

TOWN OF RYE – ZONING BOARD OF ADJUSTMENT

Wednesday, October 4, 2017

7:00 p.m. – Rye Town Hall

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

Others Present: Zoning Administrator Kimberly Reed

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.

Motion by Shawn Crapo to continue application #7 for 0 Brackett Road. Seconded by Burt Dibble. All in favor.

II. Approval of Minutes:

- **August 2, 2017**
- **Tabled to the November meeting.**
- **August 9, 2017**
- **Tabled to the November meeting.**
- **September 6, 2017**

Motion by Shawn Crapo to approve the minutes of September 6, 2017 as amended. Seconded by Patrick Driscoll. Vote: 3-0 Abstained: Burt Dibble and Tim Durkin

III. Amend Rules of Procedure

- **Moved to the end of the meeting.**

IV. Applications:

- 1. Michael C. Appe, Trustee, Michael C. Appe Family Trust for property owned and located at 5 Libbey Lane, Tax Map 16, Lot 162-3 request an Equitable Waiver of Dimensional Requirements from Section 203.3A for an inground swimming pool and related improvements in the rear setback; Sections 203.3 E for lot coverage of 15.9% where 15% is allowed and from Section 301.8B (1) & (7) for swimming pool within the wetland buffer. Property is in the Single Residence District. Case #34-2017.**

Michael C. Appe, Trustee, Michael C. Appe Family Trust for property owned and located at 5 Libbey Lane, Tax Map 16, Lot 162-3 requests Variances from Section 203.3A for an inground swimming pool and related improvements where 29.1 +/- exists 27.7' is proposed and 30' is allowed from the rear lot line; from Section 203.3 E for lot coverage where 14.9% exists 15.9% is proposed and 15% is allowed; and from Section 301.8B(1) & (7) for surface alteration and structure (a) 69.6 ft. (alteration), 80.8 ft. (structure) from marsh where 94.0 ft. to deck exists and 100 ft. is required and (b) 35.1 ft. (alteration), 48.3 ft. (structure) from poorly drained soils where 55.9 ft. to decks exists and 75 is required. **Property is in the Single Residence District. Case # 35-2017.**

Attorney Tim Phoenix, representing the applicant, presented to the Board. He stated that two applications have been filed. One is for an equitable waiver based on the circumstances and the other is for a variance. He suggested that the Board take up the variance first because if it is granted the equitable waiver becomes moot. He pointed out that this was continued once before after the filing so the Conservation Commission could weigh in on the application. The Board has a letter from the Conservation Commission from August stating their concerns. The Board should have a recent letter that says they are very pleased with the concessions that have been made. He noted that the updated plans that address the Conservation Commission's concerns have not been submitted to the Board.

He continued that 5 Libbey Lane is a 56,834sf lot at the end of a cul-de-sac. There is a 1.5 story wood framed home with a detached garage, driveway, walkways, stairways and decks servicing the property. Mr. Appe has a certain medical condition that he benefits from certain therapies, such as swimming which drove the decision to put in a swimming pool. Mr. Appe contacted Custom Pools to do the work necessary to obtain the permits and install a pool. The staff of Custom Pools met with Peter Rowell, Building Inspector, to determine what kind of permits were necessary. Attached to the Exhibit 3-B, is the partial plan that was reviewed between Custom Pools and Peter Rowell. On the partial plan, the distance from the wetland and the rear lot line can be seen, neither of which were met by this pool. Peter Rowell gave a building permit and the pool was started. At one of the inspections, the building inspector realized the pool was too close to the lot line and too close to the wetland. That led to a flurry of activity that led the applicant to the Board. He stated that the nature of the variances is such because the pool is already there. Part of the pool and deck is impervious surface. There have been significant changes made in order to reduce the amount of impervious material of the deck and pool; however, the pool is still in the location that it is which is too close to the lot line and the wetland.

Attorney Phoenix read from the September Conservation Commission's letter.

Steve Riker, Ambit Engineering, spoke to the Board. He explained that Peter Rowell issued a permit. After subsequent visits to the site, he realized there was an issue in regards to zoning. He issued a letter of violation on June 19th. Ambit was engaged on June 21st. Ambit sent a full survey crew to the site to do a boundary and topographic survey. Everything on the site was located and depicted accurately on the plan. He continued that the originally submitted plan was taken to the Conservation Commission in July. A site walk was held with the commission on the

property. As a result, the commission issued a letter that expressed some concerns that they had. Mr. Appe agreed to make all the changes that the Conservation Commission requested and revisions were made to the plans.

Mr. Riker continued the pool deck was originally supposed to be a pervious surface. The pool deck now, as well as all the associated walkways, will be an impervious surface. There was a pretty large fill extension off the back of the pool to the north towards the property owned by the Brindamour Family Trust. There was concern about the fill extension onto the stonewall at the rear of the property. He noted that the revised plan design now shows a dry laid boulder retaining wall. The wall had to be brought 4ft off the edge of the pool for frost protection. A 2ft wide path around the backside of the pool was incorporated to allow access for safety, cleaning and maintenance of the pool. There is the pool, a 2ft wide section of pervious surface, a 2ft wide section of what will be native plantings and grasses and the dry laid boulder wall. He pointed out that there is an area of fill that will be removed to the existing grade. Another concern of the Conservation Commission was in regards to the two roof drains at the back side of the house. When the pool construction started those gutters and downspouts were connected to some piping and went under the fill. He stated an infiltration trench was designed that is approximately 60ft long in length. The trench is dug into the ground, there is a 4-inch perforated PVC pipe that lays in the bottom of it. The gutters and downspouts are connected to it. It runs for a length of about 60ft with a slight pitch and allows the stormwater to be infiltrated into the ground. He noted that the infiltration trench is located outside of the buffer.

He explained that the pool has a pool well where the automatic pool cover is rolled up and stored when it is not used. The pool well has a drain for rainwater and water that comes off the pool. Initially there was a pipe that outlet on the north side of the pool towards the property owned by the Brindamours. That was a concern of the Conservation Commission. The drain cover for the pool cover well will be removed and diverted to the same infiltration trench as the roof drains. He noted that the revised plan went back to the Conservation Commission and they seem very satisfied with it.

Member Dibble asked what is the material of the pool deck.

Mr. Riker stated that it will be a porous pavement. The joints will have about a 1.5-inch gap. It will be filled with an aggregate bedding. There is about a 1ft base of gravel to allow for percolation.

Member Driscoll stated that there is a stake on the east corner. He asked what it represents. It is the closest grade stake to the pool about 10ft off.

Mr. Riker replied that it may have been a survey traverse point.

Member Crapo asked if the building inspector has seen the revised plan.

Attorney Phoenix commented that he has not given it to him. His sense is that if the Conservation Commission is okay and the BOA is okay, he will be okay also.

Member Driscoll asked what the 2-inch PVC jet line is that is noted on the plans.

Brian, Custom Pools, explained that it is for the pump and filters.

Member Driscoll asked if it is outside the wetland setback.

Brian confirmed.

Member Dibble stated that on C-1 there is a hole for an underground propane tank beyond the end of the house. There is the designation of a propane tank adjacent to the house. He asked if that is a surface tank that is being replaced with an inground tank.

Michael Appe, applicant, explained that it is replacing an inground tank. The above ground tank will be removed. The inground will be used for the pool and to heat the house.

Terrance Parker, Terra Firma Landscape, reviewed the landscape plan for the Board. He noted that the fill is being removed. What will be left is the pool coping, a 2ft access path of porous pavers, 2ft for a fence and native ground covers at the top of the wall. Any water coming off the pool will go immediately into the porous pavers and if not there then into the native planted strip and into the crushed stone backfill. He continued the fill will be removed and that area will be restored with native wood land plants and a variety of ferns. The plants in time will form a dense green area, which the roots will help loosen the soil to allow the water to infiltrate. He noted that the rest of the plant scape are all native plant materials.

