

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

**Wednesday, February 3, 2021
7:00 p.m. – via ZOOM**

Meeting ID: 872 7254 3023
Password: 123456
Call-in Number: 646-558-8656

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Burt Dibble, Gregg Mikolaities, Patrick Driscoll 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 7:02 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 ID #872-7254-3023 Password: 123456

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 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.

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. Shawn Crapo
2. Gregg Mikolaities
3. Patrick Driscoll
4. Chris Piela
5. Patricia Weathersby
6. Burt Dibble not present for roll call attendance

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

II. BUSINESS

- o Approval of the January 6, 2021 Meeting Minutes

Motion by Shawn Crapo to approve the minutes of January 6, 2021 as amended. Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Patricia Weathersby – Yes

Motion passed

- o Approval of the January 16, 2021 Site Walk Minutes

Motion by Shawn Crapo to approve the minutes of the January 16, 2021 site walk. Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Patricia Weathersby – Yes

Motion passed

Requested Continuances:

Note: *Burt Dibble joined the meeting at 7:13 p.m.*

Motion by Patricia Weathersby to continue the application for 2257 Ocean Boulevard to the March meeting. Seconded by Patrick Driscoll.

Member Driscoll noted that this is the second request for a continuance for this property. He hopes they can get this resolved at next month's meeting. He is far less likely to vote for a continuance at the March meeting if it is requested again.

Chair Weathersby agreed.

Roll Call Vote: Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piela – Yes (seated for the vote); Burt Dibble – Yes; Patricia Weathersby – Yes

Motion passed

Motion by Patrick Driscoll to continue the application for 1367 Ocean Boulevard to the March meeting. Seconded by Patricia Weathersby.

Roll Call: Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes;

Shawn Crapo – No; Patricia Weathersby – Yes

Motion passed

Vice-Chair Crapo commented that he would like to explain why he voted “no”. The Board created a checklist because there were things that were being dropped and not being applied for. Some applications were incomplete and kicked down the road. The abutter notices go out in the initial phase and don’t necessarily go out when there is a continuance. In some cases, particularly when there is a five-to-six-week lag in the building office, it could cause a disservice to abutters. He does not want to start creating a precedent where people know they are going to be denied and submit an application just to hold their spot in line.

III. APPLICATIONS

1. **Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18, request a special exception pursuant to §190.3.1.H.2(f) and §190.3.1.G(2) for a driveway in the wetlands buffer. Property is in the Single Residence District and Wetlands Overlay District. Case #45a-2020.**
2. **Craig & Denise Benson, Trustees, K&L Realty Trust for property owned and located at 2 Merrymeeting Lane, Tax Map 15, Lot 18, request variances from §190-3.1.H.2(a), (b), and (g) for a new house with an eave 14.1’, a wall 17’, a septic system 66’ and a pervious driveway 15’ from the wetlands where 100’ is required and from §190-3.1.H.2(e) for cutting trees greater than 4.5” in diameter within the wetland buffer; and relief from Building Code §35-14 B(2): D(1) for a septic system 66’ from the wetlands where 75’ is required. Property is in the Single Residence District and Wetlands Overlay Districts. Case #45b-2020.**

Chair Weathersby noted this is a continuation from the last meeting, as the Board needed more information. There was a site walk on January 16th to address some concerns and see the property. The Board has also received the information that was requested; topographical information and information about the neighborhood. Another report from Mr. Gove has been received. Also, the landscaping plan and a new letter from the Rye Conservation Commission has been received. She opened to Attorney Phoenix to address the new information, not the information that was presented before.

Attorney Tim Phoenix, representing the Benson Family, spoke to the Board. He noted that they went through the variance and special exception requirements at the last meeting. He asked Jim Gove and Robbi Woodburn to address their recent findings since the site walk.

Jim Gove, Gove Environmental, stated he views this site as having two types of wetlands. While they are contiguous to each other, they are definitely different. Wetland A is a more marginal wetland. It has a different function and value. It has a different plant community;

many more upland species interwoven with the wetland species. The hydrology is seasonally saturated poorly drained soils. At the rear of the lot (northern part of the lot), the hydrology is very different. It has a more ponded condition in this area. The entire community is almost all dominated by wetland plants. There is very thick shrub growth. It is a very different wetland than the wetland that is adjacent to the house. From that perspective, he believes there will be less impact to Wetland A, simply because it is functioning as its own buffer to Wetland B, which is the area that directly flows into the Bailey Brook complex. He thinks that a lot of discussion went in to the concept of removal of the trees and whether or not the removal and presence of the house would increase hydrology dramatically. The trees act like pumps and actually draw the water up from the soil and they do have an impact on the hydrology. Recognizing that, he felt that they needed to create buffer areas and planting areas as enhancements to the wetland, wetland buffer and to the edges of the wetland itself. With Wetland A, to offset and mitigate some of this increased hydrology, and to also to make it a little bit better wetland from the standpoint that it does not really have shrub growth, he asked Robbi Woodburn to put in over 200 new plantings and create a thick buffer area around the house. Plantings will be in both the wetland and the uplands, enhancing that edge and essentially creating a visual protection to Wetland A and increasing the amount of hydrology take up. He noted these are good size plants. This is not the typical low value type of restoration. These are very sizable species that are being put in. He commented this will be a real enhancement to the overall plan and provide a real buffer for Wetland A.

Robbi Woodburn, Woodburn & Co., presented the landscape plan on the screen. She noted the landscape buffer is approximately 10' wide and straddles the wetland edge. The buffer will be made up of a multi-height canopy of tree shrubs and ground cover, which will assist in keeping water from hitting the ground quickly. The purpose of the canopy is to keep water from eroding the ground. The thick, robust, planted buffer will act like a sponge like many of the trees that were on the site. (She reviewed the planting list for the Board.) She reiterated it is a varied canopy that will assist in slowing down the rain that falls on to the site and act as sponge from water that hits the land in back of the house and goes toward the wetland. She noted there is a 3' gravel trench to catch what is coming off the roof of the house. The buffer will assist in filtering and buffering any drainage from the back of the house. There will be a native grass mix from the back of the house to the edge of the planting. Because these are native and deep-rooted grasses, they are drop tolerant and won't need as much attention, in terms of fertilizing and such. The plan is to have a layered effect of native grasses and then the buffer. In addition, to providing the buffer and filter, it is also added habitat.

Chair Weathersby asked if there is a danger these plants won't take or thrive, given the soils have been described as being clay like.

Ms. Woodburn replied all the plants that are specified are wetland edge plants or wetland plants, so they will stand having those hydro conditions.

