abuts this side of his property. He also noted that there is a letter in the Board's packets from Robert Diodati, General Manager WBTSCC, in regards to their support of the request.

The Board reviewed the location on the plan for the generator and a/c unit.

Chair Weathersby noted that there are no members of the public present to speak for or against the application. She closed the public hearing at 10:36 p.m.

Referring to the location of the generator and a/c unit on the plans, Vice-Chair Crapo stated that the location is in an area with mature trees. The abutting building is the maintenance shed. He does not think the use of the maintenance shed will be affected by the weekly testing cycles or the use of the generator.

Member Durkin agreed.

Speaking to Mrs. Reed, Chair Weathersby asked if this is in the Single Residence.

Mrs. Reed replied yes.

Chair Weathersby noted that the variance should be to Section 203.3B, not 204.3B.

Chair Weathersby called for a vote for relief to *Section 203.3B*:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

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

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

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

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

Motion by Burt Dibble to approve the application for property owned and located at 47 Frontier Street for a variance to Section 203.3B for the installation of a generator and a/c unit 10ft from the side setback where 20ft is required. Seconded by Shawn Crapo. All in favor.

Note: Burt Dibble recused himself for the following application. Rob Patten was seated for Burt Dibble.

9. **Michael G. Travers for property owned and located at 146 Harbor Road, Tax Map 9.2, Lot 19.1, requests variances from Section 301.8B (1) & (7) for a 5.4'x15' deck within the 75' wetlands and from Section 204.3B for a deck 20' in the side setback where 20' is required. Property is in the Single Residence and Coastal Overlay Districts. Case #18-2018.**

Michael Travers, applicant, presented the proposal to build a 5.4x15ft deck within the 75ft wetland buffer and 20ft in the side setback. He noted that the whole lot is located within the poorly drained fresh water and salt water marsh buffers. The very front corner of the deck would extend 4" into the buffer and would be 19.8ft from the side boundary. He pointed out that they have been issued a Shoreland Permit. The Conservation Commission has been to the property

and they do not have any issues with the proposal. They have been in contact with their neighbors who also did not voice any concerns with the proposal. He continued that the roofline will not change for the deck. The runoff drips down into dripstone with a garden underneath. There will be no change in the way it will drain. The decking will be the same material as what is there now. The disturbance in the wetlands will be for two posts at the most.

Chair Weathersby noted that letters in support were received from:

- **Marcia Hamburg, 148 Harbor Road;**
- **Toby Heisey, 150 Mill Lane**
- **Brian Underwood;** and
- **Rye Conservation Commission**

Mr. Traverse commented that the proposal changes the coverage by a tenth of a percent but it is still less than what it was when the property was purchased.

Member Driscoll noted that there is an area of plantings where the deck is going to be but it is completely surrounded by walkway and house. He does not see how it is going to change or affect the stormwater. It is a reasonable size deck and he thinks it will add to the property.

Member Durkin agreed.

Vice-Chair Crapo commented that the plantings are probably where the foundation fill was so the area has already been disturbed once. The action of putting in a post or two is not a new disturbance to undisturbed soils.

Member Patten stated the he agrees with Member Driscoll. It is a no brainer.

Chair Weathersby agreed. She noted that it should be 203.3B, instead of 204.3 B as it is noticed.

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

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - Yes
Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - Yes
Patricia Weathersby - Yes

3. Substantial justice is done?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - Yes
Patricia Weathersby - Yes

4. The values of surrounding properties are not diminished?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - 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
Tim Durkin - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - Yes
Patricia Weathersby - Yes

7. The proposed use is a reasonable one?

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - Yes
Patricia Weathersby - Yes

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

Shawn Crapo – Yes
Patrick Driscoll – Yes
Rob Patten – Yes
Tim Durkin - Yes
Patricia Weathersby - Yes

Motion by Shawn Crapo to grant the relief to Michael Traverse for property owned and located at 146 Harbor Road from Sections 203.3B and 301.8B (1) and (7) as presented. Seconded by Patrick Driscoll. All in favor.

9. Michael J. Simchik for property owned and located at 260 Pioneer Road, Tax Map 24, Lot 110, requests a variance from Section 301.8B (1) for a generator (after-the-fact) installed 15' +/- within the 100' tidal wetlands buffer. Property is in the Single Residence District. Case #19-2018.

- Continued to the July 11th meeting (see motion above).

10. 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 in the in the Single Residence and Coastal Overlay District. Case 320-2018.

- Continued to the July 11th meeting (see motion above).