Member Driscoll pointed out the area for the proposed native ground cover and an area next to it. He asked if this is an area that will be mowed.

Mr. Parker explained that it is a conservation seed mix. It does not have to be routinely mowed. The idea is that it is going to be a rough lawn that does not get fertilized. It will have to be mowed at some point but it does not have to be fertilized.

Member Driscoll asked if that upkeep continues on to where the ground cover is.

Mr. Parker explained there will not be any confusion as to what is wild and what is a mowed lawn.

Mr. Appe commented that he would not have that area mowed more than once per month.

Mr. Riker stated that Mr. Appe doesn't have a square foot of lawn on the property. It is all mulch. The Conservation Commission's wish was to have some sort of vegetation. That is the reason for the conservation mix. There will need to be some type of maintenance but it is not the type of lawn that will be mowed once per week and fertilized. It will not be irrigated. It will be left quite natural.

Member Crapo stated that the pool is already formed. It is now going to have to be excavated out next to it. With the nature of the impermeable surface and that is loose rock, which will

attract water that could freeze and expand, will the integrity of the pool be sacrificed with this design.

Brian explained that the pressure inside the pool pushing out is more than what will be in the soils pushing in.

Speaking to Mr. Parker, Chair Weathersby asked if trees will be cut for this plan.

Mr. Parker replied no.

Attorney Phoenix reviewed the variance relief being requested and the criteria for granting the request.

Chair Weathersby asked if they are agreeable to the Conservation Commission's request that they be allowed to revisit the site after the fill has been removed and before the plantings are installed and again one month after the complete of the restoration to review and photograph the project.

Attorney Phoenix replied yes.

Chair Weathersby asked how the planning office is going to get the plans.

Attorney Phoenix stated that if this is approved he will leave the plan for the Planning Administrator and will get additional copies for the building department.

Member Driscoll asked if there has been any interaction with the Brindamours since the site walk.

Attorney Phoenix stated that he has not been contacted by them or anyone on their behalf.

Mr. Riker stated that the Brindamours were at the site walk. Their major concern was the location of fill onto the stonewall, which is essentially the property boundary as well as the PVC pipe which drains the pool cover well. He continued that he followed up with Mr. Brindamour in regards to the PVC pipe. The PVC pipe is going to be addressed with the infiltration trench. All the fill will be removed and the stonewall restored to its original condition. This note was added to the plans. This address the Brindamours concerns.

Chair Weathersby opened to the public for comments or questions. No comments or questions were heard.

Chair Weathersby noted that two letters were received from the Conservation Commission. One was dated August 31, 2017 which expressed the commission's concerns. There was a follow up letter dated September 30, 2017, where their conclusion was that they supported the revised plan.

Chair Weathersby closed the public hearing at 8:04 p.m.

Member Dibble commented that all his questions have been answered. He likes the plan.

Member Durkin agreed. The applicant has done a terrific job with the whole situation. He supports the request.

Member Driscoll stated that this looks like a 100% honest mistake. Everyone has done their best to come up with a good plan to remedy it. His concern is how to make sure what is proposed is actually carried out. If everyone has gone this far, he has no reason to think that they won't continue on with maintaining the lawn as proposed.

Chair Weathersby stated that she agrees with what has been said. She suggested a condition that everything is built, installed, planted and maintained as presented at this meeting and the recommendations set forth in the Conservation Commission letter are adhered to.

Chair Weathersby called for a vote for variances to Sections 203.3A, 203.3 E and 301.8B (1) & (7):

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

6. There is no fair and substantial relationship between the general purpose of the ordinance 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 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 request for variances by Michael C. Appe Trustee, Michael C. Appe Family Trust, for property owned and located at 5 Libbey Lane, as advertised with the conditions that the architectural modifications of the plan be maintained in accordance with the plans submitted by Terra Firma Landscape Architecture as presented and the Conservation Commission have an opportunity to reinspect the property as requested in their September 30, 2017 letter. Seconded by Shawn Crapo. All in favor.

Attorney Phoenix noted that the plan he is submitting to the Planning Administrator is the variance application plan and the attached variance exhibit plan July 17th revised September 21, 2017.

Attorney Phoenix requested that the application for the equitable waiver be continued to the December meeting.

Motion by Burt Dibble to continue the application of Michael C. Appe for an equitable wavier to the December 2017 meeting. Seconded by Shawn Crapo. All in favor.

- 3. Paula B. Leed of 58 Main Street, Andover MA for property owned and located at 40 Old Beach Road, Tax Map 8.4, Lot 111 requests Variances from Section 510.2 and Section 510.4 for a fence to remain less than 1' from the property line and without a signed "common boundary line fence permit". Property is in the Single Residence, Coastal Overlay District. Case #39-2017.**

Paul Connelly, representing the applicant, spoke to the Board. He stated that Paula Leed acquired the property in October of 2002. A survey was done not long after by Ernie Cote. The survey was submitted as part of the application. The survey shows the fencing along the Dipilato property to the east. He continued that Jim Verra also did a survey when it was the Labrie property. That survey was also submitted as part of the application package. He stated there were two fences along the property line. One on the Logan property that was roughly a foot back from the property line and one for the Leed property that was pretty much on the property line with regard to the common corner in question. In the Building Inspector's 2016 letter, it is noted that *there is a 6-inch encroachment of the fence on the abutter's land (Logan). There are portions of the fence that are closer than 12 inches to the common boundary with the abutter. This is not allowed without a common boundary line fence permit.* He stated that they do not take any issue with that. The line is where the line is and they do not disagree with any of the surveys with regards to the fence proximity to that line. The fence that is there now was put in during the summer last year. It was put in the same exact location as the wooden fence that was put in in 2003. The portion of the fence that was found to be encroaching has since been removed and is no longer encroaching onto the Logan property.

Mr. Connelly stated there is a front to rear walkway along the easterly side of the Leed house. At the subject common corner, the edge of the walkway is on the corner. If Mrs. Leed is required to move the fence a foot back from the Logan property, there would only be about 2.5ft left of walkway. The walkway is not able to be moved over. There could not be wheelchair

access to the rear. It would be difficult for snow removal. It would also be difficult for the delivery of propane and oil.

Vice-Chair Crapo asked if the walkway is a shared walkway.

Mr. Connelly replied no. The walkway goes from the Leed driveway towards the street and back to the paved patios. The walkway went in shortly after Mrs. Leed acquired the property in 2002.

Member Dibble stated that there appears to be a low fence that crosses the walkway. He asked the purpose of the fence.

Mr. Connelly explained that Mrs. Reed has two miniature dachshunds. The fence around the property contains the dogs on her property. The low fence is the gate. He continued that the boundary line is where the boundary line is. They do not have any disagreement with regard to that. They are asking the ZBA for variance relief from 510.2 and 510.4 to allow the PVC fence to remain where it is. The placement of the fence 12 inches off the common boundary would encroach into Mrs. Leed's existing front to rear walkway. He noted that if the fence was required to be moved there would have to be a gap in the fence at the common corner in order to not encroach into the walkway.

Chair Weathersby stated that if the angle of the walkway is changed the fence could be put in.

Mr. Connelly pointed out that there is a shower area and the PVC cannot be moved. The walkway has been there for 15 years. (He reviewed the criteria for granting the variances.)

Vice-Chair Crapo pointed out there are stakes that go towards the ocean. It appears that as it gets closer it creeps closer to the lot line. He asked what reference point they are using on the fence for the measurement. There needs to be a reference line. He thinks it should be the molding piece at the top which is the widest.

Chair Weathersby asked what portion of the fence is being requested to be on the property line.