Attorney Phoenix noted he has submitted a letter in response to the chair's question about the covenants and the affect. The original committee to determine house size and type was the family that created the subdivision. Eventually, all the lots were sold off so there is no longer a formed committee. The enforcement of the covenants falls to any landowner or landowners.

The covenants are still in effect. If someone wanted to pursue an alleged violation of the covenants, any or multiple landowners can do so. He continued that at the last meeting there was some question on the location of the air-conditioning unit and the generator. The air conditioner is close to the walkway and the generator is close to the wetland edge. There was talk about moving them to the other side, which the Benson Family is willing to do. He pointed out there is a mild objection from the neighbor on that side. He stated it was also agreed to put wetland markers along the wetland edge. There was a request for the silt sock to be extended around and towards the front of the lot, which the Bensons are willing to do.

Attorney Phoenix stated he would like to address the Conservation Commission's most recent letter. It is recognized that the ordinance doesn't talk about protections specifically, but it does have different setbacks from different kinds of wetlands. Wetlands have differing functions and values; and therefore, different importance in terms of protection of the wetlands and watershed. On the second page of the letter, the Commission notes that the overall project and buffer on the lot is 6100sf and the overall impervious area is 4500s. He pointed out the house footprint is 2749sf and there is a 789sf porch. The driveway and walkway are permeable. They may have been inadvertently counted as impervious. He continued the Commission also states in their letter that he mentions several times in the application that this is a "lot of record". The Commission consulted with their attorney who informed them that the Rye Zoning Ordinance makes no mention of a lot of record. He noted this troubles him because they are quoting the attorney, so it is hearsay that cannot be fully vetted. Secondly, he has never taken the position or argued the fact that because it is a lot of record it can be built on. There is a provision in the ordinance that says a lot of record is buildable if it met the requirement for setbacks, frontage and the like, which it did in 1998. It is recognized that it is buildable if the special exception and variance relief is granted. In the letter, the Conservation Commission also made some recommendations. They say the dwelling should be no larger than 2500sf. The plan is for a home of 2749. There is a reasonably large heated living space. He pointed out that there is a garage under, so the extra living space is going up two-stories over the garage. He commented the house is reasonably sized. It has also been demonstrated that although the buffer is being impacted by the removal of trees, it is being made up very well with little to no impact the actual wetland, especially Wetland A which is roughly 115' away. The Conservation Commission notes that the walkways are currently designed to be impervious, which is erroneous. The plan shows that the driveway and walkway will be pervious surface. The Commission ask that the maintenance plan be strictly adhered to, which the Bensons will certainly do. A detailed stormwater management plan has been provided, which will be adhered to.

He continued the Commission asked that the cutting of trees be minimized. That is being done. They are taking out what is needed to build the house with a little area for "elbow room" around it. The Commission also recommends native plantings around the wetland boundary, which has just been shown on the plan. He stated that he would like to reiterate that property owners have the right to own and develop their property. Their rights have to be balanced against the rights of the public. In this case, the rights are the interest in protecting the wetlands and thus protecting the environment. If the variances and special exception are denied, there is a fairly large house lot that was created under the subdivisions regulations of the mid-80's that will not be able to have a house on it and will be nearly valueless compared to its value now of being a house lot and a family lot for the Bensons. There is little to no impact to the wetland, as a result of this

project. He pointed out that this is the last house in this subdivision. There are dozens of homes in Rye that are near wetlands, near the watershed and in buffers, etc. He understands the goals of the Conservation Commission and the argument of things being accumulative, but this is not the place to “draw the line”. To do so, would take away the Bensons’ right to use their property with no corresponding benefit. Attorney Phoenix stated that although the Conservation Commission is against the project, they have not argued there is any harm to any wetland or Berry’s Brook Watershed. They’ve just said they don’t like it because it is in the buffer. The findings of Robbi Woodburn and Jim Gove should be given a strong consideration. For all those reasons, the variances and special exception should be granted.

Member Mikolaities pointed out that the house has a footprint of 2749sf and the porch is 780sf, so that is a footprint of 3538. He asked the architect to speak about the layout of the house, as it is long, as opposed to being square in order to fit on the lot.

Brendan McNamara, Architect, explained the house and garage is 2749sf and the porch is an accumulation of a wraparound and entry porch, which is 789sf. Of the 2749sf, the garage footprint accounts for over 1100sf. The house was deliberately designed to be elongated, as a consequence of the buildable area and to keep as far away from the wetland as possible. It is also pushed up against the front and right-side yard setbacks. At the same time, it has been designed having a long east/west access, meaning the house is setup for maximum solar gain. The main living area is at the eastern end of the house. There is a bedroom above the garage and the rest of the bedrooms are on the second floor above the living area.

Member Dibble stated he has looked over the planting schedule and listened to the testimony. He did not hear any discussion about how those plantings relate to the removal of the trees.

Ms. Woodburn replied there isn’t a one-to-one balance between them. The intent of the buffer is to give an additional filter between the open part of the property and the wetland itself. The trees that are being taken away have two functions. One is to protect the ground from rain eroding the soil. Second, the trees root system is like a big sponge. Between the drainage strip around the house and the buffer strip of these plants, it will assist in the uptake of water and balance out the fact that the tree canopy isn’t there. It is a layered approach to provide the same benefit, as the existing trees do now.

Chair Weathersby asked if the plantings along the edge will serve the same function in the wetland as the 93 trees.

Ms. Woodburn stated that the efforts are to provide the best buffer as possible and give as much enhancement to the edge of the wetland and provide that same filtering and uptake of water that the trees would.

Speaking to Attorney Phoenix, Member Driscoll stated it was said that the RCC’s letter does not have a specified argument. When he reads the letter, it looks like the first two paragraphs of page 2 detail what their arguments are. He asked Attorney Phoenix to elaborate on what he meant.

Attorney Phoenix explained that his interpretation to those two paragraphs is that they talk about removing the trees and what those trees do. It doesn't say that this house, on this lot, in the buffer not the wetland itself, is going to negatively impact the wetland.

Mr. Gove stated that there is some confusion that somehow there is a concept of one-to-one correlation of its impact on hydrology. In truth, that is not the case because the majority of the lot is still pervious. There is still introduction of the water going into the ground on this lot. He continued that the other reason he wanted the 200 plus plants, was not just for the hydrology aspect, it is also from the aspect of enhancing the wetland itself and providing a greater density of understory. When that area is cut, the sunlight gets into the remaining trees and those will start expanding taking up more of the hydrology in the seasonal saturation. It is a combination of different things that were implemented into this lot to offset the removal of the 93 trees.

