

**TOWN OF RYE – BOARD OF ADJUSTMENT  
MEETING**

**Wednesday, September 23, 2020  
7:00 p.m. – via ZOOM**

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Rob Patten, Greg Mikolaities and Chris Piela**

***Present on behalf of the Town:* Planning/Zoning Administrator Kimberly Reed**

**I. CALL TO ORDER**

Chair Weathersby called the meeting to order at 7:00 p.m. via Zoom teleconferencing.

Statement by Patricia Weathersby:

As chair of the Rye Zoning Board of Adjustment, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor’s Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: [www.zoom.com](http://www.zoom.com) ID #857-5069-4724 Password: 042691

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the Zoning Board of Adjustment at: [town.rye.nh.us](http://town.rye.nh.us) go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 603-379-0801 or email: Kim Reed at [KReed@town.rye.nh.us](mailto:KReed@town.rye.nh.us).

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance of members:

1. Patricia Weathersby
2. Christopher Piela
3. Gregg Mikolaities
4. Rob Patten
5. Shawn Crapo

*(Each board member confirmed that there were no others present with them in the room.)*

## II. BUSINESS

- Approval of August 26, 2020 meeting minutes

**Motion by Rob Patten to approve the meeting minutes of August 26, 2020 as presented. Seconded by Shawn Crapo.**

**Roll Call Vote: Gregg Mikolaities – Yes; Rob Patten – Yes; Shawn Crapo – Yes; Chris Piela – Yes; Patricia Weathersby – Yes**

**Motion passed**

## III. APPLICATIONS

1. **Jay Mason & Jacqueline Doherty of 77 Tyler Park, Lowell, MA for property owned and located at 4 Washington Road, Tax Map 13, Lot 40** request variances from §190-6.3.B for demolition of a nonconforming structure and replacing it with new; §190-2.4C(2) for a dwelling 6.6' from the left side boundary where 20' is required; from §190-2.4.C(3) for a dwelling 7.5' from the front boundary where 16.8' is required; from §190-3.4.E for dwelling coverage 21.2% where 15% is required; from §190-3.1.H(2)(a)(b) & (g) for building 78.9' from the tidal wetland buffer where 100' is required and for 41.5' from the fresh water buffer where 75' is required and for a septic 90' from the tidal wetland buffer where 100' is required and 81' from the fresh water buffer where 75' is required; and requests waivers from the building code §35-14.B(1)(a)(2) and §35-14(C)(1) for a septic system 4' from ledge where 6' is required; from §35-14B(5) for septic 9' from the left side boundary where 20' is required; from §35-14B(2)(a) and §35-14D(1)(a) for septic system 41.5' from the fresh water buffer where 75' is required; from §35-14D(1)(a) for a septic system 90' from the tidal marsh buffer where 75' is required; and from §35-14F(1) for new construction standard compliance. **Property is in the General Residence, Coastal Overlay District. Case #35-2020.**

**Attorney Tim Phoenix, representing the applicants,** presented to the Board. He noted that the lot at 4 Washington Road is 9,215sf with an existing older home. The lot has a little more than 110' of frontage. The existing year-round cottage is small and antiquated dating back to the 30's. The cottage comes with a footprint of 12% and an overall lot coverage of 19%. The existing home does not meet front or side setbacks, nor does it meet wetland buffer requirements. The existing home is served by a concrete driveway and an antiquated septic system. The septic tank is located in the front yard and the leachfield is in the left side setback and the wetland buffer. (He presented photos on the screen showing the home when the applicants purchased the home versus what it looks like today.)

Attorney Phoenix noted that the applicants have put in a lot of effort to save the existing home. They have replaced the windows, painted the home and updated it as much as they could. Unfortunately, due to the structure's age, flooding in the basement and water seepage over the years, they haven't been able to save it. They have opted to remove the existing structure in favor of a new home. The new home will be to code, and two-stories with three bedrooms. The new home will be lifted up to be entirely flood compliant; however, it will still be under the height limit. The new septic system will be a state-of-the-art advanced pre-treatment system. Advanced Onsite Solutions is certainly much better than the existing system. There will also be a stormwater plan with native plantings. He continued that the Conservation Commission examined the site more than once. On August 26, 2020, the commission issued its opinion letter stating that they do not object to the project, as long as four recommendations are followed. Attorney Phoenix noted that all the recommendations are acceptable to the applicants. The applicants are very much neighborhood, community and environmentally minded. The home has been designed with a flat roof, in part to provide solar panels. The angle of the house has been chosen for that reason as well.

The new home will have a solar roof. They are going to harvest rainwater. There will be an electric heat pump HVAC system. There will be a pervious drive and walkway with parking in a garage under the home. Native plantings and site work mindful of the wetlands will be provided. While the front of the home will be between 7' and 8' from the lot line, there is also an additional 10' from the edge of the property to the traveled portion of the road. (The proposed plans were presented on the screen for review.) Attorney Phoenix pointed out that the new home will be slid over a bit away from the neighbor to the left. The home design falls away from the neighbor even more going towards the back of the house. The home location was chosen, in large measure, to keep it as far away from the wetlands as possible.

**Eric Weinrieb, Altus Engineering**, presented an aerial photo showing the location of the site at the end of Washington Road near Ocean Boulevard. He also pointed out the location of the tidal marsh and the abutting properties. Mr. Weinrieb explained that the proposal is to raze an antiquated, three-bedroom, year-round home and construct a new three-bedroom home, which will be energy efficient and code compliant with a new AOS System. The house is not within the 100-year flood zone, but for climate change and prudent design, all the living space will be on the upper levels. The only thing that will be on the lower level is garage space and storage. He continued there are no wetlands on the property. All the wetlands are off the parcel. The lot is 9,215sf in area, 90' deep and has about 110' of frontage along Washington Road. The building coverage is being increased from 12% to 21.2%, which requires zoning relief. However, the proposed home is compliant with regards to the entire lot coverage, which will be going from 19% to 27.2% where 30% is allowed. (He pointed out the left side of the existing building on the plan.) He noted that the abutting property is actually on the Mason/Doherty parcel. There is an agreement that allows that to be there. Right now, the house is 5' from the property line and is right up against the abutter's driveway. The proposed home will be moved back from the property line and rotated to be in-line with Washington Road. This opens up the space between the two properties, which will create more air and light and improve drainage in that area. By rotating the structure, it moves the house, which will have a larger footprint, closer to the resource area. The intent was to balance the zoning setback with environmental setbacks, while providing open space. On the north side along Washington Road, the proposed home is completely compliant in regards to side yard setback. The side yard setback zoning relief is needed for the side to the east, nearest to the ocean. (He pointed out on the plan the location intended to be a restoration area.) Mr. Weinrieb explained the entire parcel is mostly existing lawn. Along the right side of the property, there is natural vegetation along the property line. The proposal is to enhance the landscaping in that area. He noted that the owners worked with a landscape architect to develop a very strong landscape improvement plan. The manicured lawn portion of the site is being reduced and a stronger vegetative buffer will be created.

Mr. Weinrieb noted that the roof pitches to the left side of the house. By such, there is a drip edge along that side, which will direct the runoff into a swale that runs around the outside of the leachfield area into a depressed area on the parcel. The area is about 3.5" deep and will allow the runoff to infiltrate into the ground. During a higher storm event, the stormwater will be able to overflow into a modest berm in the vegetative buffer area. This will reduce the runoff towards Washington Road and the runoff to the abutter's property. He noted that in all years modeled, up to the 100-year storm, the volume of runoff from the site is being reduced because of the infiltration into the depressed area. He pointed out that there is also a stone drip edge proposed for the left side, which was not modelled for that infiltration area, as it was just modelled as a treatment area. He noted that they used the 15% increase per the AOT Regulations, as a more conservative approach. An advanced treatment system is proposed for the septic system. The effluent goes into the septic tank and then the aeration chamber to a settlement tank. The effluent is then pumped to a small stone and pipe leachfield. The leachfield is approximately 90' from the tidal wetland, where the existing stone and pipe field is about 83' away. The system is being moved further away, but will be sited in the side yard setback.