Mr. Connelly replied the furthest extent of the fence; the fattest part which is the molding.

Member Crapo asked why there was a reference to wheelchair access.

Mr. Connelly noted that Mrs. Leed has wheelchair bound friends that visit her from time to time.

Chair Weathersby asked what the status is on the common line boundary agreement.

Mr. Connelly stated that to his knowledge the agreement was discussed with the neighbor but an agreement was not able to be reached.

The Board reviewed the maps of the subject property.

Vice-Chair Crapo commented that he does not see why the cobbles couldn't be moved closer to the air-conditioning unit in the curve. The dog fence section looks about 4ft wide in the angle. It looks like there is 12 to 18 inches to move towards the a/c units and still fit a wheelchair. It looks like a simple curvature added to the walkway could address what is needed.

Mr. Connelly agreed that if the walkway was widened towards the air-conditioner units it would take the "pinch" argument away.

Vice-Chair Crapo stated if that were the case, it would satisfy the corner point. He asked if the face of the two pieces of fence that approach this area would still be on the line.

Mr. Connelly noted that on both wings, roughly five sections in each direction would have to be reset. He pointed out that there would probably need to be new posts because the posts are set in concrete; however, the panels might be salvageable.

Chair Weathersby asked if this was installed recently.

Mr. Connelly replied that it was installed in 2016.

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

Attorney Phoenix stated that he is present to represent Melanie Logan who is the abutting neighbor. He continued that this started in July of 2016 when Ms. Logan saw the fences going up. She told Mrs. Leed that the fence was too close or on the lot line. Mrs. Leed told Ms. Logan to talk with Peter Rowell. Mr. Rowell went out to the property and said the fence was not a foot from the property line and had to be moved. Mrs. Leed put the fence up anyways. The fence is not only on the line but in sections it is over the property line. Ms. Logan hired surveyors to go out there and the location of the boundary pin was on the other side of the fence. Mrs. Leed would not let the surveyors onto the property to finish the survey. He stated that in order to have a fence on the line, or close to the line, there has to be agreement with both parties. Without Ms. Logan's agreement, no part of the fence can be on the property line. She does not agree to any part of it being on the property line. Section 510.4 says, the common boundary line shall be located at least one foot from the property line. That is what Ms. Logan is asking to happen.

He continued that he submitted a copy of the building permit from August 28, 2003. The permit and the application, submitted by Mrs. Leed, both say the fence has to be one foot from the property line. It was mentioned that the new fence was put up in the same location as the fence that was put up 15 years ago. That may be true but they did not put it where they were supposed to 15 years ago. He continued that the letter from Peter Rowell of July 22, 2016 stated that the fence was on the property line and she had to get an agreement from Ms. Logan, which she did not do. (He reviewed the plans in the packet submitted to the Board.) He pointed out that Ms. Logan has been to the building inspector's office and checked the files. She could not find that there was ever any permit given for the shower enclosure. The pinch point that was talked about was caused by Ms. Leed building the shower without any permit to do so. The walkway is a structure under the ordinance. The walkway is not exempt from setbacks. That probably

required a variance that was also not found in the files. The whole argument seems to be “we have this walkway. We have this fence. We built this house so big it goes from pillar to post and now we can’t get through there. Let us put this fence essentially on Melanie’s property.” (He continued to review the submitted documents.) He stated they want to move 12 inches because it’s too narrow for wheelchairs to get through. He pointed out that because they have room on the other side and because they created the pinch point by their own construction, this is not accurate and is not a reasonable position. It was said that if the fence was moved it would be difficult for snow removal. He pointed out that even at 28 inches a shovel could get in there. There is enough room to get back there for fuel oil and propane. In looking at the requirements for a variance, he thinks the public interest would be served by denying the variance because of the history, circumstances and self-creation. In the spirit of the ordinance, this helps Mrs. Leed but hurts Ms. Logan if this variance is granted, therefore, substantial justice would not be done. He pointed out this harms Ms. Logan’s property value. There is a reason fences are supposed to be a foot off the property line. In regards to maintenance, PVC is pretty flimsy and can be blown down from the wind so they do need maintenance. In regards to the hardship, there is no hardship in the land that causes a need for this variance. The hardship is she put the shower up, which made a pinch point, without permission and then she put the fence up being told it can’t go where it is. Now she wants the Board to say let it stay because it is going to incur an expense in moving it.

Melanie Logan, 36 Old Beach Road, pointed out the 3rd picture shows the propane tanks and the pinch point.

Vice-Chair Crapo asked if the propane tanks are on the Dipilato’s side north of the a/c units.

Ms. Logan replied yes.

Vice-Chair Crapo asked if research showed a permit for the a/c units. Those are placed within the setback, in addition to the shower.

Attorney Phoenix stated that he did not research anything; however, Ms. Logan did and did not find anything. It is a question mark. The fact remains she put the a/c units and shower there. That is what created the issue.

Mr. Connolly stated that with regard to the shower enclosure, the walkway location and a/c unit location, he does not have any history and it was not part of the scope of his review relative to this application.

There were no further comments from the public. Chair Weathersby closed the public hearing at 9:00 p.m.

Member Driscoll stated it is pretty straight forward. He thinks it is up to them to correct what they have done in error to conform to the town’s requirements.

Member Durkin stated he does not see any basis for a hardship.

Chair Weathersby stated that she thinks they knew the requirement was a foot, having documentation of that, and they erected a fence closer than one foot. The pinch point does appear to be self-created.

Vice-Chair Crapo commented it is a fairly unique shaped lot; however, in that area it is what it is. People who buy these homes know they've carved out a niche and have to use a shoehorn.

Chair Weathersby stated that because of the other items that have been placed in that area, the pinch point has been self-created.

Member Dibble pointed out this property has been before the Board before. He has walked on the other side of the building and there is plenty of room to get out back. The argument that the pinch point is a hardship is not well supported.

The reasons for denial were reviewed:

1. Fence was erected closer than a foot with knowledge of the 1ft requirement and in violation of the building permit.
2. The pinch point was self-created through the installation of the outdoor shower and the air conditioning units.
3. Wider access to the ocean side of the building can be gained by using the east side of the property. Furthermore, the existing walkway can be widened to abut the air-conditioning units to make up for the loss of space by properly installing the fence.
4. The variance request cannot satisfy the required criteria.

Chair Weathersby called for a vote for variances to Sections 510.2 and 510.4:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

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

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

7. The proposed use is a reasonable one?

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

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

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

Motion by Tim Durkin to deny the requested variances as advertised, based on the reasons outlined. Seconded by Burt Dibble.

Vice-Chair Crapo stated that his reason for stating it was unique was the focus on the oddly shaped property line that pinches in at a point. Other than that, it is similar to other properties.

Vote on the motion to deny: 5-0

- 4 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 in a non-conforming vacant lot in the Coastal District; from Section 204.3 F for lot of size of 8,795 SF where 44,000 Memb SF is required; from Section 204.3C for a walkway within the 30' front yard setback; from Section 204.3B for a brick walkway within the 20' side setback. **Property in the General and Coastal Overlay Districts. Case #40-2017.**

- **Withdrawn by applicant.**

- 5. McIntyre Family Rev Trust, M & C McIntyre Trustees of 1 Crestwood Drive, Hudson, NH for property owned and located at 731 Ocean Blvd., Tax 23, Lot 6** requests Variances from Section 603.1 for an expansion of non-conforming structure; from Section 301.8B1, 7 for 52' wetland buffer disturbance where 100' is required; from Section 210.3C for steps within the 30' front setback. **Property in the Business, Coastal Overlay and Wetlands Conservation Districts. Case #41-2017.**

Attorney Tim Phoenix, representing the applicant, presented to the Board. He explained this is one unit of a two-unit condominium. It is a modest home. The proposal is to take down the existing garage and put up a new garage. Relief is needed because pretty much the whole existing house and their portion of the lot is within the wetlands.