Ms. Woodburn pointed out that the plant list has a combination of 170 tree and shrubs plus 150 herbaceous ground coverage.

Vice-Chair Crapo commented he is not familiar with wetland species. He asked if they would tend to spread farther into the wetland.

Ms. Woodburn replied that some would and some wouldn't.

Member Driscoll asked if there was any thought on the shape of the driveway. It seems a car would need to back all the way out of the driveway with a 90 degree turn without a turnaround close to the house.

Robert Baskerville, Bedford Design Consultants, explained that originally the driveway was a little closer to the house. An area in the front where hardwoods that are going to be saved, pushed the driveway to the west. When backing out of the garage, there is enough width to make a "Y" shape turn. There is enough width to make a turn in the driveway.

Chair Weathersby opened to the Conservation Commission in regards to the new information and/or the site walk.

Mike Garvan, Conservation Commission Member, stated that two-thirds of the property is in the Berry's Brook Watershed. The entire project is within the buffer and it is a sensitive watershed. Wetlands A and B are contiguous. The wetland closer to the house has a femoral stream course in it. He thinks there is going to be considerably more water. It might not be one-to-one, but 93 trees take up a lot of water and they are not going to be there. It is an impressive planting plan, but he is not sure it will offset the water. The forest duff will be taken away and will be replaced with roof and lawn, which will probably be fertilized. The lawn runs right to the buffer; although, there will be a plant barrier. He thinks there is going to be more water into the ground. He noted that it has been said that the majority of the project is pervious, but he does not really see that. The numbers on the plan said that 4500sf is impervious and it indicated the walkways were impervious. Additionally, the project is a priority protection area for flood storage and pollution attenuation. It is a very sensitive lot with very little buildable area. He reiterated that virtually the entire project is in the buffer. Where relief has been granted in the

past, its usually a portion of the house in the buffer. It's a large project entirely in the buffer in a sensitive area. He does not think Mr. Gove has provided any empirical knowledge that it is not going to affect the wetlands. He pointed out there is a member on the Commission that is a hydrologist that says it is going to affect the wetlands. Additional water could make Wetland A more like Wetland B. He commented that the Commission would like the ZBA to hire an independent certified wetland scientist to look into that and make a decision about whether this project is going to be deleterious to a sensitive wetland.

Chair Weathersby opened to the public for comments in favor or in opposition to the project. No comments were heard.

Attorney Phoenix stated that he thinks they have expert opinion that the wetland will be properly protected. He knows Danna Truslow is a hydrologist. He is not sure that she is a certified wetland scientist, which Jim Gove is. There is nothing in the project that is impactful to the wetland, even though the house is in the buffer. As for peer review, it is his view that is not necessary. When balancing the property owners' rights against what is considered to be deminimis, at best, harm to the wetland, these variances and special exception should be granted.

Referring to the septic system, Chair Weathersby asked if this is a standard system.

Mr. Baskerville confirmed.

Hearing no further questions, Chair Weathersby closed the public hearing at 7:10 p.m. and opened to the Board for deliberation.

Chair Weathersby stated that to her it all comes down to whether this project adversely affects the wetland to such a degree it overcomes a landowner's right to develop their property. There has been a suggestion for the Board to hire a certified wetland scientist to give an opinion on the effect to the wetland. It would delay this application. However, she is wondering if the Board has enough information to make a decision tonight or whether that would be necessary.

Member Driscoll stated he is interested to see what other Board members say on a couple of different items. However, where he stands right now, he has a hard time with the size and the number of trees that are going to be cut for the project. An independent wetland scientist might sway him towards being in favor of the application, but right now, he is leaning in the opposite direction.

Member Dibble commented he has significant environmental concerns, but they are not his only concerns. It would be interesting to him but he does not think it would be determinative.

Member Mikolaities stated it would not be helpful to him to have an independent soil scientist.

Vice-Chair Crapo stated he is neutral on it, unless this person could determine if this lot is in some way effected by the build of the other lot. At one point, this lot was subdivided and the other lots were built on. Is this lot being negatively affected, wetlands wise, by those lots or does it stand on its own?

Chair Weathersby replied they have to take the lot as it exists today. If it has been affected by the other lots, it's the situation today. She commented it sounds like the Board does not feel it is necessary to hire an independent wetland scientist.

Member Driscoll stated he goes back to the N.H. OSI, the Strategic Initiatives Guidelines, for the five criteria. When he looks at those in this application, the hardship one is the one he struggles most with. The applicant must show that the property is burdened by the zoning restrictions in a manner that is distinct from other lands in the area. He does not disagree with Attorney Phoenix that this lot should be buildable. However, this is a large house with a standard septic and it is too close to the wetlands itself. He would have a hard time voting in favor of the criteria for unnecessary hardship when looking at this application. A lot of trees will be cut. A smaller project would affect the wetlands in a more minimal way, including the number of trees to be cut. He is interested in seeing what the other board members have to say about weighing the covenants to the zoning ordinance and if that should weigh in the Board's decision. Still, in looking at the covenants, a smaller house would be within the guidelines of the covenants and more in keeping with the spirit of the ordinance.

Member Mikolaities stated he does not have a problem with this. The roof runoff is being handled. They have done a good job of situating the house to work with the topography. He has full faith in Robbi Woodburn and her planting plan. He had no problem with the drainage, as he stood on the lot during the storm. He has no problem with what they have come up with.

Vice-Chair Crapo stated that sitting in the first meeting, he was envisioning a swampier piece of land. Obviously, there is standing water and it is not without wetland characteristics, but it is definitely not as swampy as he envisioned. The area where the house is proposed does not seem all that wet. After the site walk, he does not see a huge negative affect from the house. It is sizeable, but there are covenants for the size. If it was forced to be a smaller home, it would have to get drastically smaller before there was an appreciable deduction in the tree reduction. If they were to cut ten percent off, they may only gain back six or seven trees. With that in mind, he is leaning in favor of the proposal. There is going to be a right to build. He thinks this project has been engineered in such a way that is the best balance of the impacts. It is probably the best balance that can be achieved.