Mr. Weinrieb stated the Conservation Commission review letter was received on August 26<sup>th</sup>. The applicant has agreed to all the recommendations in the letter. He pointed out that there was one misunderstanding noted in the letter. The commission thought that the propane tank was going to be a raised tank. He explained the tank is going to be an underground tank in a cradle, so it will be anti-float if the area should ever be inundated with water. The mechanicals and generator will be elevated underneath the patio, so it will be above any potential flood in the future. Mr. Weinrieb continued that the proposed driveway and walkway is a permeable surface. A traditional pavement area will be done along Washington Road, in order to keep the permeable surface from being ripped up by town snowplow trucks. He reiterated there are no wetlands on the site. Wetlands will not be impacted. The work is within the existing wetland buffer. (He pointed out the wetlands buffer on the plan.)

Attorney Phoenix noted that the application for DES septic approval has been filed and is pending. The DES Wetlands Permit is also pending. The shoreland permit has been received. The Rye Conservation Commission's letter has been received stating they have no objections, so long as their recommendations are followed, which the applicants are willing to do. Letters of support have been received from Rye residents. Five of those are from residents who are nearby;

- Mary Keenan, 1497 Ocean Blvd.
- Sharon Lohnes, 1493 Ocean Blvd.
- Cynthia, 1481 Ocean Blvd.
- Gerald Clinton, 1535 Ocean Blvd.
- Brendan Sullivan, 1611 Ocean Blvd.

Letters from other Rye residents were received from;

- Peter Akins, 1233 Ocean Blvd.
- Ellen Kazanjian, 2595 Ocean Blvd.
- Philip Nunez, 160 Perkins Rd.
- Joseph Wilson, 25 Cable Rd.

Attorney Phoenix stated that the buffer line runs basically through the center of the site, which leaves a very small building envelope. He noted that the applicants are starting with a house that is in very poor condition, and a septic system that is probably in poorer condition, with no specific attempts to either protect the wetlands or incorporate other environmental benefits. Although the variances are needed, there is no impact to the wetlands because of the drainage plan directing the rainwater, which does not happen today. The AOS system is vastly superior to any other system. He is somewhat puzzled by the letters from neighbors who are in opposition that are concerned about the replacement of an old septic system with a state-of-the-art system.

Attorney Phoenix noted that the list of variances being requested has been submitted to the Board. One variance has been added, which is the catchall §190-6.3(B) because it was inadvertently missed. By and large, the Rye Building Code relief is a slightly different test and makes it look like a fair amount of additional relief. However, it is really the same information; same setbacks, same existing and proposed distances. The relief mirrors the wetland buffer setback relief. One of the Rye Building Code waivers that has been asked for is distance from ledge, which is required at 6'. The engineering plans show 5'. The reason for that is because this is essentially sand soil. When they tried to dig test pits to get down to 6', it kept getting filled in so they could only get to 5'. He does not believe that anyone believes there is any ledge here. However, because that could not be made in an affirmative statement, the relief was requested. Attorney Phoenix reviewed the variance criteria.

- The variances are not contrary to the public interest and the spirit of the ordinance is observed. The test is whether the variances would unduly and to a marked degree conflict with the ordinance such that it violates the ordinances basic zoning objectives. A violation of the

ordinance in of itself is not enough to defeat a variance request. The purposes of the ordinances are to;

- Lessen congestion in the streets - There will be no change.
- Secure safety from fire, panic and other dangers - The new home is going to be vastly superior in terms of code for fire protection. The new septic system is vastly superior. The stormwater treatment protects the wetland better.

All of the purposes are met, as well as promoting health and the general welfare.

- Promoting adequate light and air – The new home will be the same distance from the front lot line, as existing. The proposed home is a little further at its closes point on the left side; however, it falls away to a fairly significant distance. The place where it is the closest is not right next to the neighbor’s house. Adequate light and air are provided.
  - Prevent the overcrowding of land and avoid undue concentration of population – It will remain a single-family home.
  - Facilitate provision of transportation, solid waste, water, sewage, school and recreation facilities – Solid waste is being improved. The property has town water. The other items are not affected.
  - Secure the proper use of natural resources – All of these implementations, as well as the new septic system, plantings and stormwater treatment, are going to improve and help natural resources better than the rundown building that is there.
- Would the variances alter the essential character of the locality? This is a relatively small lot; although, on par with many in the Myrica and Fairhill area. This new home and the variances needed to get it, helps the central character of the locality by replacing a decrepit home and septic system with something that is modern and to code, with vastly better treatment and all the plantings that made the Rye Conservation Commission reasonably happy.
  - Would granting the variances threaten the public health, safety or welfare? These are all improving public health, safety and welfare.
  - Would granting the variances dimmish surrounding property values? The setback relief is the same or better than what is there today. The building coverage is increasing a bit; however, it is more than offset by the fact that there will be a new septic system, stormwater treatment and native plantings to protect the wetlands. Granting the variances and building code needed are not going to diminish the surrounding property values.
  - Are there special conditions that distinguish it from other properties in the area? This lot is 77% within the wetland buffer. The existing home is in the front and left side setback. Those issues alone create special conditions.
  - Yard requirements are for adequate air, light, sight distances, stormwater and to get cars of the road. This is equal or improving all of those and getting cars completely off the road and covered. The air, light and space are increasing overall. The wetland buffers are there to protect the wetland. When this is completed, it will be much more protective of the wetlands than it is today
  - The proposed use is reasonable. It’s a residential use in a residential zone, thus it is reasonable.
  - Substantial justice will be done by granting the variances. He reiterated this is an antiquated home with an unstable foundation that is subject to flooding in the basement with an antient septic system and no protections between the home, septic system and the wetlands. It is going to vastly improve and better protect the wetland than what is there today. Accordingly, the general public is not going to be harmed by the granting of any of these variances or building relief, which is a substantial manifest injustice test. The public will not be harmed but the applicants will be greatly harmed because they would be stuck with what is there today or something that would be much smaller and not in keeping with the general area. The proposed home is not that big compared to many in the area, considering the value of properties in Rye.

Chair Weathersby opened to the Board for questions.

Member Piela asked for clarification in regards to the test pit.

Attorney Phoenix explained that Ambit Engineering did the septic work. He is not sure if it was for test pits or when they were trying to determine if there was ledge, but at 5' the sand kept falling in on itself and they couldn't get any deeper. They are nearly 100% sure there is no ledge; however, because they couldn't state it with 100% accuracy, the variance was requested.

Mr. Weinrieb stated that his company has done a lot of test pits along the coastal area. In that sand condition, they probably could have kept going but the hole would've been half the size of the backyard and it could've gone into the existing leachfield. At some point, it becomes an issue of safety, so they decided not to go any further.

Chair Weathersby asked if the Advanced Onsite Solution system requires a maintenance agreement with the company.

Mr. Weinrieb confirmed, as this is a NH DES requirement.

Chair Weathersby asked if there will be a generator or some sort of battery backup for the septic system pump, in case of a power failure.

Mr. Weinrieb explained that the system does need a pump. However, whether it needed a pump or not, it is an active system that has aeration. A generator is being proposed for the project. (He pointed out the location for the generator on the plan.)