11. Thomas & Laurie Glasrud of 35U Columbia Street, Portsmouth, NH, for property owned and located at 5 Wentworth Rd, Tax Map 26, Lot 15, request variances from Section 603.2 to tear down an existing house and replace with new; from Section 203.3E for dwelling coverage of 16.4% where 15% is allowed; from Section 301.8B (1) (2) (5) & (7) for a septic system 55.4' within the 100' wetland buffer, for a house 76.1' within the 100' wetland buffer and for the removal of 6 trees within the 100' wetland buffer and Building Code relief from Section 7.9.2.5 for a septic system 55.4' within the 75' wetlands buffer; from Section 7.9.4.1 for septic system within the 100' tidal marsh setback; from Section 7.9.4.3 for septic system less than 36" from bedrock; from Section 7.9.4.4 for septic system slope greater than 15.1% and from Section 7.9.6 for new construction standards. Property is in the Single Residence District. Case #21-2018.

- Continued to the July 11th meeting (see motion above).

12. Tuck Realty Corp for Joseph W. Goss for property owned and located at 0 Ocean Blvd, Tax Map 8, Lots 58 & 59, requests an administrative appeal pursuant to Section 701.1, of the decision of the Rye Planning Board dated May 8, 2018 – that proposed Lot 5 on the Goss Grant Subdivision Plan does not meet the frontage “access” requirement of the RZO Sections 202.14, Section 203.3F and Appendix A. Property is located in the Single Residence District and Coastal Overlay District. Case #23-2018.

- Continued to the July 11th meeting (see motion above).

13. Tuck Realty Corp for Joseph W. Goss for property owned and located at 0 Ocean Blvd, Tax Map 8, Lots 58 & 59, requests variances from Section 202.14, 203.3F and Appendix A “frontage definition” to access for a proposed lot 5 of the subdivision over 59’ of frontage along Locke Road in lieu of the frontage on Ocean Blvd. Property is located in the Single Residence District and Coastal Overlay District. Case #24-2018.

- Continued to the July 11th meeting (see motion above).

Adjournment

Motion by Tim Durkin to adjourn at 10:45 p.m. Seconded by Patricia Weathersby. All in favor.

**All corresponding documents 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: Splitrock Cove Limited Partnership & James P. Nadeau, Jr. of 507 State Street, Portsmouth NH

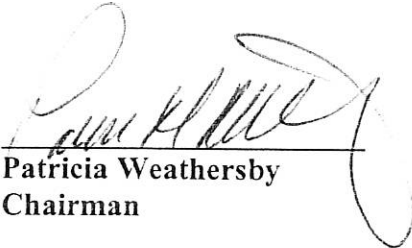
Property: 135 Wentworth Road, Tax Map 24, Lot 30 and 30-1

Application case: Case # 14-2018

Date of decision: June 6, 2018

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

- Section 203.3B for a building 14.67' from the side boundary; and
- Section 203.3F for lot of 2.403 acres. with three dwelling units.



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: Susan & Kevin Duplisea

Property: 31 Parsons Road, Tax Map 20.2, Lot 47

Application case: Cases# 15-2018

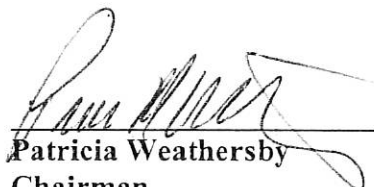
Date of decision: June 6, 2018

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

- Section 204.3C for garage 18' from front boundary;
- Sections 301.8 B (1)(2) & (7) for garage 58.7' from wetlands..

All variances were granted upon continued compliance with the following conditions:

1. There shall be no apartment nor bedroom in the garage; and
2. The applicant will adhere to each of the recommendations of the Rye Conservation Commission as set forth in a to-be-issued letter, a copy of which will be appended to this notice of decision.


Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

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

Property:

0 Richard Road, Tax Map 5.2, Lot 156

Application case:

Case #47-2017/#22-2018

Date of decision:

June 6, 2018

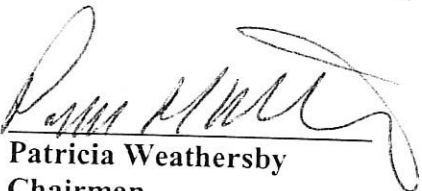
Decision:

The Board voted 4-1 to grant variances from the following sections of the Zoning Ordinance:

- Section 601 for construction on a non-conforming lot;
- Section 204.3C for a walkway 15' and stairs 22' +/- from the front boundary;
- Section 204.3F for lot size of 8,395 sq ft; and
- Section 301.8 B (1) & (7) for 45 sq ft of permanent disturbance and 468 sq. ft. of temporary disturbance within 75' of wetlands buffer.