Member Dibble stated it is very clear the owners have worked very hard to make this project minimally impactful on the environment. He cannot remember a time when a building was approved within 14' of the wetland itself, let alone entirely in the wetland setbacks. To that extent, he thinks it is contrary to the intent of the ordinance. Regarding the concept of making the house smaller, he agrees with Vice-Chair Crapo that ten or twenty trees might be saved, but it is not going to make a definite difference in the amount of tree cutting. He thinks the case about the plantings compensating for the tree loss was not effectively made. It isn't clear to him that the removal of the trees is going to be fully compensated by the plantings. The environment is a changing and dynamic one. There are flood and other environmental considerations. There is water storage already present on this property. He thinks there is a significant concern that this property is going to become a greater matter, in terms of the future going forward. There was testimony that the information from the Conservation Committee really amounted to the fact that they just really didn't like it. He is not in agreement with that appraisal. In looking at the

comments that they made, they've addressed specific matters that are of concern to them and many of which are concerns for him. The last matter is the Berry's Brook Watershed. That is a very serious problem to the region. He thinks to potentially have an impact on the watershed is probably not a wise thing to do. Those are his reasons for not feeling like he can be in support of this development.

Member Piela commented he has a lot of empathy for the applicant, as there is always a risk in not improving a piece of property. He feels that Member Dibble raised a number of really good points. He has to listen to the experts as to having setbacks for a reason and wetlands are designated for a reason. That's what he is really weighing in his head; the value of the property to the applicant and the changing regulations.

Chair Weathersby stated that at the last meeting, she was very much opposed to this project for all the reasons that were stated. At the site walk, she left saying that she was not really sure anymore. It was helpful to read everything over again and look at the new information. She is fairly torn about this one. However, at the end of the day, she cannot get behind the proposal for many of the reasons that have been stated; the fact that it is entirely in the buffer and so close to the wetland itself. She commented that Wetland A may be a less functioning wetland than Wetland B, but it is really dangerous for this Board to start treating different types of wetlands, all of which are protected, as being more or less deserving of protection. She does not think they have that capability. She noted the Town of Rye has decided that all wetlands are deserving of protection. Until the Town says to start treating them differently, she feels they all need to be treated as deserving, regardless of whether they have a different value to the environment or different function. It is still a wetland that has been deemed sufficiently important enough to be protected. This wetland in particular, as being part of the Berry's Brook Watershed, has been singled out by the Town as being extra deserving of protection. Also, it is a priority flood storage area. Putting a house in the middle of that buffer and flood storage area, is not in the public interest or consistent with the spirit of the zoning ordinance. As to a smaller house, she is not going to tell them what they should or shouldn't do. If a house has to be at least 3200sf in size, she personally does not see this lot supporting a house of any significant size. She thought the planting plan was spectacular. It had great qualities and great plants. It will definitely do some filtering and do some absorption. However, it couldn't be assured that the loss of those 93 trees and the "straw effect" would be compensated by those plantings. If this lot were to be created today it would not be a buildable lot, as it doesn't meet the Town's requirement for the minimum amount of uplands or contiguous uplands. She looks at that as a little piece of guidance that says this really shouldn't be approved; not to mention the septic issues of it being 60' from the wetlands and entirely in the buffer. She feels for the Benson Family. They purchased this lot many years ago hoping to build on it. In her mind, the lot doesn't support this building on it.

Referring to the comment about treating wetlands differently, Vice-Chair Crapo stated that he believes a prior version of the zoning had different references to the Hydric A and Hydric B soils. When the wetlands criteria changed to flora and fauna, the amendments were made. This resulted in the ordinance treating it all as one.

Chair Weathersby agreed the “poorly drained” and “very poorly drained” soils was replaced by a different definition.

Member Dibble stated he has one additional thought. The regulations as they apply to wetlands, changed at the State, as well as in the community. They changed for good and sufficient reasons. He thinks that speaks further to a couple of observations that this really was a buildable lot when it was purchased but is not any longer.

Chair Weathersby called for a vote on variances to 190-3.1.H.2(a), (b), (g) and 190-3.1.H.2(e):

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby - No

2) The spirit of the ordinance is observed?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby - No

3) Substantial justice is done?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby - No

4) The values of surrounding properties are not diminished?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – Yes
Patricia Weathersby - No

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – 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?

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby - No

7) The proposed use is a reasonable one?

Shawn Crapo - Yes
Gregg Mikolaities – Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby - No

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

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby – No

Motion by Shawn Crapo to grant the variance relief requested.

Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Burt Dibble – No;

Patrick Driscoll – No; Patricia Weathersby – No

Motion failed by a 2-3 vote.

Chair Weathersby called for a vote for Building Code relief from **§35-14 B(2): D(1)**:

- **Would enforcement of §35-14.B(2):D(1) for the septic system 66' from the wetlands do manifest injustice and be contrary to the spirit and purpose of the building code and the public interest?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby – No

Motion by Shawn Crapo to grant the relief requested. Seconded by Gregg Mikolaities.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Burt Dibble – No;

Patrick Driscoll – No; Patricia Weathersby – No

Motion failed by a 2-3 vote.

Chair Weathersby called for a vote on the Special Exception requested §190.3.1.H.2(f) and §190.3.1.G(2):

- **Do to existing conditions no alternative route is feasible?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – No
Patricia Weathersby – Yes

- **Is the driveway in the wetlands buffer neither injurious nor detrimental to the neighborhood?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No
Patrick Driscoll – No
Patricia Weathersby – No

- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

Shawn Crapo - Yes
Gregg Mikolaities - Yes
Burt Dibble – No

Patrick Driscoll – No
Patricia Weathersby – No

Motion by Burt Dibble to deny the request of the applicant for a Special Exception, as advertised. Seconded by Patrick Driscoll.

Roll Call: Shawn Crapo – No; Gregg Mikolaities – No; Burt Dibble – Yes; Patrick Driscoll – Yes; Patricia Weathersby – Yes
Motion passed by a 3-2 vote.

Note: *The following application was taken out of posted agenda order.*

- **Rannie Webster Foundation d/b/a Webster at Rye for property owned and located at 795 Washington Road, Tax Map 11, Lots 52 & 6, requests a two-year extension to the Special Exception granted 03/03/19, Case #04-2019, 21 new beds, assisted living beds, building expansion 18,324. Property is in the Single Residence District. Case #06-2021.**

Attorney Tim Phoenix, representing the applicant, addressed the Board. He explained the Zoning Board granted a Special Exception in March 2019. Webster then went through an extensive Planning Board process that just ended a couple of months ago. They could not proceed on the variances until the application got through the Planning Board. That Planning Board approval left approximately six months until expiration of the variances. The timing of the Planning Board did extend the deadline until the end of April, as the applicant is allowed six months from the end of the planning board process. Webster finds itself a couple of years down the road, and in the interim Covid hit, which had a particularly devastating effect on these kinds of facilities in general and in Webster in particular. He continued that they are going to build part of the proposal now, but not the new wing. A garage outbuilding will be built within the timeframe, but they are not going to build the new addition to the building. It is his understanding that given the state of Covid, it is much up in the air. Webster is pretty sure they are not going to get to this within the year. That is the reason a two-year extension has been requested.