Lisa DeStefano, DeStefano Architects, stated that the McIntyres are looking to use this property year-round. They have made some improvements on the inside of the existing house. They are now looking to have a garage that houses two cars and can be used for storage. The garage is 23.6 in the shortest dimension and is 24.11 deep. The garage will store two cars and have storage in the rear. Above the garage will be a roof deck. The roof deck is not connected

to the main house. She continued that one of the requests is to relocate the stairs. There is an existing set of stairs and those will be in the same volume but slid over to give more access room into the garage. The stairs will be slid to the left. She noted there will be no footprint change.

Member Durkin asked if the garage door is the only access to the garage.

Ms. DeStefano replied yes. A man door may be put on the side. Ideally the man door would be in the back but there is ledge in the back. She pointed out that they are working with a structural engineer and are sure this can support the flat roof deck.

Chair Weathersby commented that the only place to put a man door would be on the side to the front of the garage, which would also be in the buffer.

Ms. DeStefano replied yes. However, at this time they are not asking for the door.

Steve Riker, Ambit Engineering, stated that almost the entire existing structure is located within the 100ft buffer. He pointed out that on the side of the garage is a storm drip edge. It cannot be directed to the rear because of the ledge. It cannot be directed towards the front or the house. The drip edge will add some value to wetland protection because it currently does not exist.

Member Driscoll commented that it will also pick up about a quarter of the water that is coming off the house.

Mr. Riker agreed. He continued there is also a letter from the Conservation Commission. The commission had requested some buffer plantings along the property line, as well as ceasing mowing along that area. He pointed out that the applicant is fine with both of those conditions.

Member Dibble stated that on the first page of Exhibit B it shows two doors entering the building under the proposed new stairs. He asked what is in that space.

Christine McIntyre, applicant, replied that it is storage space.

Attorney Phoenix reviewed the variances being requested and the criteria for granting the variances.

Chair Weathersby asked if there will be a change in the driveway.

Mr. Riker replied no.

Attorney Phoenix noted that they did get approval from the other condo owner. He will get that to the Planning Administrator.

Speaking to Mrs. McIntyre, Member Driscoll asked if the details of the Rye Conservation Commission letter are what she agreed to with them.

Mrs. McIntyre confirmed. She commented that she will be planting a buffer and will stop mowing along the property line.

Chair Weathersby asked for the location of the hot tub pad.

Attorney Phoenix pointed this out on the plan. He commented that it is going on the ledge directly behind the middle of the house.

Chair Weathersby opened to the public for comments or questions. Hearing none, she closed the public hearing at 9:31 p.m.

Member Durkin stated it is a reasonable plan and proposal.

Chair Weathersby stated it seems reasonable and modest. To be able to get vehicles in the garage and enjoy the views from the top will be a great enhancement.

Chair Weathersby stated that the Board received and considered the October 4th letter of the Rye Conservation Commission, wherein they suggest a 5ft wide native buffer of plantings and to discontinue mowing beyond the property line. She suggested that those be incorporated as a condition.

Chair Weathersby called for a vote for variances to Sections 603.1, 301.8B (1) & (7), 210.3C:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

6. There is no fair and substantial relationship between the general purpose of the ordinance 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 would result in unnecessary hardship?

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

Motion by Shawn Crapo to grant the variances requested for the McIntyre Revocable Family Trust for property at 731 Ocean Boulevard as advertised and presented with the condition that they comply with the specific requests in the October 4, 2017 Rye Conservation Commission letter pertaining to a vegetative buffer and the discontinuance of mowing of mowing on the abutter's property. Seconded by Patrick Driscoll. All in favor.

- 6. Mullen Michelle J Rev Trust, Michelle & David Mullen Trustees of 10 Squier Drive, North Hampton, NH for property owned and located at 149 Perkins Road, Tax Map 5.3, Lot 8** requests Variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3C for a three season room where 32.1' exists, 20.1' is proposed and 20.16' is allowed within the front yard setback; from Section 204.3A for construction where 15.4' is proposed, 30' exists and 25' is allowed within the rear yard setback; and from Section 204.4 E for lot coverage of 30.8% where 30% is allowed. **Property is in the General Residence District. Case #42-2017.**

Attorney Phoenix, representing the applicants, spoke to the Board. He explained that the lot is 10,003sf. There is a 1.5 story cape with an attached garage on the property, which is serviced by town water and sewer. The homes were built in 2008 as a retirement home and is fairly basic. The home is three bedrooms with an open kitchen and very tiny family room. The home meets the dimensional requirements but it fills the entire lot. The Mullins are a family of four. Their charge is to make the home more livable for their family while still trying to respect the relatively small lot. The proposal is to bump up the garage to gain some space above that and to bump out the front and back slightly to gain some more living space. This will provide them with a fourth bedroom that will be a guest bedroom, a bathroom, porch, mudroom and laundry room. The kitchen will be expanded to accommodate the family. They have also put in permeable pavement on the walkway in the front to try and reduce ground coverage.

Attorney Phoenix reviewed the variances being requested and the criteria for granting the variances.

Chair Weathersby asked if the front porch is heated.

Michelle Mullen, applicant, replied yes.

Member Driscoll asked if the underground propane tank, generator and a/c unit are there currently.

Mrs. Mullen explained that one of the a/c units is there currently. They are predicting that they will need a second unit.

Member Driscoll stated that it is not shown on the proposed conditions plan.

Mrs. Mullen stated that it is added to the numbers for the proposed coverage.

Member Driscoll asked if the additional unit will be in the setback.

Attorney Phoenix commented that it will be located beside the current unit.

Member Driscoll asked if space is being added to the front of the garage.

Mrs. Mullen replied yes. She continued that they currently have a two-car garage and they would like to keep that same space. The very back of the garage is going to become part of the mudroom, laundry room and half bath.

Member Driscoll asked for the existing square footage versus the proposed.

Mrs. Mullen replied the current square footage is around 1700 but the new square footage has not been calculated.

Member Driscoll asked if they have talked to all the abutters about the plan.

Mrs. Mullen stated that she has talked to them and showed them the plans. Nobody has expressed any concerns about the plans.

Chair Weathersby opened to the public for comments or questions.

Member Driscoll stated that this is very close to these restrictions. He asked if they talked about shrinking certain areas to try and conform to those.

Mrs. Mullen stated that they did. The months that they spent planning the property, they thought it was under the 30. Once the steps, landing and all the little things were put in, that put it over.

Hearing no further comments or questions, Chair Weathersby closed the public hearing at 9:59 p.m.

Chair Weathersby stated it seems reasonable. She is a little concerned about the front setback because it is so close; however, it is so close because of what is being considered the average. She is fine with the rear and the expansion.

Chair Weathersby called for a vote for variances to Sections 603.1, 204.3C, 204.3A and 204.4E:

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

Shawn Crapo – Yes

Patrick Driscoll – Yes

Tim Durkin – Yes

Burt Dibble - Yes

Patricia Weathersby - Yes

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

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

6. There is no fair and substantial relationship between the general purpose of the ordinance 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 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 Mullen Michelle J Revocable Trust variances as described, published and discussed for property at 149 Perkins Road. Seconded by Shawn Crapo. All in favor.

- 7. Joel & Lauren Feid of 7 Skyview Drive, Greenland NH for property owned by Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court, Prince Frederick, MD and located at 0 Brackett Road, Tax Map 17, Lot 34-2 requests Variances from Section 203.3B for a shed 5.7' from the left side setback where 20' is required; from Section 301.8A.2 and Section 301.8B1 & 7 for a portion of dwelling and patio within the 75' wetlands buffer and requests relief from the Building Code Section 7.9.3.2 for bottom of the effluent disposal system 2' above the seasonal high water table where 4' is required. Property is in the Single Residence District. Case #44-2017.**

- **Request to be continued to the November meeting.**
(See motion above.)