Chair Weathersby asked if the footprint of the existing house is 1106sf.

Attorney Phoenix confirmed.

Chair Weathersby asked the total footprint for the proposed home.

Attorney Phoenix replied 1955sf.

Chair Weathersby asked for clarity in regards to the footprint.

Referring to the plan on the screen, Mr. Weinrieb pointed out the footprint of the proposed building. He also pointed out the two decks and stairs with landing to the decks.

Chair Weathersby asked if the decks are included in the footprint.

Mr. Weinrieb replied it is not in the building coverage, but it is in the lot coverage. The existing building coverage is 12% with a 15% maximum. The proposed building coverage is 21.2%. The lot coverage includes open porches, decks, garages, patios and impervious driveways. He pointed out that the garage is part of the building coverage because there is building above the garage.

Referring to the interior square footage, Chair Weathersby noted there is 1934sf on the first floor. She asked if the second floor is 645sf with most of it being open to the first floor below.

**Jay Mason, applicant and architect**, explained the first floor is a 1934sf footprint and the second floor is 645sf. There is about 250sf on the lower level for the entry and stairs with an unfinished work shop. The total square footage adds up to 2831sf.

Hearing no further questions from the Board, Chair Weathersby opened to the public in favor of the proposal. She noted that a number of letters have been received in favor;

- **Gerald Clinton, 1535 Ocean Blvd.**
- **Brendan Sullivan, 1611 Ocean Blvd**
- **Mary Keenan, 1497 Ocean Blvd**
- **Dawn & Bob Blanchard, 1487 Ocean Blvd**
- **Sharon Lohnes, 1493 Ocean Blvd**
- **Cynthia, 1481 Ocean Blvd**  
*All live in the neighborhood.*
- **Peter Aikens; Joe Wilson; Phil Nunez; Allen Kazanjian** – *who live further and probably do not have standing.*

Hearing no public comments in favor, Chair Weathersby opened to the public who would like to speak in opposition. She first noted that letters against the project have been received from;

- **Sheila White & Don Sellers, 1515 Ocean Blvd**
- **Earl Sheesley & Melody Mueller, 22 Washington Rd**
- **Michael & Patricia Anderson, 10 Washington Rd**
- **Lucille Braun, Ainsley Braun & Fabio Mnuchin, 1505 Ocean Blvd**
- **Brad & Kristen Fulkerson, 25 Washington Rd**

**Ainsley Braun** stated that her family has lived at 1505 Ocean Boulevard for 20 years, which abuts the property in question. Building anything beyond the current footprint of what is existing on the property is unacceptable and against the spirit of the ordinances in place. This new building would be drastically infringing on the wildlife and marsh systems. Staying on the current footprint is the more rationale option. (She presented a PowerPoint presentation on the screen which addressed her family's concerns.) She noted that the existing structure covers about 12% of the lot. The new proposal is asking for a 21.6% lot coverage, which is 41.3% above Rye lot allowances and nearly double the current footprint. She highlighted how much the current property infringes on the wetland setbacks compared to the new property. More than half of the new house will infringe on the marshes and freshwater pond, which is on a small portion of that lot. She noted that there is very little acceptable building space for the lot. (She pointed out in her presentation the setbacks, wetland area and the buildable area on the lot.) She stated that she has submitted a documentation showing the variation percentages that have been requested by the applicant. They are requesting an overall average variation from many ordinances and building codes by about 41.3%. Some requests are more egregious than others. Before the current owners, there were many times the sale of the current house fell apart because of lack of buildability on the lot. This is a flaw that was known from the start. Rye is a small town. It seems the owners took this as a sign that they would be able to push through any building that they wanted. She thinks it is absolutely irresponsible to approve the build of this plan.

**Lucy Braun, 1505 Ocean Blvd**, stated that she has lived next door to this project for about 20 years. Attorney Phoenix's presentation tried to downplay the immensity of this project. She continued that according to town records, the "antiquated" septic was replaced in April of 2008. It is not quite as "antiquated" as the owners would have one think. The current living space in the current house is 1003sf. The front portion if the house used to be a screened in porch that now has windows; however, it is not actually living space. The owners are talking about moving from a footprint of 1003sf up to a base footprint of 1955sf. In looking at the relief being requested, on the left-hand side, what is required is 20'

and they are proposing 6.6'. This is 67% short of what the town requirements are. She pointed out there is also a 3' easement on the property that she has access to. In the front yard, they are asking for 7.5' where 16.8' is required, which is 55% short. These are not small shortages. These are massive shortages. She commented that this property is very close to the front. Whenever there is an oil delivery, the truck has to park in her driveway. The existing is 8' from the front and they want to go 7.5'. Is the oil tank truck going to park on Washington Road? There is about 12" from the white line to the end of pavement on Washington Road. Therein lies a problem, especially for a very, busy road like Washington Road. In talking about the tidal, they are 21% short and they are 45% short on the freshwater. However, the "freshwater" pond is actually tidal, not fresh. In thinking of it as a tidal pond, it is 140% short. She noted that the septic system should have a 20' setback from her property, but it is only going to have a 9' setback. The septic system is only achieved by being in the setback on the left side.

Lucy Braun stated that she met the current owners when they bought the house five years ago. In the interim period, the owners have VRBO'd this house daily, on weekends and on a weekly basis for the last five years during the summer and rented it to other tenants in the winter. The renters have had multiple parties in this house. There have been parking issues galore. The current 1000sf house is advertised as 1300sf, sleeping seven people with an outdoor shower. This is going to be a heavily used property based on how it's been used for the last five years. In regards to lessening congestion on the streets, she does not see how they are going to park all the cars. Sometimes cars park across the street, as there are multiple guests. In regards to safety, security from fire panic and other dangers, Ms. Braun reiterated the oil delivery truck has to park on her property just to fill them up. She asked where they are going to put trucks for oil deliveries, other deliveries and guests. Referring to promoting adequate light and air, Ms. Braun stated it can be seen that they really have not moved from her property. Also, a deck is going to be added right next to her bedroom windows. She commented this is one of three decks that are being added. That is not to mention that the roof is flat. She asked if this is because they intend to put a fourth deck up there, so guests can party up there. In terms of preventing overcrowding of land, she pointed out that this is 41% over Rye requirements. She cannot see how it can be said this is a small improvement, as it is massive. Approximately 71% of the lot is in the wetlands, but they knew that when they bought the property and yet, they want to build on 15% more of it. This is a huge building compared to other buildings in the area. All the buildings on Ocean Blvd are much smaller. She would say this is a threat to public health and safety. One of the tenants rented it for a wedding. There were between 50 and 75 people there during this period. This type of enlargement to the building is unfair to the neighbors. It will grossly devalue her property and the Andersons' property, due to the magnitude. If they built on the current footprint, they would not be heading into the wetlands like they are trying to do. This is not a modest house. It is a very large house on a small lot, extraordinarily close to her home. The house that they are proposing will be far larger than what is allowed in Rye and this was known when they bought the house.

Ms. Braun noted that she and Mrs. Anderson were not informed of any of the four Conservation Commission's visit to the site. Each time the commission visited the site, the owner had a different plan. She thinks the Conservation Commission was confused as to where the house was actually going to be. In regards to denial of the variances creating an unnecessary hardship, she commented that cannot be said because they can build on the current footprint. This is not a small change being requested. This is ample hardship for both her and Mrs. Anderson to see a building go up of this size.