Tom Argue, Webster at Rye, explained they have too much on their plates. They have lost a significant amount of money because of Covid. Webster is still dealing with a lot of challenging situations. In looking at the projections, it would probably mean that the project would fail. It is a project that has value for the Town of Rye and they want to make sure it succeeds.

Member Mikolaities asked how long the Planning Board approval is good for.

Planning Administrator Reed noted eighteen months.

Attorney Phoenix commented they have the right to extend that as well. If they need an extension from the Planning Board, it would coincide with this extension.

Vice-Chair Crapo asked if there are any environmental concerns or anything that would come in to play that would vary the conditions of approval or the site conditions, by doing this in two phases.

Attorney Phoenix stated it is theoretically possible that zoning changes could come along. It is his opinion, if it is within the period of extension, it is vested against those. He does not anticipate anything, but he does not know what will be done in the next couple of years in terms of zoning changes.

Vice-Chair Crapo asked if there was some moving or changing of a septic field. With environmental excavation factors, could only doing part of it change the project or leave something short in the interim?

Attorney Phoenix replied not that he is aware of. He explained there was an issue with one of the septic systems that caused it to be dragged out a couple of extra months. That ended up being based upon a computation error by Altus. When it was corrected, the Planning Board felt comfortable moving forward without sending it back to the Zoning Board.

Mr. Argue explained that originally Altus thought that an additional leachfield was needed. When Eric Weinrieb noticed he made an error in his calculations, he notified the Planning Board that the additional leachfield was not necessary and it was removed from the plan. That was the difference between what was presented to the Board of Adjustment and the Planning Board.

Vice-Chair Crapo asked if phase 1 be safely separated from phase 2.

Attorney Phoenix noted it is basically some parking and a detached garage. It is not living space so it doesn't add to the septic. The septic computations are required because when the addition is done, there will be more people at Webster. The part that is going to be done now does not affect the septic at all.

Member Dibble commented that he is curious about what the use of the new outbuilding is going to be and why it is necessary at this time.

Mr. Argue explained it is a 40' addition to the existing maintenance garage to assist with storage.

Chair Weathersby noted the storage building was not before the Zoning Board. It was the expansion of the additional beds.

Mr. Argue stated there were three aspects to the project; the addition to the nursing home; the addition to the garage and some additional parking spaces. The garage and parking spaces will be done at this point.

Attorney Phoenix explained that what was before the Zoning Board was related to the use, not dimensional issues. It is arguable that this part would not have needed review by the Zoning Board because the storage facility would not be a use that requires a special exception.

Hearing no further questions from the Board, Chair Weathersby opened to the public.

Mary Harb, 48 Mountain View Terrace, asked for clarification on the timeframe for the two-year extension. She commented this would extend, by quite a few months, the construction noise that will go on with this size project. The neighbors will be impacted over a longer period of time.

Chair Weathersby explained the original approval from this Board is due to expire next month. They have asked for two more years to do the expansion of the building. That would bring it to March 2023.

Ms. Harb asked what a normal extension would be.

Chair Weathersby replied she would not say there is a normal. Typically, the Board will give one year, but on some occasions give two years.

Hearing no further comments, Chair Weathersby closed the public hearing at 8:56 p.m.

Member Dibble commented that in view of the Covid matter, this is a complete no-brainer. Covid has exposed terrible financial stresses on all healthcare institutions; especially, long-term care institutions. He thinks to grant this to an organization that has been nothing but a benefit to the Town of Rye is totally supportable.

Vice-Chair Crapo commented that obviously, they would have loved to have had the addition done two years ago and have the extra space, both for social distancing as well as treatment. However, now that it is not done, trying to social distance and following protocols, while a construction project is going on, would burden any type of planning. It might be weeks or months before reaching a resolution.

Chair Weathersby agreed. To start a construction project of this size right now, with fiscal and Covid concerns, would be very difficult. While perhaps the Board may typically grant a one-year extension, she is not sure that committing to next March would really be enough time under the current circumstances. She would be in favor of a two-year extension.

Motion by Patricia Weathersby to extend the Special Exception granted to the Rannie Webster Foundation d/b/a Webster at Rye on March 6, 2019 for two years. Seconded by Burt Dibble.

Roll Call: Shawn Crapo – Yes; Gregg Mikolaities – Yes; Burt Dibble – Yes;

Patrick Driscoll – Yes; Patricia Weathersby – Yes

Motion passed.

Note: Shawn Crapo left the meeting at 9:05 p.m. Alternate Chris Piela was seated for the remainder of the meeting.

3. **Drew Pierce of Seacoast Modular Homes, Inc for the Kehas Family Living Trust for property owned and located at 2257 Ocean Blvd, Tax Map 5.3, Lot 7**, requests an equitable waiver of dimensional requirements pursuant to §190-7.1 for a newly built home with a height of 30.29'. **Property is in the General Residence and Coastal Overlay Districts and the SFHA Zone. Case #04-2021.**

- *Continued to the March meeting (see motion above).*

4. **Dava & Alan Singer for property owned and located at 18 Parkridge Ave, Tax Map 19.4, Lot 10**, request a variance from §190-8.1; from §190-2.4.(1) to remove an existing deck and replace with a foundation and a one story office 1.94' from the rear boundary where 30' is required and from §190-2.4.C(2) for an office 15.6' from the left side boundary and 14.7' from the right side boundary where 20' is required. **Property is in the General Residence, Coastal Overlay District. Case #05-2021.**

Dava Singer, applicant, presented to the Board. She explained there is a small deck on the back of the house. The proposal is to remove the deck and build a one-story office 10'x14'. She noted the deck is 8'x12'. With the overhang, the office will be 1.94' from the rear boundary. The wall itself will not be that close. It will be about another foot away.

Chair Weathersby asked if they live in the house year-round.

Mrs. Singer confirmed.

Chair Weathersby asked how many people live in the house.

Mrs. Singer noted it is her husband and herself with their daughter, who is staying with them because of the Covid situation.

Chair Weathersby stated the house appears to have two-bedrooms and a finished third floor.

Mrs. Singer explained there is a master bedroom on the top floor. On the second floor, there is a bedroom, bathroom and sitting area. Downstairs there is one room with a bathroom. The kitchen and living room are one room on the first floor.

Chair Weathersby asked if one of the rooms on the second floor could be used as an office.