- **Rules of Procedure**

The Board discussed the letter received from the Board of Selectmen dated July 12, 2017 in regards to a board member giving advice to an application that is before the board. The Selectmen requested that land use boards amend their Rules of Procedure to add Section 10.4A, Request for Advice, which follows the suggestion of Town Counsel.

Member Crapo stated it is overreaching and too broad. There are RSA's that govern recusal. If a member feels they have taken that step too far and should recuse, there is an avenue to take to

not sit on that application. It does not address the overlap, such as Member Hoyt is an architect and Member Driscoll is a builder. That may prohibit them from working on an application. This is a small town. This is a board of peers and there is going to be overlap.

Chair Weathersby stated that she submitted an inquiry to the Municipal Law Association. One of her questions was in regards to the authority of the Selectmen and if this has to be adopted. The response was no it is a request. She continued that some of them have been on this board for a while and a neighbor may ask for advice. She commented that if it is a neighbor, she is going to recuse herself anyways. She feels that they should be able to help their neighbors out.

Member Durkin commented that he agrees with Member Crapo that this is overreaching.

Member Driscoll stated that to take the situation with the neighbor would a member not be able to speak in favor or against the application.

Chair Weathersby stated that she feels that what the Board has now has worked well.

Member Dibble stated that he is not a big fan of writing specific language into rules. It may get into a situation where it is a little bit different than what the rules was created for. One or two words may be left out of the specific language and then someone starts saying the rules are not being obeyed. He continued that it happens occasionally that as a Board they listen to an application and might make a recommendation to someone about doing something else. That would preclude that kind of spiritedness on the part of this Board. He is reluctant to give away the opportunity to be helpful in streamlining the process for applicants and the town. He continued the Board can take a vote on advising anyone of its members. However, the decision to recuse lies entirely in the hands of the member. There are times when actions of the Board of Selectmen come before the BOA. It is a violation of the separation of powers for the Board of Selectmen to tell the BOA how to create its rules.

Chair Weathersby clarified that it is a request.

Motion by Patricia Weathersby to respectfully decline to adopt proposed Section 10.4(A), Request for Advice, for the Board of Adjustment's Rules of Procedure. Seconded by Tim Durkin. All in favor.

Adjournment

Motion by Tim Durkin to adjourn at 10:30 p.m. Seconded by Burt Dibble. All in favor.

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

- Applicant/Owner:** Michael C. Appe, Trustee, Michael C. Appe Family Trust
- Property:** 5 Libbey Lane, Tax Map 16, Lot 162-3
Property is in the Single Residence District
- Application case:** Cases # #35-2017
- Date of decision:** October 4, 2017
- Decision:** The Board voted 5-0 to grant the Applicant variances from the following Sections of the Zoning Ordinance:
- (1) Section 203.3A for an inground swimming pool and related improvements 27.7' from the rear lot line;
 - (2) Section 203.3 E for lot coverage of 15.9%;
 - (3) & (4) Sections 301.8B (1) & 301.8B (7) for surface alteration, fill and structure (a) 69.6 ft. (alteration and 80.8 ft. (structure) from marsh and (b) 35.1 ft. (alteration), 48.3 ft. (structure) from poorly drained soils with the following conditions:
 - a. The applicant build, install, plant and maintain all structures, improvements and landscaping as advertised, presented and as outlined in the September 26, 2017 letter of Terra Firma Landscape Architectures; and
 - b. The Rye Conservation Commission be allowed to revisit the site after the fill has been removed and before the plantings are installed and, one month after completion of the restoration, RCC be allowed to revisit, review and photograph the final project as outlined in RCC letter dated September 30, 2017.



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

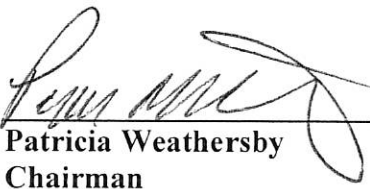
Applicant/Owner: Michael C. Appe, Trustee, Michael C. Appe Family Trust

Property: 5 Libbey Lane, Tax Map 16, Lot 162-3
Property is in the Single Residence District

Application case: Cases # 34-2017

Date of decision: October 4, 2017

Decision: The Board voted 5-0 to continue this Application to the December 6, 2017 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:

Paula B. Leed of 58 Main Street, Andover, MA

Property:

40 Old Beach Road, Tax Map 8.4, Lot 111

Property is in the Single Residence, Coastal Overlay District

Application case:

Cases # 39-2017

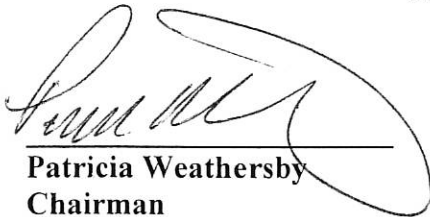
Date of decision:

October 4, 2017

Decision:

The Board voted 5-0 to deny the Applicant's request for Variances from Section 510.2 and Section 510.4 for a fence less than 1' from the property line without a signed "common boundary line fence permit" for the following reasons:

1. The fence was erected closer than 1' to the property line with knowledge of the 1' requirement and in violation of the building permit;
2. The "pinch point" was self-created by the installment of the outdoor shower and AC units;
3. Wider access to the rear (ocean side) of the property is available on the south side of the property;
4. The walkway near the "pinch point" can be altered such that it can be a similar width and accommodate a fence 1' from the property line; and
5. The application failed to meet the criteria for relief.



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:

McIntrye Family Rev Trust, M & C McIntrye Trustees
of 1 Crestwood Drive, Hudson, NH

Property:

731 Ocean Blvd, Tax Map 23, Lot 6
Property is in Business, Coastal Overlay and Wetlands District

Application case:

Cases # #41-2017

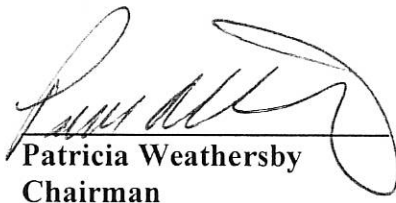
Date of decision:

October 4, 2017

Decision:

The Board voted 5-0 to grant the Applicant's request for Variances from Section 603.1 for an expansion of non-conforming structure; from Section 301.8B(1) and 301.8 B(7) for a 52' wetland buffer disturbance and from Section 210.3C for steps in the front setback with the following condition:

1. The Applicant adhere to the recommendations of the Rye Conservation Commission as set forth in its October 4, 2017 letter, namely:
 - a. The applicant provides a 5' wide buffer of native plantings along the property line to create a vegetative buffer to help protect the wetland marsh; and
 - b. The applicant discontinues mowing beyond the property line.



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: Joel & Lauren Feid of 7 Skyview Drive, Greenland NH

Owner: Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely
Of 216 Caney Court, Prince Frederick, MD

Property: 0 Brackett Road, Tax Map 17, Lot 34-2
Property is in Single Residence District

Application case: Cases # 44-2017

Date of decision: October 4, 2017

Decision: The Board voted 5-0 to continue this Application to the November 1, 2017 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

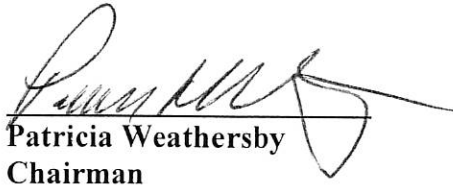
Applicant/Owner: Michelle J. Mullen Rev Trust, Michelle & David Mullen Trustees
of 10 Squire Drive, North Hampton NH

Property: 149 Perkins Road, Tax Map 5.3, Lot 8
Property is in General Residence District

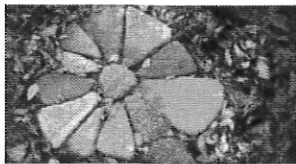
Application case: Cases # 42-2017

Date of decision: October 4, 2017

Decision: The Board voted 5-0 to grant the Applicant's requests for variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3C for a porch 20.1' from the front boundary; from Section 204.3A for a structure 15.4' from the rear boundary; and from Section 204.4 E for lot coverage of 30.8%.