**Brad Fulkerson, 25 Washington Road,** stated that he thinks the Rye Zoning Board has an obligation to protect the Town of Rye, its citizens, wetlands and environment. The Board should really consider the environmental impact on the surrounding property values by putting in a very large house that does not fit with the surrounding properties. He has spoken to a number of neighbors. There is a general feeling that this would adversely affect the surrounding property values. When asking for a variance, it should really be addressing the hardship. When someone buys a property knowing what the regulations and setbacks

are and then ask for over ten variances, it is not a hardship. It is just poor planning. He asks that the Rye Zoning Board really take that into consideration and uphold the regulations and setbacks that are put in place for a reason.

**Michael Anderson, 10 Washington Road,** noted that ledge runs the whole spine of Washington Road probably a mile inland. He continued that he and his wife are caretakers of the pond in front of their house. It is a very fragile eco-system. He is concerned about the health of the pond. They have witnessed otters, muskrats, water fowl, fish and turtles using this wild area. The pond is alive and well. If the magnitude of the construction were to be a reality next door, it's a fact and it's been proven that it would be detrimental to the wetlands. That is why there are buffers at a certain number of feet. The further away the better. Being closer is going to cause damage. There will be no oxygen in the pond and there will be no breeding. Not only will there be no oxygen, but it will also become toxic. This is a fragile existing eco-system, which he takes a lot of pride in. Mr. Anderson noted that the pond is tidal. He asks that before any decisions are made, the Board takes a few minutes to visit his site and witness this natural beauty. The wrong decision will leave a permanent, irreversible eyesore. It is inconceivable the magnitude of the development. He commented that he is very concerned that people cannot take a site walk to view the pond.

Chair Weathersby explained the Board of Adjustment does not do a site walk like the Rye Conservation Commission does; however, all board members go by to look at the property and the neighborhood. She commented that she did that and is very familiar with the pond and the neighborhood.

**Padi Anderson, 10 Washington Road,** stated that the NH Natural Heritage Bureau records the pond as a natural community and that was not addressed anywhere. This saddens her, as she was on the Rye Conservation Commission years ago. She thinks there is a gap in communication for hearings, such as this, and the Rye Conservation Commission. Her understanding is that they are not obligated to notify anyone. In the Town process, there should be a way to notify abutters in these situations.

Hearing no further comments from the public in opposition, Chair Weathersby opened to the Rye Conservation Commission.

**Mike Garvan, Conservation Commission Member,** stated that the RCC visited the site numerous times because Mr. Mason did change the plans. The commission was not confused. Because the plans changed so frequently, the RCC had Mr. Mason's engineer lay tape out showing the location for the new structure. The commission knew what the layout would be. He noted that it is not within the Conservation Commission's purview to comment on the size or the square footage. The commission just looks at the impact on the environment. The RCC felt that the improvements made in terms of drainage, a better septic and a vastly better vegetative buffer, more than offset any impact. It was felt that it would be a better situation. They are treating stormwater better. They are treating flood water and effluent better. These were the guiding principles for the RCC. The commission does know that the house extends further into the buffer. The commission also recognizes both the sensitivity and small size of the lot. RCC felt that because of the improvements to water treatment, many of the negative environmental factors would be mitigated. Mr. Garvan apologized if the abutters were not able to attend the meetings. There were three meetings held onsite and there was a meeting where the project was presented to the commission. Two weeks after the abutters received their notice from the ZBA, RCC had another meeting and they would have welcomed anyone to speak or present more information. Mr. Garvan stated that he visited the Anderson property when they rebuilt their home in 2012. It is a gorgeous property and a lovely pond, which he walks by frequently. As a commission, it was felt that environmentally this proposal would be an improvement.

Hearing no further comments from the public, Chair Weathersby asked Attorney Phoenix to address some of the comments.

Attorney Phoenix stated that he believes Jay and Jacqueline would strenuously agree with a lot of the comments that have been made about concerns for the environment. All the improvements that would be made are better protective of the wildlife and the pond; including, the solar panels for less electric use. He pointed out there is not going to be oil. There will be a propane tank. There is room for a truck to pull off between the edge of the road and the property line. He commented that the neighbors' objections don't seem to recognize or acknowledge all the physical and environmental improvements that Jay and Jacqueline intend to implement. As far as rentals, the owners have rented it for several weeks in the summer; however, they are trying to build this house so they can move into it as their forever home, so the rentals would stop. He commented that there has never been a wedding held there. That must've been with a prior owner. Raising the house addresses flooding issues and better protects the wetland than existing conditions.

In regards to the test pit, Mr. Weinrieb explained that the actual test pit was 6' deep, but it is only 5' deep from the bed bottom. The way the footprint and the way the interior of the house is designed, there is absolutely no expected use of the flat portion of the roof. A professional wetland scientist mapped the wetlands on the property. He can certify that it is not a tidal pond. It may flood on occasion, but it is not a tidal pond. There will be no more oil deliveries. The heat will be with an electric heat pump because of the solar gain. The propane is primarily for the generator. As far as the front setback, it shows that it is 8' to the wall. However, this is actually at the same distance as it is today. It is 7.5' to the drip line, so it is not going any closer at the closest point. Mr. Weinrieb stated that more space is being created. The actual building envelope is small. The house is being rotated to create more space, so there is adequate light and air. As far as addressing the natural community, that was actually before the Conservation Commission when the wetlands application was filed. That is included in the application process and is reviewed by DES. From DES's perspective and from an environmental perspective, this work is all in disturbed areas. He pointed out that lawn area is being restored to make it into buffer.

Member Mikolaities asked the status of the septic system approval. He also asked how many bedrooms the septic is designed for.

Mr. Weinrieb replied there are three bedrooms for the existing system and three bedrooms for the proposed. Because of the size, there was no opportunity to expand on lot loading. DES cannot approve the system until it gets zoning relief and the wetlands permit. He noted that it already has the shoreland permit.

Vice-Chair Crapo stated that in Attorney Phoenix's presentation there was representation on the lot line and the easement. There seemed to be another in Ms. Braun's. He commented that the back of the Braun property looks like it is within the setback. He is not sure if that was an addition or not. There seems to be a dispute between whether it is one person's driveway that someone is on or one person's property that the driveway is on. He asked for clarification on the easement.

Ms. Braun stated that she has lived on her property for twenty years. The footprint that is there right now is the footprint that was there when the property was purchased. Her family has not made any changes to the footprint. There was a dispute over the easement on the driveway with the prior owners. In looking at the plans, there is a little 3' jog, which has an easement on it. Jay and Jacqueline own that little 3' jog. That 3' jog is actually on their property, she has an easement to this, which goes all the way down to her fence line and then it jogs back in to her property.

Vice-Chair Crapo clarified the driveway is actually on their property and there is an easement to use it. The applicant's stairs still actually fall on their property and they are proposing to move back.

Ms. Braun replied they are proposing to change the angle of their property. The front corner of their property would not be moving back. Also, they are proposing a deck that would be right outside a bedroom window on her property.

Mr. Weinrieb stated that everyone acknowledges that the driveway for the Braun property is on the Mason's property. He reminded everyone that the impervious was included in the lot computation.

Ms. Braun noted that the easement is about 3'x 30'.

Chair Weathersby noted that the proposed house is on pilings and she is hearing that it is all sand. She asked if they know how far down they are going to have to go to get to a solid subsurface and what the impact of the construction process will be.

Mr. Weinrieb stated he does not believe any geo-technical work has been done. However, the fact that it is sand, he presumes that either traditional footing or a spread footing would be adequate to support a single-family residence. He explained there will be a traditional frost wall running around the house with footings and a foundation wall coming up from there below the frost line.

Chair Weathersby asked for further explanation on the drainage during a heavy rain event.

Vice-Chair Crapo asked if the house must move back in order for the drainage to work. Is it required to have some of the side line open in order for this drainage to work? Could there be a modification of what is there and still give drainage improvements?