Mrs. Singer replied the whole point of having the office on the first floor is because she has mobility issues. Going up and down the stairs all day is a hard thing for her to do.

Member Piela asked if the proposed office is the width of the house.

Mrs. Singer explained it would not be the entire width of the house. It will be about 2' less on one side and about 1' less on the other.

Chair Weathersby opened to the public for comments. No comments were heard. She noted that the Board received a letter in opposition from the Reardons, who own the property in the back, which is dated December 28, 2020. Speaking to Planning Administrator Reed, she noted that at that time, the notice indicated that it was going to be a deck and not an enclosed office. She asked if the Reardons are fully apprised of the project and if they still have objections.

Planning Administrator Reed stated that she spoke with Mr. Reardon, as well as emailed him, to explain it is actually going to be an office. Mr. Reardon asked if he could still leave his letter in the file as an objection. He is less objectionable to an office, but still wants to leave his objection in the file.

Mrs. Singer stated that she does not know the Reardons, so she did not approach them and was not going to knock on their door in this Covid environment. However, she has emails from two of the other abutters and a voice mail from the third that they have no objections to the office. She noted the Prices left a voicemail. The Maxwells and the Nortons sent letters.

Referring to Attorney Reardon's letter, Member Piela pointed out that it sounds like he is objecting to a deck but is not objecting to an office space.

Referring to the full-size plan, Member Mikolaities asked if there is a proposed deck to the north side.

Mrs. Singer explained the deck is in the back on the west side. There is a patio on the north that is semi-permeable and was put in several years ago. She noted there is no change proposed for the patio with this project.

Member Mikolaities asked the height of the addition.

Mrs. Singer replied she does not know the measurements, but it is just one-story. It will be below the windows that are on the second-story. She explained they were trying to duplicate the roof line in the front of the house that is below the second-floor windows.

Member Mikolaities clarified it is one-story with no deck on top of the roof.

Mrs. Singer confirmed.

Member Dibble stated that in looking at the elevations from the rear, it shows steps on the left. He does not see this represented on the larger plan. He asked if it is correct that they do not extend beyond the edge of the house.

Mrs. Singer confirmed. It is only three risers.

Chair Weathersby asked if the room will have outdoor access.

Mrs. Singer explained the risers are for the back door that goes out to the patio.

Member Driscoll asked if there will be only two windows facing the closest lot line.

Mrs. Singer commented they were thinking of possibly putting a window on the right side of the back of the addition. It may be something that is smaller towards the roof on that side.

Member Driscoll commented that he likes the fact there are two windows facing the abutter. His concern is that there is so much view onto the abutter in the rear.

Mrs. Singer stated that on the Reardon's property in the back, there is primarily an invasive plant. There are no structures within eyesight.

Chair Weathersby commented there is a request for a variance from Section 8.1 which is the requirement to get a building permit. She asked if they intended to make that request.

Mrs. Singer stated she was confused by the whole process. The person that was going to do the addition initially applied for a permit. She does not really know what is happening with the building permit. She got a denial letter recently, but she does not know the details of the sections to answer the question.

Hearing no further questions, Chair Weathersby closed the public hearing at 9:20 p.m.

Chair Weathersby commented she is sure most members went out to the property and saw the Reardons' house and other buildings are more towards the Wallis Road side. It is a big piece of land behind this house and is a pretty open area. She does not have a problem with the proposal. It seems pretty reasonable. She wishes it wasn't so close, but the house is already there. It's a small house. She understands why they need a first-floor office.

Member Piela stated that it sounds like the nearest abutter is not objecting. He does not have a problem with the proposal.

Member Mikolaities stated that he wants to be sure it is on the record that it will be one-story with no roof deck.

Chair Weathersby commented limited to one-story of this size with no deck on top, which could be a condition. She noted they requested a variance from Section 8.1, which is a building permit. She would recommend that one be denied.

Chair Weathersby called for a vote on the requested variances to §190-8.1:

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

Gregg Mikolaities - No
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

2) The spirit of the ordinance is observed?

Gregg Mikolaities - No
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

3) Substantial justice is done?

Gregg Mikolaities - No
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

4) The values of surrounding properties are not diminished?

Gregg Mikolaities - No
Burt Dibble – No
Patrick Driscoll – No
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
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

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
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

7) The purposed use is a reasonable one?

Gregg Mikolaities - No
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

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

Gregg Mikolaities - No
Burt Dibble – No
Patrick Driscoll – No
Chris Piela - No
Patricia Weathersby - No

Chair Weathersby called for a vote on the requested variances to §190-2.4.(1) and §190-2.4.C(2):

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

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – 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
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

7) The proposed use is a reasonable one?

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes
Burt Dibble – Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

Motion by Burt Dibble to deny the variance to §190-8.1 and grant the variances to §190-2.4.(1) and §190-2.4.C(2), with the condition that there be no expansion upward of the addition or any deck on the roof. Seconded by Chris Piela.

Roll Call: Gregg Mikolaities – Yes; Burt Dibble – Yes; Patrick Driscoll – Yes;

Chris Piela – Yes; Patricia Weathersby – Yes

Motion passed.

Note: Burt Dibble left the meeting at 9:30 p.m.

Sitting for the following application: Patricia Weathersby, Patrick Driscoll, Gregg Mikolaities and Chris Piela

5. Gary Wingate of 15 Sherman Street, Nashua, NH for property owned and located at 27 F Street, Tax Map 5.3, Lot 54, requests variances from §190-2.3.C(1) for an a/c unit 8.4' and a propane pad 8.5' from the rear boundary where 12.25' is required; from §190-2.3.C(2) for an a/c unit 17.3' and a propane pad 10.4' from the side boundary where 20' is required; and from §190-603.1 for a non-conforming expansion. Property is in the Single Residence and Coastal Overlay District. Case #07-2021.

Speaking to Attorney Phoenix, Chair Weathersby noted they are down to a four-member Board. It is the applicant's choice if they want to proceed or continue the application.

Attorney Tim Phoenix, representing the applicant, stated he has no issue with going forward, given the nature of the application. He asked Gary Wingate if he would like to move forward.

Mr. Wingate confirmed he would like to proceed with the application.