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.



terra firma
landscape architecture

9.26.17

To: Town of Rye ZBA

RE: Appe Residence: Landscape Narrative

After meeting with and listening to the conservation commission the design team for the Appe family will make several critical changes to the site plans for the area between the existing pool and the rear property line defined by the loosely stacked stone wall.

We are proposing to remove the existing fill on the Appe side of the property line to expose the original grade and to not install the concrete pool deck that was planned along the back of the pool. Instead, we will replace the originally planned pool deck with a 24" wide porous paver access path and a 24" porous planting of native ground covers at the base of the pool fence, so that the owner can maintain the pool. This porous paver access path will be supported by a sloped boulder wall ~~that~~ to facilitate water or runoff infiltration. In the area where the existing fill is to be removed we are proposing to plant a bed of native ferns or ground covers into what was the original grade line. Such a restorative planting will stabilize the soil and enhance the infiltration rates of the soil in this area.

Please refer to the site section provided herein.

Terrence Parker, Landscape Architect
ASLA



**RYE CONSERVATION COMMISSION
10 CENTRAL ROAD
RYE, NH 03870**

September 30, 2017

RE: 5 Libbey Lane, Tax Map 16 Lot 162-3. Owner Michael C. Appe

The Rye Conservation Commission (RCC) conducted a site walk at 5 Libbey Lane on August 30, 2017 to assess the swimming pool construction project at that location. The RCC wrote a recommendation letter on August 31, 2017 outlining our concerns about the project and recommending several changes that would mitigate the impact of the project on the wetland buffer.

At the regular RCC meeting on September 21, 2017, Steven Riker, Ambit Engineering, presented a revised plan on behalf of the owner, Mr. Michael Appe. We were pleased that Mr. Appe has adopted all of our recommendations in the new plan.

The new plan calls for the removal of the pool deck on the eastern or wetland side of the pool except for a 2 foot wide deck for safety and maintenance purposes. The pool deck and walkways will be constructed with pervious material. A retaining wall will be constructed to support the pool. The fill on that side of the pool as well as the fill all along the eastern side of the property will be removed and taken off site. That area will be returned to original grade except for the slope required for the retaining wall. The stone and fill covering the existing stone wall property boundary will be removed and the wall will be restored to its original state. A pool fence will be installed for safety around the project in the setback and buffer.

The RCC had concerns about storm drainage from the roof downspouts as well as from a pipe draining from the pool area on to the abutting property. The new plan design calls for an infiltration system that connects the roof drains and pool drain to a 24 inch trench with perforated pipe. The RCC is still unclear how pool backwash would be handled but considers the new system a major improvement.

The new landscaping plan calls for native plantings in the area where the fill will be removed. The plans call for a sloped lawn; the RCC recommends that the lawn not be sloped toward the property boundary since that could result in runoff onto the adjacent property. The area is currently a mix of ferns and trees on mulch; a natural ground cover would be preferable to mulch or grass. The plan should also specify that no existing trees be removed. That area has already seen removal of trees in the buffer and it is important that the existing trees remain. The RCC requests it be allowed to revisit the site after the fill has been removed and before the plantings

are installed. Additionally, one month after completion of the restoration, RCC will be back to review and photograph the final project.

The Rye Conservation Commission approves of the revised plan with the additional recommendations noted above. The RCC commends Mr. Appe for his flexibility and cooperation. We believe that the new plan will fairly serve both the applicant and the public purpose of conserving and protecting Rye's wetland resources.

Sincerely,

A handwritten signature in dark ink, appearing to read "F. Garvan II", with a stylized flourish at the end.

Francis P. (Mike) Garvan II, Clerk

40/36 old beach rd

Write a description for your map.

Legend

- 36 Old Beach Rd
- Feature 1
- Feature 2
- NATIONAL WILDLIFE REFUGE

36 Old Beach Rd

Google Earth

© 2017 Google

© 2017 Europa Technologies

60 ft



- B. The building is of such unusual or uncommon design, texture or materials that it could not be reproduced or could be reproduced only with great difficulty and expense.
- C. The building is of such historic, architectural or community value that its removal would be to the detriment of the public interest.
- D. Retention of the building would help preserve and protect an historic place or area of historic interest.

510: Fences: All fences, walls, and similar enclosures, except trees, shrubs and natural vegetation, are subject to the restrictions of this section. All fences or enclosures surrounding an outdoor swimming pool shall also comply with Sections 7.12.1 and 7.12.2 of the Building Code. (Deleted from Building Code section 7.13 and added to the Zoning Ordinance 3-14-17)

510.1: Fence Permits. No fence shall be erected or replaced prior to obtaining a permit from the Building Inspector, except wire or rail fencing for agricultural use, which is exempt from the permit requirement.

510.2: Common Boundary Line Fence Permits. Common Boundary Line Fences are those placed along the common boundary line of properties. A Common Boundary Line Fence permit application shall be signed by all property owners of the land involved. The permit shall hold the town harmless from any disputes which may arise concerning such fences.

510.3: Height. Fences and walls shall not exceed six (6) feet in height.

510.4: Setback. All fences, except "Common Boundary Line Fences," shall be located at least one (1) foot from the property line. The applicant is responsible for establishing the boundary with a survey by a licensed New Hampshire surveyor.

510.5: Finished Side. Any fence within 10 feet of a lot line shall have the finished side face the abutting properties, and the side of a fence containing the posts and other bracing appurtenances shall face inward to the property on which the fence is located. For Common Boundary Line Fences, the finished side(s) shall be as designated by the property owners in the application.

510.6: Sight Distance. All fences and walls shall comply with the corner clearance requirements of Article II of the Rye Zoning ordinance.

510.7: Town Rights-of-Way. Erection of fences within town rights of way is prohibited. Fences abutting a right of way shall be set back at least one (1) foot from the right-of-way line.

510.8: Applicability. This section shall apply to all fences erected or replaced after January 2, 2001.

This Permit expires 1 year from date of issue

BUILDING PERMIT

RYE, N.H.

Aug 28 20 03
PERMIT # NO 6810

PERMISSION IS HEREBY GRANTED TO:

OWNER: Paula Leed TELEPHONE # _____

LOCATION OF WORK: 40 Old Beach TAX MAP # 8.4 LOT # 111

TO: ERECT: _____ ALTER: _____ PAVE: _____

DESCRIPTION: Install 6' H fence along 2 sides 1' in
from PL; fence to drop to 4' by ocean *

CONTRACTOR: Grasso Constr.

ADDRESS: No Andover TELEPHONE # 978-688-8895

COST OF CONSTRUCTION \$10,000 PERMIT FEE \$1000 CK X CASH _____

THIS PERMISSION IS GRANTED IN ACCORDANCE WITH THE BUILDING AND ZONING ORDINANCES OF THE TOWN OF RYE.