Answering Vice-Chair Crapo's question first, Mr. Weinrieb stated it would be very difficult maintaining the bump-out for the existing home, for the entryway on the side, with the building being 5' from the property line and right up against the driveway to get runoff to run away from the Braun property. Referring to the grading plan, he pointed out the section that drains towards the Braun property. Mr. Weinrieb stated that if the building was rotated closer the Braun property, it is just going to be tighter and more pronounced to get the runoff to run in that direction. He explained that in between the berms, on the other side of the property, the elevation is 10.5. The low point near the patio is at 10.2. There is almost 4' of ponding area in the lawn that allows the runoff to infiltrate. In higher storms it overflows in that one location. He noted there is a higher point of 10.9 between the berm and the house to make sure the water does not go around the other side, so the location of the discharge is being controlled.

Chair Weathersby stated that in looking at the contours it appears that if it does go through that low point it will head towards the pond on the Anderson property.

Mr. Weinrieb confirmed. He explained the volume is decreased in that direction. There is a slight increase in a couple of the storms of peak rate of runoff; however, the total volume is decreased. The reason this was done is because there will be less going to Washington Road and less going to the Braun property. The brunt of the water is being taken off the building and running it around the outside of the leachfield into that low area and over the berm in higher storm events.

Member Mikolaities asked for review of the building elevations, in order to understand the mass and impact to abutters.

The elevation plans were presented on the screen for review. Mr. Mason explained there will be a raised foundation that will put the building elevation at 9' above grade. The house is being raised up because they are sensitive about the land and concerned about the wetlands and what happens during a storm event. It will be a stoneface foundation wall that will have pass throughs at the bottom. During flood times, there will be water passing through the foundation wall. The elevation plans show the slope of the solar panel roof to the left, with the Braun property on the left and the Anderson property to the right. There is also a flat roof, which is almost 28' and will stay just as it is. There are some windows on the second floor that look out towards the ocean above the solar roof.

Mr. Mason continued that in looking at the south elevation, large openings have been made in the foundation wall to promote plant growth. The intent is to have a green wall on this side of the building. The living area is at the 9' level and there is a deck on the right-hand side, which is not a large deck. (He pointed out the solar panels and the windows that look out over the panels towards the ocean.) He noted that on the left side there is another deck above grade, which is where the generator and heat pump will be located raised up off the ground. Referring to the west elevation, Mr. Mason stated that this sheet shows circular stairs that go up to the deck, as well as another smaller deck above that would allow for good ocean views. There is a double door at the top of the stairs that opens to the bedrooms. There are two bedrooms and a bath on that 645sf second floor space. Below that on the first floor are two offices and a master bedroom suite to the far right. The entrance side of the house has a pervious paved walk that leads up the stairs to the door. The pervious pathway and additional plants will be provided, as worked out with the Rye Conservation Commission. He feels very confident that they are being very considerate of the environment and the fragile eco-system. As a LEED Certified Architect, he understands and is very involved in that type of design work. He pointed out this side is on the north side, so there are very few windows. (He pointed out the entry and the deck to the right.)

Hearing no further questions at this time from the Board, Chair Weathersby closed the public hearing at 9:14 p.m.

Member Patten stated this is a tough one with so much opposition from the neighbors. He is very sensitive to how neighbors perceive the development of properties right next door to them. Given the size of the structure on the property, it makes it sort of difficult. On the other hand, he thinks they have gone through great lengths to try to mitigate any harm that might be done to the pond. He noted that he took a long look through the buffer and observed the pond when he was at the site. Board members do take into consideration the surroundings more than many might know. He commented that he is still weighing both sides and would like to hear other comments.

Member Piela commented he is looking at the existing structure overlaid onto the proposed structure. There is very little that can be done on this property without needing a host of variances. He is trying to weigh the front and side yard setbacks versus the wetland setbacks. It seems like one can't be done without making the other worse. He commented that both cannot be satisfied.

Chair Weathersby commented it could be made a little smaller.

Member Mikolaities stated he is struggling with this because of the abutters. When he heard the presentation; the building is going to be centered more, three-bedrooms are existing and are proposed, the lot coverage is under 30%, there is pretty extensive buffering along the pond, floodproofing and upgraded septic, those are all positives. Then the abutters started speaking and he read all the letters. He noted that he did look at the site a number of times. He is familiar with the building and is familiar with 'Rye on the Rocks'. This is a struggle for him. He sees a lot of good and he also understands the abutters. In looking at the buildable area, variances are going to be needed. Some relief is going to be needed no matter what is done. He commented that the abutters did a good job and made some good points.

Vice-Chair Crapo stated that if the house was made smaller, it does not seem that the drainage analysis or those items would change, as far as the impact to the land, but it might need less dimensional relief. The septic needs to be where it is. He does not think this is being driven by the size of the house, as it is more the land. By moving it and rerouting the water, he does not think a smaller structure is going to affect that. The abutter's presentation misled with the 40% over lot coverage, because yes, it is over the 15% but it is still under the 30%. That number is kind of a skewed number. Here there is a situation where the current house is right on the lot line with easements and people entering over other people's property. The proposal kind of solves some of those issues. He commented that the abutters who said they are across the street are actually up the street. Vice-Chair Crapo stated that he was present for the presentation when the Andersons rebuilt their home. They took great pains in that design to protect the pond and there was conversation about that at that time also. He thinks this balances the effect. The Conservation Commission has no qualms about speaking up when they feel something is egregious or a risk. The RCC has made some requests and the applicant is willing to meet them. He is more in favor than against for those reasons. He does not see how the building can be updated and modernized anymore without requiring extensive relief. It has already been renovated once, as some of the photos show. Not much more can be done without getting into the relief factors the Board is looking at.

Chair Weathersby stated she agrees that redevelopment of this property is going to need wetland relief and setback relief. She does not have any concerns about the septic system. It is a state-of-the-art system and is in a location that seems to be suitable. She loves the idea of the house and its energy efficiencies. She finds the house to be very interesting and she appreciates a number of the elements of the house. However, she has serious concerns about the size of the structure and the impacts of a house being that size would have on the lot. The lot is 9,215sf. It is a pretty small lot and on that is going to be a house 2,831 interior square feet, plus the decks and open space which could be converted. The second floor could have a lot more living space. She understands why they would want that space, but she does not think this is the lot for that house. She thinks this lot of 9,215sf calls out for something smaller. If it was smaller there would be a greater infiltration area for the runoff. She is concerned about extra runoff going towards the Anderson property and the pond during storm events. Yes, it might be filtered, but it's not a great spot for that to be going. As she looked at everything and read the information, she came down to it's a great house, but it is probably the wrong lot for the house, in her opinion.

Chair Weathersby suggested that the Board discuss possible conditions, if this was to be approved. She pointed out that they have the Rye Conservation Commission's four conditions. She was thinking a maintenance contract for the septic, but that is probably required. She asked the Board if they have any other conditions that they would like to see.

Referring to the deck that is on the eastern corner of the lot, Member Piela pointed out it is inside the footprint of the existing structure, but certainly outside the setback requirements. He heard from the abutter that the deck is in an area that is close to them. He does not know if this is a necessary structure. In looking at it, that one corner is pretty close to the road and close to the abutter's property. He knows it is a point of contention. He is not sure if it is a necessary 160sf portion of the structure. He commented that even if the 160sf is deleted, it doesn't mitigate some of the other points that were brought up.

Vice-Chair Crapo noted that with having 160sf, 10x16, deck with a table and chairs on it, there is barely enough room to pull the chairs out to sit in.