Attorney Phoenix explained this is a seasonal cottage right now. The Wingate Family is improving it somewhat by insulating the cottage, so they can use it more throughout the year. It is going to have a heating system and they would like air conditioning. He stressed that it is going to remain a seasonal residence because of the water situation. The house covers a good portion of the lot. They need a propane tank, which does not need setback relief under the ordinance; however, it is on a permeable pad, so relief was requested. Right next to that is an air conditioning condenser and below that will be grass. This is within the rear setback and slightly in the side setback. He pointed out there is a fence behind the house. There is really nowhere on the lot where these could go that would not need the same or similar relief. The lot to the east has a very similar circumstance. There is an air conditioner on that property and there are others nearby. He continued this is a small lot at 3295sf. The Wingates are asking for relief to make these improvements in order to make it a little more livable during the season.

Attorney Phoenix pointed out that letters from the neighbors have been submitted from;

- **Murphy Family, 19 F Street**
- **Brennan Family, 31 F Street**
- **Chrisafides Family, 23 F Street**
- **Jones Family, 24 F Street**

He reviewed the criteria for granting the variances:

- The variances are not contrary to the public interest and the spirit of the ordinance is observed because these are not going to alter the essential characteristics of the locality. Most homes have air conditioners and propane tanks are used for heating. These are buffered by the fence and shed that is already existing. Granting these variances is not going to threaten the public health, safety or welfare in this location.
- For similar reasons, they will not diminish surrounding property values. These really won't be seen by anyone because of the fence and shed.
- Special conditions exist because it is a small lot with a house already on it. There is nowhere to put these units without the same or similar relief.
- There is no fair and substantial relationship between the general public purposes of the ordinance and its application in this instance. Setbacks are to provide for air, light, separation from neighbors, stormwater treatment, etc. These do not even change the coverage enough to register a portion of the change.
- The proposed use is reasonable. It is residential. It is reasonable to have air conditioning for a house and fuel for heating.
- Substantial justice is done. There is no benefit to the public that would outweigh the hardship to the applicant. The public will not be harmed by this. If the applicant is not granted the variances, there is no way they can have an air-conditioned house in the heat of the summer and likely couldn't heat the house because they couldn't put the propane tank in.

Chair Weathersby asked if they have been in touch with the abutter to the rear (Morton property).

Mr. Wingate explained that the abutters to the west, the Brennan Family, are fully in support. The abutters to the right have three gas tanks and two condensers. They also gave their approval. The abutter across the street gave their approval. He continued that his family has actually owned this house since 1958. With the house in back, when the owner passed away, another family member took it over. He has not been in contact with them. They are always renting the house and are hardly ever there. He explained that he spoke with the renters and got the owners contact information. He left a couple of messages for the owner but have not gotten an answer.

Hearing no further questions from the board members, Chair Weathersby opened to the public for comments. None were heard. She closed the public hearing at 9:45 p.m.

Member Mikolaities commented he is fine with the proposal.

Chair Weathersby noted it is a pretty minor ask.

Member Driscoll stated it is a minor ask but it is a straight forward application and is really nice. It was a luxury to have the Ambit plans in the packet and can see exactly what is going on. It makes it very clear. He has no issues with the proposal. He appreciates the clearly defined application.

Chair Weathersby agreed.

Member Piela agreed it is pretty straight forward. He pointed out that 23 F Street looks to have a/c units at the back of their house too.

Chair Weathersby called for a vote for relief to §190-2.3.C(1), §190-2.3.C(2) and §190-603.1:

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

Gregg Mikolaities - Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

2) The spirit of the ordinance is observed?

Gregg Mikolaities - Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

3) Substantial justice is done?

Gregg Mikolaities - Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

4) The values of surrounding properties are not diminished?

Gregg Mikolaities - Yes
Patrick Driscoll – 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
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

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

Gregg Mikolaities - Yes
Patrick Driscoll – Yes
Chris Piela - Yes
Patricia Weathersby - Yes

Motion by Gregg Mikolaities to approve the variances as advertised. Seconded by Patrick Driscoll.

**Roll Call: Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piela – Yes
Patricia Weathersby – Yes**

6. **Nicole & Michael Callahan for property owned and located at 1367 Ocean Blvd, Tax Map 17.4, Lot 16, request variances from §190-2.4.C(1) for a house 5.0' from the rear boundary where .8' exists and 30' is required; from §190-2.4.(2) for a house 11.0' from the left side boundary where 10.8' exists and 20' is required; from §190-2.4C(2) for a house 1.4' from the right side boundary where -1.4' exists and 20' is required; from §190-6.3A for the expansion of a nonconforming building. Property is in the General and Coastal Overlay Districts and SFHA Zone AO+1. Case #08-2021.**

- *Continued to the March meeting (see motion above).*

IV. OTHER BUSINESS

There was some discussion on whether the Board will continue to meet via Zoom or go back to meeting in person.

Planning Administrator Reed noted that Attorney Donovan weighed in saying that it does not look like the Board will be meeting in person for a long time. He suggested waiting to hear what happens in the Legislature. In the meantime, the Board will continue with Zoom.

Chair Weathersby explained the Board's authority to meet through Zoom is pursuant to the Governor's order. Once that expires, the Board will have to meet in person. This does not mean there won't be some enabling legislation that will allow the Board to meet electronically in the future. She noted that if they meet in person, they have the livestream for people to watch if they cannot make it. It would be really helpful if the public watching the livestream could call in if they had comments.

Member Mikolaities commented that he personally prefers in person meetings, as there is so much value.

Chair Weathersby agreed.

Member Piela stated that the idea of having a hybrid approach is interesting. He thinks having an in-person meeting, when possible, is best. However, given the fact that there are so many seasonal residents, someone out of state could speak if they wanted to, if there was that ability.

ADJOURNMENT

Motion by Patricia Weathersby to adjourn at 9:58 p.m. Seconded by Patrick Driscoll.

Roll Call: Gregg Mikolaities – Yes; Patrick Driscoll – Yes; Chris Piela – Yes;

Patricia Weathersby – Yes

Motion passed.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

- Applicant/Owner:** Craig & Denise Benson, Trustees, K&L Realty Trust
- Property:** 0 Merrymeeting Lane, Tax Map 15, Lot 18
Property is in the Single Residence and Wetlands Conservation Districts
- Application case:** Case #45-2020
- Date of decision:** February 3, 2021
- Decision:** The Board voted 2-3 to approve, and therefore denied, the special exception pursuant to the following sections of the Rye Zoning Ordinance:
- §190.3.1H.2(f) and §190.3.1.G(2) for a driveway in the wetlands buffer.
- The Board voted 2-3 to approve, and therefore denied, variances from the following sections of the Rye Zoning Ordinance:
- §190-3.1 H.2(a),(b),and (g) for a new house with an eave 14.1', a wall 17', a septic system 66' and a pervious driveway 15' from the wetlands; and
 - §190-3.1 H.2 (e) for cutting trees greater than 4.5" in diameter within the wetland buffer.
- The Board voted 2-3 to approve, and therefore denied, relief from the following section of the Rye Building Code:
- §35-14 B(2): D (1) for a septic system 66' from the wetlands.