All variances were granted upon continued compliance with the following conditions:

1. There shall be no basement in the home; and
2. The applicant complies with the recommendations set forth in the Rye Conservation Commission's May 8, 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 Corrente, Trustee of the Barbara Corrente Rev. Trust of 1997

Property: 61 Washington Road, Tax Map 17, Lot 72

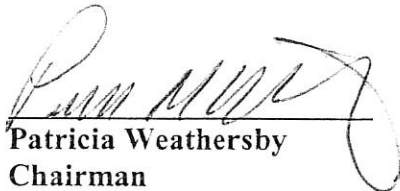
Application case: Cases # 16-2018

Date of decision: June 6, 2018

Decision: The Board voted 5-0 to grant equitable waivers pursuant to Section 701.4 for the existing garage, deck and storage shed in their present locations.

The Board voted 5-0 to grant a variance from the following section of the Zoning Ordinance:

- Section 203.3B for the existing 10' x 16' storage shed to be "permanently" located 7.6' from the side boundary.



Patricia Weathersby
Chairman

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

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Michael Reddington

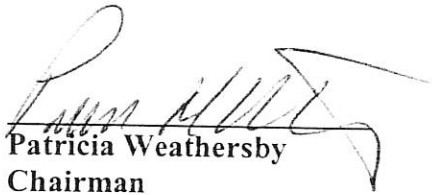
Property: 47 Frontier Street, Tax Map 24, Lot 61-11

Application case: Case # 17-2018

Date of decision: June 6, 2018

Decision: The Board voted 5-0 to grant a variance from the following section of the Zoning Ordinance:

- Section 203.3B for a generator and AC Unit 10' +/- within the side setback.


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: Michael G. Travers

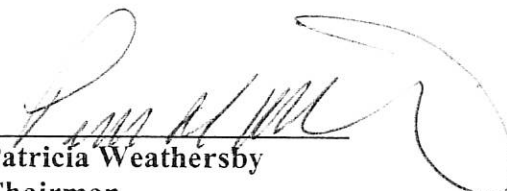
Property: 146 Harbor Rd, Tax Map 9.2, Lot 19.1

Application case: Case # 18-2018

Date of decision: June 6, 2018

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

- Section 203.3B for an attached 5.4' x 15' deck within the side setback; and
- Section 301.8 B (1) & (7) for an attached 5.4' x 15' deck within the 75' wetlands buffer.



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

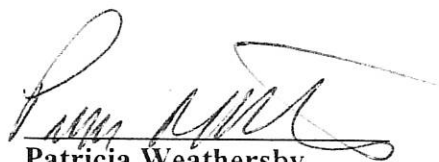
Applicant/Owner: Micahel J. Simchik

Property: 260 Pioneer Road, Tax Map 24, Lot 110

Application case: Case # 19-2018

Date of decision: June 6, 2018

Decision: The Board voted 5-0 to continue the application to the July 11, 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

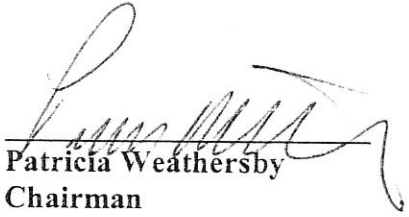
Applicant/Owner: Edward N. Herbert Assoc. Inc., for property owned by
Cara C. Zohdi 1998 Trust of 1 Frost Road, Windham, NH

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

Application case: Case # 20-2018

Date of decision: June 6, 2018

Decision: The Board voted 5-0 to continue the application to the July 11, 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

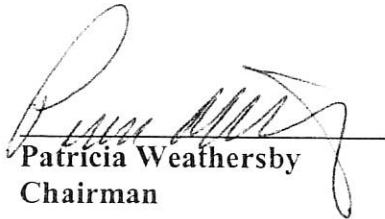
Applicant/Owner: Thomas & Laurie Glasrud of 35 U Columbia Street, Portsmouth

Property: 5 Wentworth Road, Tax Map 26, Lot 15

Application case: Case # 21-2018

Date of decision: June 6, 2018

Decision: The Board voted 5-0 to continue the application to the July 11, 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

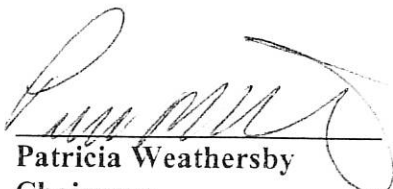
Applicant/Owner: Tuck Realty Corp for Joseph W. Goss

Property: 0 Ocean Blvd, Tax Map 8, Lots 58 & 59

Application case: Cases # 23-2018 and 24-2018

Date of decision: June 6, 2018

Decision: The Board voted 5-0 to continue the applications to the July 11, 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.