Member Piela stated that it does not look like that big of a deck. It is located next to the garage with a storage area under. It's not a component that is going to make any meaningful difference to anyone's opinion about the structure size. He was just saying it was one thing that they could potentially look at because it is all non-conforming; however, it is a small entity and hardly worth discussing.

Chair Weathersby explained that what is before the Board is this proposal with the deck. The Board does not usually get into re-engineering or redrawing a proposal. If people find the deck to be egregious, that should be put on the record. If the proposal gets voted down, it might be something the applicant would want to look at for the future.

Member Mikolaities stated that at 21% with the 1,955sf, it's about a 4,600sf building. If it goes to 15%, which is allowed in that zone, it would be roughly a 1,382sf footprint; however, it would still be a 3,400sf building. He added up the three floors; 645sf for the top floor, 1,934sf for the middle and 1,934sf for the basement. Still meeting the 15% allowable dwelling coverage, there would still be some relief needed for setbacks, but it would meet the code and it would still be a 3,400sf building, which is a good size.

Vice-Chair Crapo stated this sounds like 3,400sf on the ground, but this is volume.

Member Mikolaities agreed. He commented he has not made up his mind, as they are still deliberating.

Chair Weathersby pointed out that the first floor is parking and unfinished area. It is not living area. The second floor does not have a lot of square footage because they chose to have the open area to below. The volume of the building is fairly significant. She continued that if it were not so close to the road and so close to the Braun property, she might feel differently. It's a good size structure that is very close and the setbacks are short.

Vice-Chair Crapo pointed out they're increasing the distance from the Braun property. The Braun property is designed such that it hardly looks out at this. That end of the Braun property barely has any windows and is just access doors. This is a unique design, as it was brought up to 9' to have that floodable space underneath, so it looks taller.

In regards to the size of the footprint, Member Patten commented that if the footprint was smaller, it would decrease the impacts on the setbacks that are needed. He asked if the home were redesigned to have a smaller footprint, would that result in them needing to use the interior space as living space; therefore, the parking would have to be outside? He asked if this would be a more desirable outcome than having the parking inside and underneath. Or would it be less desirable? Would that be a less desirable situation than what is presented today?

Chair Weathersby stated that would be very difficult to say not knowing what would be proposed, where it would be located and what the size of the home would be. She also thinks the applicant has expressed an interest in making sure this is well above flooding potential. They have sought to raise the house up and the most logical spot to park would be under.

Chair Crapo commented he does not struggle with the size as much as other board members do. In other designs, some of the areas that are decks in the proposal, people might be able to fill in with more interior space or volume. In some respects, the decks here add to the square footage, but a different design that might use the whole second floor might have more interior volume. If a different proposal was a smaller footprint, he is guessing that the abutters and the Board would want it farther from the wetlands. That is still going to push it towards Braun and Washington Road. He does not know if another proposal is going to be looking for less relief on those sides and not be chastised for being centered and more towards the wetlands.

Chair Weathersby stated that she would rather see it pushed back a bit more towards the wetland, with the plantings and stormwater management, so it would not be so close to the road and the Braun property. There are ways to protect the wetland and they would still be 70' or so from the tidal wetland. She

reiterated that for conditions they just had the RCC conditions. She asked if anyone has any conditions they would like to add.

There was discussion on whether to vote on the variances as a package or to separate the variance and building code relief being requested.

Chair Weathersby called for a vote on the variances requested for the side and front setbacks and dwelling coverage (2.4.C(2); 2.4.C(3); and 3.4.E):

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

**3) Substantial justice is done?**

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No

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?**

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

**7) The purposed use is a reasonable one?**

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

Chair Weathersby called for a vote on variances requested for the wetland buffers (3.1.H(2)(a)(b) & (g):

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

**3) Substantial justice is done?**

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

**7) The purposed use is a reasonable one?**

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes

Chris Piela - No  
Patricia Weathersby - No

Chair Weathersby called for a vote on the setbacks to the left boundary for the septic:

**1) Granting the variance is not contrary to the public interest?**

Gregg Mikolaities - Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

**3) Substantial justice is done?**

Gregg Mikolaities - Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities – Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

**7) The purposed use is a reasonable one?**

Gregg Mikolaities – Yes  
Rob Patten - Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes  
Rob Patten – Yes  
Shawn Crapo - Yes  
Chris Piela - Yes  
Patricia Weathersby – Yes

Chair Weathersby called for a vote on building code waivers requested for the septic:

**• Would enforcement of those provisions do manifest injustice and be contrary to the spirit and the purpose of the building code and the public interest?**

Gregg Mikolaities – Yes  
Rob Patten – Yes  
Shawn Crapo - Yes  
Chris Piela – Yes

**Chair Weathersby called for a vote for variance requested to 6.3.B for tear down and rebuild, in relation to the plans presented at this meeting:**

**1) Granting the variance is not contrary to the public interest?**

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela – No  
Patricia Weathersby - No

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

Gregg Mikolaities – No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby – No

**3) Substantial justice is done?**

Gregg Mikolaities - No  
Rob Patten – No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby – No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela – No  
Patricia Weathersby – No

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

Gregg Mikolaities - No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - Yes

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

Gregg Mikolaities – No  
Rob Patten - No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby - No

**7) The purposed use is a reasonable one?**

Gregg Mikolaities – No  
Rob Patten - No  
Shawn Crapo - Yes

Chris Piela - No  
Patricia Weathersby – No

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

Gregg Mikolaities - No  
Rob Patten – No  
Shawn Crapo - Yes  
Chris Piela - No  
Patricia Weathersby – No

**Motion by Shawn Crapo to grant the variances and building code relief related the septic as requested and presented, with the conditions outlined in the Conservation Commission’s letter. Seconded by Gregg Mikolaities.**

**Roll Call Vote: Gregg Mikolaities – Yes; Rob Patten – Yes; Shawn Crapo – Yes; Chris Piela – Yes; Patricia Weathersby – Yes**

**Motion passed.**

**Motion by Patricia Weathersby to deny the variances for the side yard setback, front yard setback, dwelling coverage, buffer restrictions, relating to the building and 6.3.B concerning the deconstruction. Seconded by Gregg Mikolaities.**

**Roll Call Vote: Gregg Mikolaities – Yes; Rob Patten – Yes; Shawn Crapo – No; Chris Piela – Yes; Patricia Weathersby – Yes**

**Motion to deny passed.**

**Motion by Shawn Crapo to continue the application for 24 Glendale Road to the October 7, 2020 meeting. Seconded by Gregg Mikolaities.**

**Roll Call Vote: Gregg Mikolaities – Yes; Rob Patten – Yes; Shawn Crapo – Yes; Chris Piela – Yes; Patricia Weathersby – Yes**

**Motion passed.**

- 2. Lawrence L. Tierney & Mary R. Tierney Revocable Trusts, Lawrence & Mary Tierney, Trustees of 72 Mirona Road, Suite 4, Portsmouth NH for property owned and located 1 & 3 Cable Rd, Tax Map 5.3, Lots 43 and 44 request variances from §190-2.3.C(1)(3) for a house 3.9’ from the rear boundary where 23’ is required, for a house 16.2’ from the side boundary where 20’ is required and a porch 23.6’ from the front boundary where 40’ is required; from §190-2.3.C(5) & 3.4.D for dwelling coverage of 21.1% where 15% is required and lot coverage of 26.4% where 15% is required; from §190-3.4.D for a ridge height of 28.2’ and cupola height of 33.29’ where 30’ is required (for Freeboard) and from §190-6.3.A and §190-6.3B for replacing a non-conforming structure. **Property is in the Single Residence, Coastal Overlay District and SFHA, Zone AO+1. Case #36-2020.****