SIGNED: Susan Zarlengo
SUSAN ZARLENGO, BUILDING INSPECTOR

THIS PERMIT TO BE POSTED AT WORK SITE

FLOOD PLAIN CERTIFICATE? YES/NO

CC: _____ *View not obstructed

TOWN OF RYE
APPLICATION FOR BUILDING PERMIT
BUILDING PERMIT SHALL BE KEPT ON SITE, ALONG WITH A SET OF PLANS

Owner: DAULA WEED Date Submitted: 8/28/03
Location of Property: 40 OLD BEACH RD Map Lot Flood Zone:
Mailing Address: 7 BATESON DR Town: ANDOVER State: MA Zip: 01810
Zoning District: Total Lot Area: Frontage:

Contractor: GRASSO CONST CO INC Telephone No.: 978-888-8895 pager/cell 978-502-6030
Address: 865 TURNPIKE ST Town: ANDOVER State: MA Zip: 01845

Variances Approved For: Date Granted:
State Approved Septic System Approval/Operation No.: Year Installed:

Estimated Cost: 10,000 Copy of contract or estimate from contractor:

Addition: Size of Addition: Description (include No. baths and bedrooms and types of rooms:

Renovation: Description: INSTALLATION OF FENCE 6' HIGH ALONG 2 SIDES OF PROPERTY LINE 1' IN FROM PROPERTY LINE FENCE TO DROP TO 4' BY OCEAN AS NOT TO OBSTRUCT VIEW
New House: No. Rooms: No. Bedrooms: Baths: Garage: Porch: Decks: FOR NEIGHBORS
Bonus Rooms: No. Of Stories:

Foundation: concrete block stone piers
Exterior Walls: clapboard wide siding wood shingles vinyl brick stone
Roofing: asphalt other
Interior Finish: sheetrock plaster Fireplace: how many and where?
Heating: electric gas forced hot air furnace hot water other

Town Water: Well: If well, analytical results are required prior to final inspection.

I agree to give the building inspector 48 hours notice prior to any rough wiring, rough plumbing, chimney, or framing inspection.
Permits must be posted for the inspection to be conducted.

Signed by Owner: [Signature]

Date: 8/28/03

Application Approved: Permit No.
Application needs the following review(s):

Site Review
Board of Adjustment
Historic District Comm.
Flood Plain District

\$100 cash

[Signature]
Approved by Building Inspector/Date



Town of Rye

BUILDING DEPARTMENT

Peter E. Rowell CFM
Building Inspector

10 Central Road
Rye NH 03870

603 964-9800
prowell@town.rye.nh.us

July 22, 2016

Paula B. Leed
58 Main Street
Andover, MA 01840

RE: 40 Old Beach Road – Generator Application

Property Information:

Location	40 Old Beach Road
Map / Lot	8.4 / 111
Zoning District	Single Family Residence
Overlay District	Coastal District
Lot size	17,609 sf.
Frontage	100'
Flood Zone	AO - EL1

Dear Ms. Leed,

This letter is in regard to the new fence that you recently installed. You stated that the fence would be 1' from your property line and the permit reflected that you would install the fence 1' onto your property. I went over the location very carefully with you installer and it appears that he did not do what we agreed upon or what you had stated on your permit. The area in question is the inside corner right in the middle of your home on the ocean side. I located that corner, using your submitted survey, with the installer. After receiving a complaint from your abutter I went out to verify the fence location and it appeared that the installer had disregarded the agreed upon location and placed the fence closer than 1'.

At this time I would like you to have your surveyor verify the fence location and submit a document showing or stating that the fence is installed as permitted 1' from the property line.

As an alternative to having the survey work done you could come to an agreement with your abutter that the fence location is acceptable. I will need this agreement in writing to include in the file.

If both of the above fail the fence will need to be move to the location permitted.

You have the right to appeal this decision to the Rye Board of Adjustment per RZO, Section VII. All appeals must be made within a reasonable time (30 days) on forms supplied by the Board.

If you have any questions, please feel free to contact this office.
Sincerely,

Peter E. Rowell
Building Inspector

Cc: Zoning and Planning Administrator
Civil Works

www.town.rye.nh.us



Town of Rye BUILDING DEPARTMENT

Peter E. Rowell CFM
Building Inspector

10 Central Road
Rye NH 03870

603 964-9800
prowell@town.rye.nh.us

September 8, 2016

Paula B. Leed
58 Main Street
Andover, MA 01840

Central Fence & Deck
162 Route 108
Somersworth NH 03878

RE: 40 Old Beach Road - Fence installation

Property Information:

Location	40 Old Beach Road
Map / Lot	8.4 / 111
Zoning District	Single Family Residence
Overlay District	Coastal District
Lot size	17,609 sf.
Frontage	100'
Flood Zone	AO - EL1

Dear Ms. Leed,

I am again writing in regards to the new fence that you had installed. Your abutter to the northeast had the property line surveyed and found that the corner of your fence was located about 6" onto your abutters property. You stated that the fence would be 1' onto your property and the permit reflected that you would install the fence 1' onto your property. The town ordinances allow you to construct a fence without your abutter's permission as long as it is 1' onto your property. I went over the location very carefully with your installer and it appears that he did not do what we agreed upon or what you had stated on your permit. The area in question is the inside corner right in the middle of your home on the ocean side. I located that corner, using your submitted survey, with the installer. After receiving a complaint from your abutter I went out to verify the fence location and it appeared that the installer had disregarded the agreed upon location and placed the fence closer than 1'. At the time he stated that he was told to place it where the old fence was located and did not move it even after being told that it was not correct.

At this time I am asking you to have the fence moved and installed as permitted 1' from the property line.

As an alternative to moving the fence you could come to an agreement with your abutter that the fence location is acceptable. I will need this agreement in writing to include in the file.

If you can't come to an agreement and do not move the fence within 30 days I will be forced to take action to see that the towns ordinance are complied with. This action will take the form of a Notice of Violation.

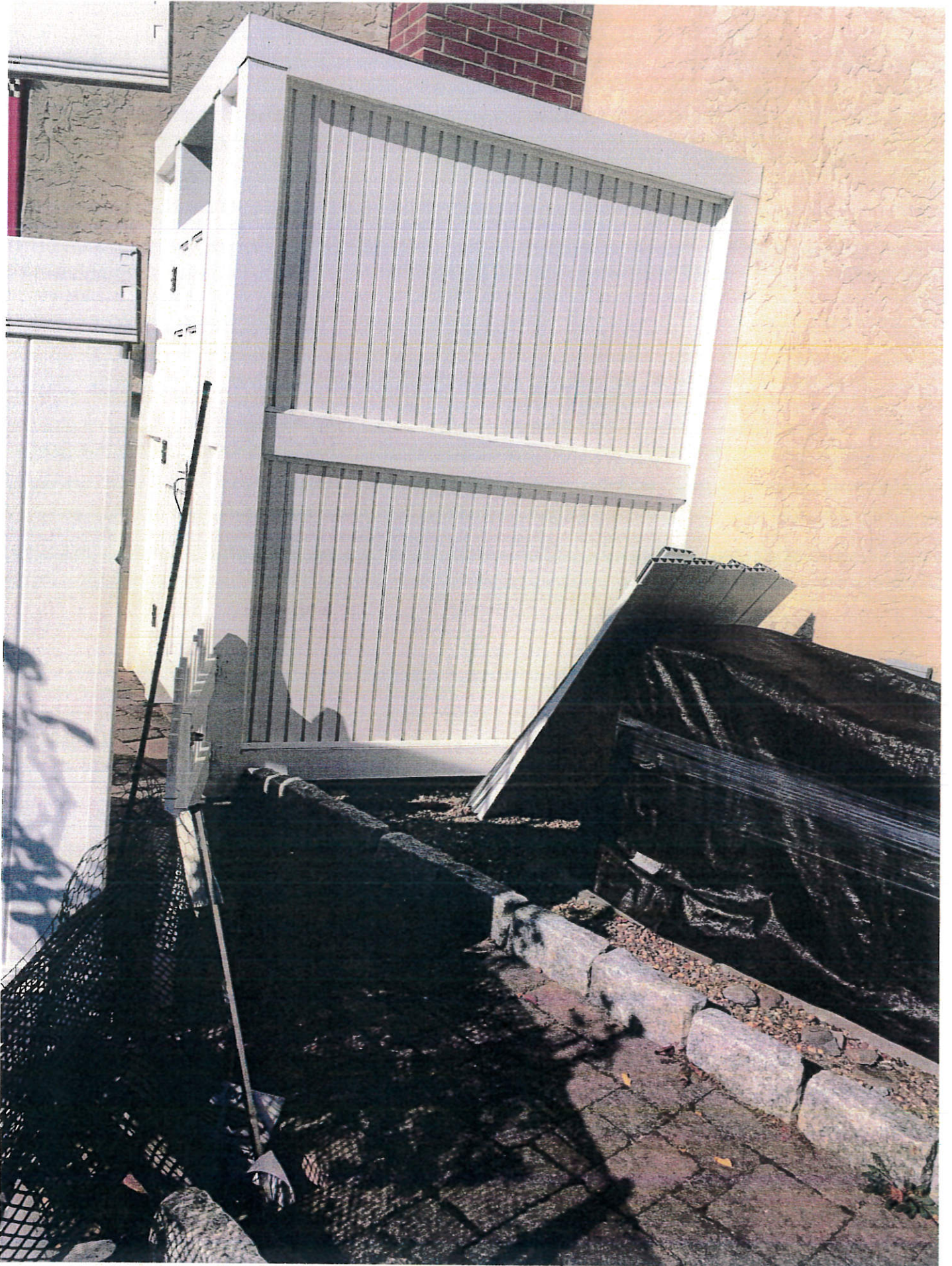
If you have any questions, please feel free to contact this office.