The reasons the special exception, building code relief and variances were denied include:

1. The proposed project is located entirely within the wetland buffer. The home was to be 14' from the wetland, the generator 2' from the wetland, the septic system 66' from the wetland and the driveway 15' from the wetland where a 100' buffer is required. Even with the proposed mitigation, the project will have an adverse impact on the wetland/wetland buffer.
2. The project requires cutting of 93 trees greater than 4.5" in diameter at 4' high located in the wetlands buffer. The loss of

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.

transpiration activity from these trees will have a negative effect on the wetland/wetland buffer. It was not clearly demonstrated that the plantings as shown on the proposed landscaping plan would offset this loss.

3. While this lot may have been buildable at the time it was purchased, regulatory and environmental changes now place the entire lot within the protected wetland buffer.
4. The subject parcel is located in the Berry Brook Watershed, a watershed deemed important for its ecosystems, hydrology, wildlife, beauty and flood control properties. The watershed has been given additional protections due to its value and the threats it faces due to development and pollutants. Allowing the project to be built in the Berry Brook Watershed would be contrary to and impair such objectives.
5. The subject parcel is located in an area identified for priority flood storage and pollution attenuation. Allowing the land to be developed as proposed is contrary to and impair such uses, particularly in light of anticipated water management issues related to climate change.
6. While the two types of wetlands on the property may have different functions and values, the Zoning Ordinance does not distinguish between the two nor cause one to be less deserving of protection.
7. The two wetlands on the property are hydrologically connected. Impacts to the wetland 14' from the proposed house could result in impacts to the higher quality and higher functioning wetland further from the project.
8. The proposed home is of a size (footprint of 3538 sf and living space of 4910 sf) that its construction and use will have too great an impact upon the wetlands buffer.
9. The Zoning Ordinance now requires buildable lots to have a minimum of 44,000 sf of upland soils, 30,000 sf of which shall be contiguous. While the subject lot is grandfathered from this restriction, the fact that the lot does not meet this criteria is further support that the lot is not suitable for building.

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.

10. The harm to the public- the negative impact to the wetlands buffer -outweighs the injury to the landowner in not being able to build the project on this lot.
11. Granting the requested variances and other relief for the proposed home, septic system and driveway is contrary to the public interest and is inconsistent with the spirit and the intent of the Zoning Ordinance. Granting the variances would unduly and to a marked degree conflict with the Ordinance such that it would violate the Ordinance's basis zoning objectives with regard to wetland protections.
12. The proposed project and its impacts do not promote the health and general welfare of the community.
13. The proposed project and its impacts do not assure proper use of natural resources.
14. The proposed project constitutes an unreasonable use of the property.
15. Enforcement of the Zoning Ordinance does not result in unnecessary hardship to the property owner.
16. While denial of the requested relief precludes construction of the proposed project, it does not preclude other productive and passive uses of the land.
17. Enforcement of the building code and not allowing a septic system 66' from the wetland does not constitute manifest injustice nor is contrary to the spirit and purpose of the building code or the public interest.
18. A driveway 15' from the wetland is injurious and detrimental to the neighborhood and is in disharmony with the general purpose and intent of the Zoning Ordinance and the rules contained therein.



Patricia Weathersby, Chairman

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BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

- Applicant/Owner:** Gary Wingate of 15 Sherman Street, Nashua NH
- Property:** 27 F Street, Tax Map 5.3, Lot 54
Property is in the Single Residence, Coastal Overlay District
- Application case:** Case #07-2021
- Date of decision:** February 3, 2021
- Decision:** The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:
- §190-2.3.C(1) for an A/C unit 8.4' from the rear boundary;
 - §190-2.3.C(1) for a propane pad 8.5' from the rear boundary;
 - §190-2.3.C(2) for an A/C unit 17.3' from the side boundary;
 - §190-2.3.C(2) for a propane pad 10.4' from the side boundary; and
 - §190-6.3.A for the expansion of a non-conforming building.



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: Nicole & Michael Callahan

Property: 1367 Ocean Blvd, Tax Map 17.4, Lot 16
Property is in the General Residence, Coastal Overlay and SFHA Zone

Application case: Case #08-2021

Date of decision: February 3, 2021

Decision: The Board voted 5-0 continue the application to the March 3, 2021 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: Drew Pierce of Seacoast Modular Homes, Inc. for the Kehas Family Living Trust

Property: 2257 Ocean Blvd, Tax Map 5.3, Lot 7
Property is in the General Residence, Coastal Overlay and SFHA Zones

Application case: Case #04-2021

Date of decision: February 3, 2021

Decision: The Board voted 5-0 continue the application to the March 3, 2021 meeting. Given that the Applicant has twice requested that this application be continued, no further continuance requests will be granted except under extraordinary circumstances.



Patricia Weathersby, Chairman

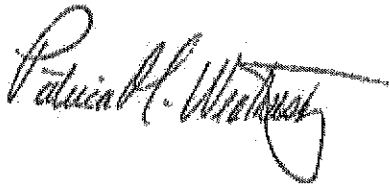
Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. 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:** Dava & Alan Singer
- Property:** 18 Park Ridge Ave, Tax Map 19.4, Lot 10
Property is in the General Residence, Coastal Overlay
- Application case:** Case #05-2021
- Date of decision:** February 3, 2021
- Decision:** The Board voted 5-0 to deny a variance from the following section of the Rye Zoning Ordinance:
- §190-8.1
- The Board voted 5-0 to grant variances from the following sections of the Rye Zoning Ordinance:
- §190-2.4.C(1) to remove an existing deck and replace it with a foundation and a one-story addition 1.94' from the rear boundary; and
 - §190-2.4.C(2) for the addition to be 15.6' from the left side boundary; and
 - §190-2.4.C(2) for the addition to be 14.7' from the right side boundary.
- The variances were granted upon continued compliance with the following conditions:
- (1) that the addition remains one-story; and
 - (2) no deck or other outdoor living space be located above the addition.



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: Rannie Webster Foundation d/b/a Webster at Rye

Property: 795 Washington Road, Tax Map 11, Lots 52 & 6
Property is in the Single Residence District

Application case: Case #06-2021

Date of decision: February 3, 2021

Decision: The Board voted 5-0 to grant a two-year extension to the Special Exception granted 3/3/2019.



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.