**Attorney Phoenix, representing the applicants,** presented to the Board. He explained this property was before the Board in 2019 and essentially received the same relief that is being requested today. That Board consisted of Shawn Crapo, Rob Patten, Charlie Hoyt, Burt Dibble and Patricia Weathersby. The Tierneys own two lots; Tax Map 43 and 44. They have owned 43 since 1997, which is a little over 9,000sf and contains a five-bedroom, two-story home. In 2018, they acquired 44, which is a 5,928sf lot with no frontage and contains a small one-bedroom cottage and shed. The intent is to merge the two lots

into a 14,970sf lot with about 167' of frontage. When the project was before the Board in 2019, the Tierneys received approval to raze the one-bedroom cottage and the shed and construct a garage addition in essentially the same location with living space over and connecting it to the main house. The entire house was to be lifted for flood compliance. At the time, the relief that was needed is essentially being asked for today, but it was under the old section numbers. He noted that to help with that the old section numbers, along with the new section numbers, he included a chart in the packets for the Board. In 2019, the side of the house was going to be altered to match the new construction to provide a seamless connection to the garage addition with rooms over it. He noted that some of the 2019 information has been included in the Board's packets; including, the notice, agenda, notice of decision and the minutes of the meeting, as well as the plan set. After the 2019 variances were granted, they found that the project had a number of architectural and construction related challenges related to raising the main home to comply for flood compliance. After a lot of discussion, the Tierneys decided to proceed before the Board again with a situation where the main house is taken down to the foundation with a new home, of really the same dimensions, built on the foundation with the same garage next to it and connected to the main house. (The 2020 proposed plan was presented on the screen for review. He pointed out the plan that was approved in 2019 versus what is being proposed today.) He noted that the architect outlined what was approved in 2019 onto the new plan. The new proposal is a little bit shorter and either the same or a little less in width in depth. Overall, the new proposal either matches or is a bit better than the relief that was granted in 2019.

Attorney Phoenix stated that when this went to the building department, he was of the opinion that because what is being built is the same or a little better than what was approved, it would comply under the tear down and rebuild and it wouldn't have to come for variances. However, the building inspector disagreed and felt that in a sense, it was starting over with a new foundation and that it should come back to the Board. He noted that he provided a chart showing the variances required, what is existing, what was granted in 2019 and what is being proposed for 2020. He noted that back in 2019, this Board granted overall coverage of 48.1% where 48.7% existed on the overall lots together. There was a mistake made, not caught by the building inspector, the Board or himself. He pointed out that relief was requested for 48.1% where 30% is permitted. The 30% is permitted in the Coastal Overlay, but the section that says "where regulations conflict, the more restrictive applies". The regular regulation in this zone is 15% overall. Once that was discovered, the plan had to come back to the Board anyways. He continued that the pervious coverage has been increased significantly by adding a lot more permeable pavers to the site. On the numbers, last time it was at 48.7% and got 48.1%, thinking that 30% was permitted, but only 15% was permitted. Now the request is for lot coverage of 26.4% where 15% is permitted. The numbers are better now in terms of the coverage. He hopes the Board will agree that was a proper way to deal with this situation.

**Alex Ross, Ross Engineering**, stated that the wetland adjacent to the property is the ocean. Typically, a site slopes towards the wetlands, but this is actually sloping the other way. The stormwater management plan has a series of infiltration trenches, as well as a large pervious paver area, which mitigates all the runoff and really makes a significant improvement. He noted that all of this has been reviewed with Eben Lewis from NH DES. The necessary permitting has already been received.

Referring to the minutes of the 2019 meeting, Vice-Chair Crapo stated that the notice in the minutes says "a garage 3.6' from the rear boundary"; however, in the minutes when the Board was polled it says "left boundary".

Attorney Monica Keiser clarified it was the rear.

Chair Weathersby pointed out the notice of decision is correct.

Attorney Phoenix commented that this is a little odd because the frontage is the side of the building, the way it is oriented on the lot.

Vice-Chair Crapo stated he voted “no” to this before because of it being tight to that side. He asked why there is still no attempt being made to be farther away from the neighbor.

Attorney Phoenix pointed out that the neighbor sent in a letter of support, so they are okay with it. The theory was that approval was received and they were coming back in to ask for essentially the same thing that approval was received for.

Chair Weathersby stated that she also voted “no” last time because she felt that it was taking the two existing structures and filling in the middle. The whole thing was premised on keeping the main house. She objected because if the little cottage was being torn down, why couldn’t it be “snug” in a little bit. Here, everything is being completely wiped off and they are starting fresh. She commented that it is a lovely home; but again, there is the big three-car garage on the side of the house with a storage space above. She knows that it is an expensive piece of property and deserves an expensive looking house; however, she is questioning why a little more effort wasn’t brought to pulling it away from the rear boundary line a bit.

Attorney Phoenix stated that someone other than the Keenes (abutters) may own that property in the future, the Keenes know that but they are fine with the proposal, as should someone who comes along and buys the property later. Approval was received for the top last time. If the proposal stays within that, or a tiny bit smaller, it should also be approvable.

Vice-Chair Crapo stated that approval or not from the neighbor, it’s a tear down now and rebuild, which could be more conforming. He asked where the hardship would be for that side. He commented that he kind of went with the package as a hardship, when it was using existing structures. He is having even more trouble now because it is a tear down and it could be reconfigured.

Attorney Keiser pointed out that they are still using the same foundation footprint of the main house.

Attorney Phoenix noted that the building on the other site that is being taken down is closer yet to the lot line than what is being built.

Chair Weathersby asked if they are using the existing footprint or the existing foundation.

Attorney Phoenix stated the existing foundation is essentially the existing footprint of the house, after the decks are taken off. They are not using the existing footprint of the small cottage that is being removed. That is coming down all together.

Chair Weathersby asked if Attorney Keiser said the existing foundation is being used.

Attorney Keiser replied that she is not clear on that entirely because that is a technical issue.

Mr. Ross explained the plan is to utilize what they can of the existing foundation. To comply with the flood regulations, the house will have to be raised up, but the plan is to use what they can of that foundation, which should be a significant amount.

Vice-Chair Crapo stated that in this argument, it is being said that the foundation is still fundamentally sound to use. He asked what it was that made the prior approval not able to build. It was said in the

beginning that raising the structure was not feasible. He would think that would be mainly due to the foundation.

Attorney Keiser commented that it is not clear as to why the building inspector viewed it as being different enough that it had to come back. She noted that the building permit packet was submitted and the building inspector asked for the foundation plans. He had all that information when he made the decision that the plan had to come back to the Board.

**Tyler Tierney, applicant**, explained that when the company came in to jack up the whole structure, they said that because the house was built so many years ago and the fact that it is brick, they could not guarantee that the house was not going to buckle or collapse. That is when they came back and asked if there was any thought to knocking the house down. They felt it might be better than to raise the house up 3.5', as it was all brick. Mr. Tierney noted there were no intentions of tearing it down, until they came forth with that argument, as it became a safety factor. He stated that it was felt that by rebuilding and making it a little smaller here and there it would be okay. He commented that if he has to jack it up, he will jack it up. He does not want to take that gamble, but he will.

Vice-Chair Crapo stated the previous proposal was to have a company come in and jack the house up. Part of the reason for relief is because it was keeping that structure and the foundation would be modified to satisfy the flood ordinance. Here, the opposite is being done. What is on top is being taken down and somehow, some of the foundation is going to be reused enough to have the same footprint.

Mr. Tierney noted that it is staying within the same footprint. He commented that it could be jacked up but there is a risk. It was felt that it might be better to stay on the same footprint, knock the house down and be right in the same foundation coming up, just as a safety factor.