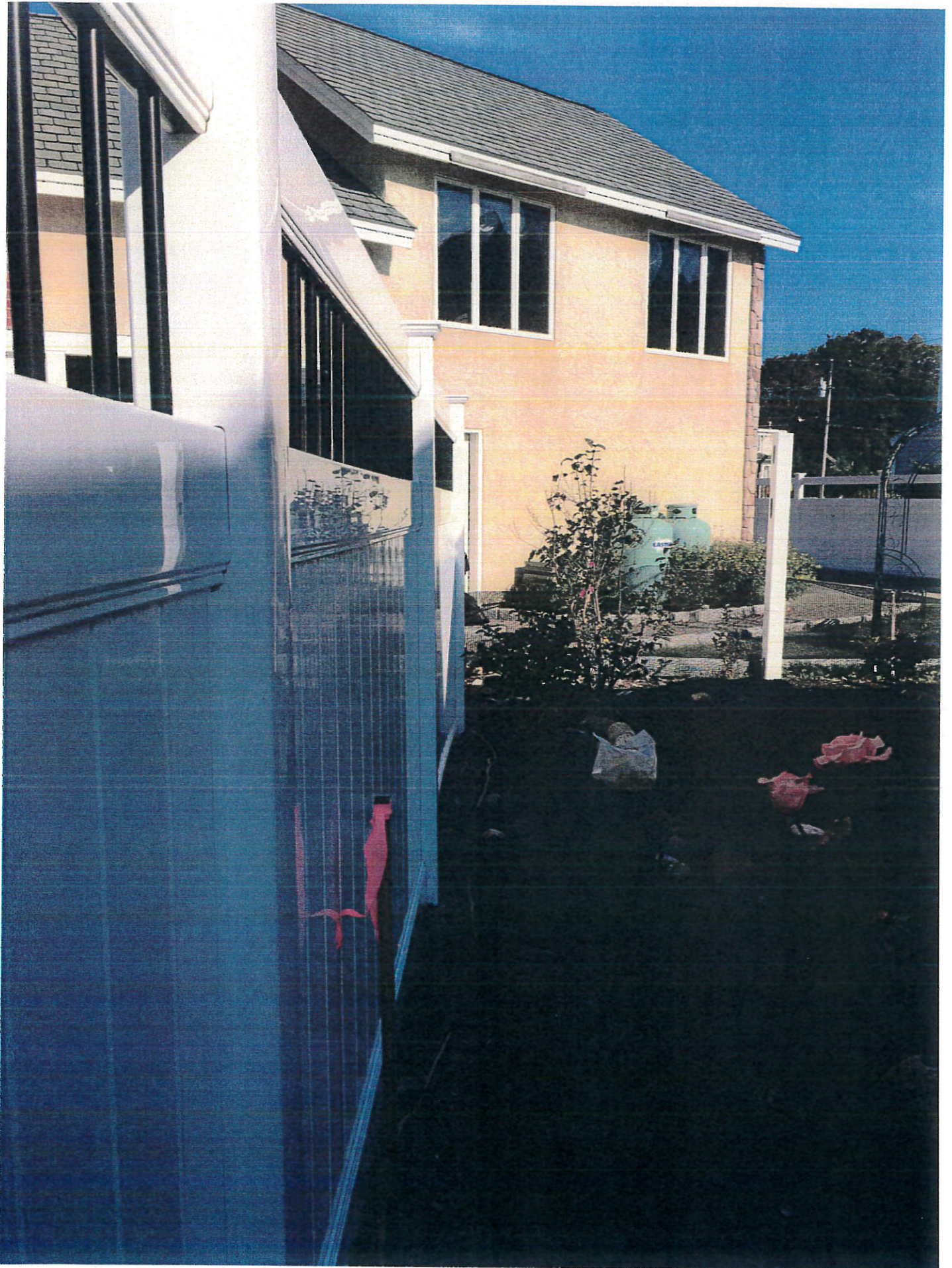
Sincerely,

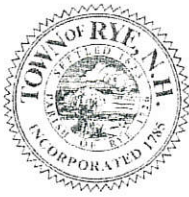
Peter E. Rowell
Building Inspector
Cc: Zoning and Planning Administrator
Civil Works
Veara Associates Land Surveyor

www.town.rye.nh.us









**RYE CONSERVATION COMMISSION
10 CENTRAL ROAD
RYE, NH 03870**

October 4, 2017

RE: 731 Ocean Boulevard, Tax Map 23 Lot 6, Owner: McIntyre Family Trust and Judy Smith

The Rye Conservation Commission (RCC) conducted a site walk at 731 Ocean Boulevard on September 28, 2017 to review the proposed project at that property. The plan calls for the existing garage to be replaced by a new garage that would be 1.5 feet closer to the marsh and 1.5 feet greater encroachment in the wetland buffer. There will be a deck on top of the garage. The roof will slope toward the marsh with a drip edge to allow the water to infiltrate the soil. The driveway will be repaved and a 9 ft. x 9 ft. pad for a hot tub will be added immediately behind the house on existing ledge. The impervious area on the lot will increase from 8.5% to 9.2%. The hot tub pad and driveway repaving are reasonable improvements to the property.

The RCC does not object to the new garage; the old garage is in relatively poor shape and is not very functional as it stands. There was some concern that the new structure will be 1.5 feet closer to the marsh but consultation between the RCC and Christine McIntyre, one of the owners, resulted in a plan to mitigate that impact. The lawn currently extends beyond the property line and the McIntyres have been mowing it almost up to the marsh. The RCC suggested that a 5 foot wide buffer of native plantings be planted along the property line to create a vegetative buffer to help protect the wetland marsh and Mrs. McIntyre agreed. Mrs. McIntyre also agreed to discontinue mowing beyond her property line.

The Rye Conservation Commission recommends approval of the project so long as a 5 foot wide buffer of native plantings is created on the property line and the owners cease mowing beyond their property line. The RCC would like to reserve the right to revisit the property after the plantings have been completed to review the vegetative buffer.

Sincerely,

Francis P. (Mike) Garvan II, Clerk