Vice-Chair Crapo asked how this design would use the same foundation, without it becoming a different foundation.

Attorney Phoenix commented he does not understand the question. There may be some foundation repairs that need to be made, but the perimeter of the foundation is what is being used, other than the one little area where it is coming in getting a little farther from the ocean. The theory was that relief was received for the building on the top. Now they are coming in and asking for a little bit less relief. He does not see where it matters if they lifted the whole house or took it down to the foundation and build new, given the past and the parameters of it being a little less tall and a little less wide.

Referring to the plan for the new home, Member Patten noted there are windows along the bottom of the stone foundation. He asked if this is also going to be living space.

Mr. Tierney explained that according to the architect there are going to be breakaway walls, so water will go through and then out.

Mr. Ross stated that currently there is a small semi-crawl space area. When the house is lifted up, there will be a little more head height. It is his belief it will still be an area for storage and would not be living space.

Member Patten asked if the windows are to let light into the storage space.

Vice-Chair Crapo asked if those are windows or flood gates.

Mrs. Tierney replied flood gates.

Planning Administrator Kim Reed commented that they do not look like flood gates.

Member Patten commented that no one really knows, which is puzzling to him.

Vice-Chair Crapo stated that he is ready to move to continue the application because there has already been enough "I don't know" on this.

Mr. Ross explained the drawings are renderings of what the structure will look like. For the flood zone this property is in, which is AO, it is not required to have as many gates and vents as in a V zone. There is a way to make enough openings to make this work and still have traditional windows.

Planning Administrator Reed noted that she is a certified floodplain manager. Windows are not flood gates. They need to be able to let the hydrostatic water and the pressure build up against them. If there is a window and there is pressure, they are going to burst. She continued that in the AO zone there still needs to be the flood storage area.

Speaking to Vice-Chair Crapo, Chair Weathersby asked if the basement is unfinished storage space, what bearing would that have on the variance request? They're asking for 28.2' to the ridge, which is compliant because of the extra freeboard.

Member Patten commented that he was asking the question because it was just for clarification on why the house needs to be leveled. His real question is, are they trying to fit more living space in by reconstructing the entire thing? There has been a lot of question about whether the foundation is new or rebuilt. He thinks there are still some questions about how that will be implemented. He reiterated that he was just curious if the idea to reconstruct the house was to fit in another entire floor underneath the main living area.

Mr. Tierney replied no, that is not it at all. It was due to jacking up the house. That is the only reason. He reiterated that if the house has to be jacked up, they will jack it up. It was just going to be easier and a little safer. He commented they are not trying to get more living space.

Mr. Ross commented that originally the thought was to keep the exterior frame of the house. Getting into the details of jacking up the existing brick structure, it just does not make sense. The architect came up with this new design that actually shrinks it a bit. There is no additional living space. As far as the flood venting, it does have to comply in every way. This foundation with its flood vent openings will. He commented that with this particular plan, they do not get into every detail like that. It's the architect's rendering of the shape, roof slopes and the massing.

Planning Administrator Reed stated the rendering and how it should be built in regards to floodproofing would lead Member Patten to his theory that an extra floor is being put in because windows can't be put in if it is going to be built to floodplain compliance.

Vice-Chair Crapo asked if there is a different set of drawings the Board should be looking at. He asked what parts of the foundation are being kept and what aren't.

Mr. Tierney replied the whole foundation on the existing house is being kept. If the house is knocked down, they have to comply with FEMA which is going up 3.5' off the foundation. He reiterated they are not trying to get any more space. This is being done because it was felt that since the whole house is brick there could be some problems jacking it up.

Attorney Keiser stated that one thing she thinks the architect would say is that when he learned that the company who was going to jack up the house had some concerns about certain structural components, he went back and reviewed the minutes from the 2019 meeting. He recalled specifically Chair Weathersby concerns about the bulk and the roofline. That is one area that he removed. (Referring to the plan on the screen, she pointed out the areas where bulk was removed.) She continued that alternatively, they are back before the Board to address the coverage issue for the approval that was already obtained.

Planning Administrator Reed asked how the Board will handle this issue, whether they stay with the existing or go with what is now being proposed. The Board voted on what they thought was a 30% lot coverage, but it is really 15%. She asked if some people's vote would have changed if they knew it was 15% versus the 30%.

Chair Weathersby stated that was a different Board. She thinks they are just going to vote on the 15%. If these variances are approved tonight, there can be a condition that the other variances are null and void.

Attorney Phoenix asked the Board what the remaining concerns are, as to whether or not a continuance would be in order to address concerns or questions that cannot be answered today. He knows there are concerns from two members about the distance from the back-lot line. He is not sure if the other members share that concern or whether they have addressed the flood/basement floor adequately. He commented that they do not have a floor plan for the basement.

Vice-Chair Crapo stated he voted against the side setback before. The only reason he voted in favor of any of the others, when he was against the bulk, inherently in trying to save and use that structure, there was an interior layout and floor plan that dictated things. Even though the other house was being taken down and it was kind of being added to the side with new construction for the garage, the interior layout would drive different things. In this proposal, everything has been taken down from the foundation up, so hallways and stairways, etc. could all be reconfigured. In his mind, there is even less need to get closer to that lot line. To him, there is even less hardship because this is a fresh palette. He is having even more trouble reaching the hardship with the tear down.

Speaking to the Tierneys, Attorney Phoenix asked if they want to proceed or continue the application so they can talk about it.

Mr. Tierney agreed to continue the application.

Attorney Phoenix requested a continuance to the October meeting, in order to provide information to answer the Board's questions about the foundation and the living space and how it all relates. Also, to address whether they want to look at that one setback that two members have expressed concerns about.

**Motion by Patricia Weathersby to continue the application until the October 7<sup>th</sup> Zoning Board of Adjustment Meeting. Seconded by Shawn Crapo.**

**Roll Call Vote: Gregg Mikolaities – Yes; Rob Patten – Yes; Shawn Crapo – Yes; Chris Piela – Yes; Patricia Weathersby – Yes**

**Motion passed.**

3. **Brian K. & Carrie-Ann B. Carlson of 690 Lancaster Ave, Lunenburg, MA for property owned and located at 24 Glendale Road, Tax Map 20,2, Lot 129** request variances from §190-2.4C(3) for a home 16.5', a deck 13.7' and a walkway +/- 3' from the front boundary; from §190-2.4C(2) for a home 11.8' and an AC Unit +/- 9.3' from the left side boundary and for the home 14.2' and deck 7.9' from the right side boundary; from §190-5.0.B for 2 parking spaces less than 10' from any lot boundary; §190-6.3B for replacement of a nonconforming structure; and a waiver from the building code §35-14B(5) for a septic system 10' from the side boundary where 20' is required. **Property is in the General Residence, Coastal Overlay District. Case #37-2020.**

- Continued to the October 7<sup>th</sup> meeting.

4. ~~David Eckman, owner representative for Todor & Pauline Simeonov for property owned and located at 0 Brackett Road, Tax Map 17, Lot 65~~ request an Administrative Appeal per §190 7.2 of Rye Zoning Ordinance to appeal the building inspector's letter dated 7-27-2020 that the construction of the stonewall is within the wetland buffer. **Property is in the Single Residence District. Case #39-2020.**

- Withdrawn

#### Adjournment

Motion by Shawn Crapo to adjourn at 11:01 p.m. Seconded by Rob Patten.

Roll Call Vote: Gregg Mikolaities – Yes; Rob Patten – Yes; Shawn Crapo – Yes; Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

Respectfully Submitted,  
Dyana F. Ledger