

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, January 17, 2024

7:00 p.m. – Rye Town Hall

Members Present: John Mitchell, Chris Piela, Chair Shawn Crapo, Sandra Chororos, Rob Patten

Also Present on behalf of the Town: Planning/Zoning Administrator Kim Reed

I. CALL TO ORDER

Chair Crapo called the meeting to order, led the Pledge of Allegiance, and outlined meeting procedures.

II. APPLICATIONS

1. Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request variances from §190-2.4.C(1) for rear deck/egress 21.82' from the rear boundary where 25' is required; from §190-2.4.C(3) for a bioretention basin 0' ft (Jenness Avenue side, 9 +/- to road) and bioretention basin 0' ft (Surf lane > 10ft to road) where 23.5' required to Jenness Ave and 8' required to Surf Road; §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, House 11.24'/26.99', Overhang 9.87'/26.05', rear deck +/- 17.50' and pervious driveway 29.35' from the wetland where 75' is required; from §190-6.1.A and from §190-6.1.B(1)(2), (C) for a 9,998 square foot lot area with 200' of frontage on a nonconforming lot; and from §190-5.0C for 1 off-street parking space within the front setback where that is prohibited. Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06-2024.

2. Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request a special exception from §190-3.1.G(2) for a pervious driveway 29.35' in the wetland buffer and from §190-3.4.C for a 1,331 s.f. home on a vacant lot in the coast overlay district with criteria per §190-3.4.C(1)-C(8). Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06b-2024.

Chair Crapo explained this application still has a pending request for rehearing which hasn't been finalized. He explained the opinion of town council that the board doesn't need to do a Fisher v. Dover analysis in this case.

The board agreed to hear the new application.

Attorney Tim Phoenix presented on behalf of the applicants who were present via Zoom. He introduced team members **Max Crater**, Horizon Engineering (Zoom); **Attorney Monica Kieser**; **Robbi Woodburn**, landscape architect; **Jen Ramsey**, who created the house design; and **Steve Riker**, wetland scientist from Ambit Engineering.

Attorney Phoenix explained the applicant's position that if these variances and special exceptions are granted and the appeal period runs without an appeal they would be willing to live with the reduced project and withdraw the appeal on the previous project. If this should be denied or appealed, they reserve the right to go forward with the other plan.

Attorney Phoenix described the lot, noting that it was originally two lots created in 1903 and has existed as it is for over 120 years. He explained that the town taxes the property as a buildable lot and at the time of purchase in 2021 there were no wetlands restrictions, those restrictions changed in 2022.

Attorney Phoenix, explaining that the RCC doesn't approve of the project, discussed some issues with their recommendations. He noted that Mr. Riker determined the wetlands are not high functioning and that Horizon's report determined that no more water will leave this site post-construction as pre-construction. The earlier plan by Horizons was also peer-reviewed by Sebago, who agreed with and supported their plan. He discussed abutters' concerns regarding flooding in the area and stated that its cause is rainwater, high tide, and wind, not this lot. He addressed Member Piela's previous concerns with the RCC's position. He stated that if the board would like the driveway to be impermeable, the analysis still works and they are still under coverage requirements.

Piela -Was water analysis done with a permeable driveway in mind?

In response to Member Piela's question, Attorney Kieser explained that the analysis was done with both a permeable and impermeable driveway, and it would work either way.

Attorney Phoenix discussed neighbor submissions and concerns and paraphrased comments taken from the BOA's 8/22/24 minutes. He presented the proposed project with a diagram of changes and a chart for required relief and special exceptions. He expressed his confusion with the Building Inspector's note that relief was needed for article 6.1.

Attorney Kieser explained that the assessed value of the property when they purchased it was \$492,800, the applicant paid \$612,000, and today it's valued at \$672,500, noting that it's of higher value even with the new restrictions.

Attorney Kieser discussed the existing grade, 11', and referenced Exhibit C-102.

Attorney Phoenix expressed their intent to submit the 7/27/23 Sebago report, the analysis and confirmation of Horizon's work, as part of the record.

Member Piela asked if a report exists stating the outcomes if the driveway were impervious.

Mr. Crater clarified that the final model result is shown with impervious pavers. In response to Chair Crapo's question, Attorney Kieser confirmed that the proposed plan is permeable, though the calculations are based on an impervious surface. She stated that the preference is to use a permeable surface as the property would benefit from having as much infiltration as possible even though not strictly necessary.

In response to Chair Crapo's question, Attorney Kieser clarified that this report is the same that was submitted to the board for peer review of the previous, more impactful project.

Ms. Woodburn explained that her plan has not changed from the original, though when the location of the house was moved, a proposed tree along the street was lost as well as an existing, 7" birch. She explained that the trade-off is that they're now able to save a 24" white oak. She stated that for tree canopy coverage, despite the loss, they gained a much larger existing tree. Referring to tree coverage calculations, she explained that instead of being 393 square feet less, it's now 203 square feet. She explained that no new trees were added with this proposal as it's better for the proposed trees to have space to grow into the house. She stated that they went from adding 25 new to 24 new trees, but have an existing tree which adds much more coverage. Referring to the RCC's recommendations she stated that they'd like to mow once per year in the fall to manage invasive species.

Chair Crapo stated that fertilizer is needed to establish even no-mow grass, and asked if the RCC is ok with no fertilizer after that point. Ms. Woodburn explained that the initial fertilizer would be a slow-release fertilizer.

Member Chororos asked what would be going around the bioretention basin. She observed that it was right up against the property line.

Ms. Woodburn described the basin as a lawn with a dip in it. She explained that rain gardens were originally planted with native species and would often get out of control if not maintained. UNH did a study on rain gardens without native species and the rain garden still performs in the same manner, it just doesn't create habitat. She stated that more habitat is not needed in this residential neighborhood.

Referring to sheet C501, Chair Crapo asked if the cross-section depicting the pond's underground layers would look like a depression in the lawn. Ms. Woodburn confirmed. Chair Crapo asked about the pond's functionality if it's filled with snow from the street. Ms. Woodburn explained that water collects under the snow.

Mr. Crater explained that it's close to the road, but not on the road, and if there's a snow bank in the way, water will have to go around it and flow into the bioretention basin, which will filter out solids. He noted that stormwater analysis was done without any tree plantings.

Attorney Kieser clarified that to be conservative, the entire area between the wetland and the road was modeled as a grass area. Any trees that do grow in or are well established will help in addition to what was modeled.

Chair Crapo asked if the model included existing trees or if it was as if no tree vegetation was on the lot. Mr. Crater explained that the premodel included a portion of where the building is as forested and in the new model everywhere is considered grass. He clarified that the house was considered in the model and the area that was being disturbed was modeled as grass, not a forested area.

Ms. Woodburn explained that landscaping isn't a tool that hinges on drainage calculations but is done for the subsurface.

Attorney Phoenix noted that there's 10-15' between the paved surface of the road to the property line, which is a good area for snow to be plowed. While the wetland itself goes right up to the property line, if a plow goes by they're still 10-12' away, maybe 15'.

Attorney Phoenix discussed each of the five conditions included in the RCC's January 14, 2024 letter.

Chair Crapo and Ms. Woodburn discussed the delineation of no-mow vs. mow area. Ms. Woodburn offered to use non-permanent flagging or staking to establish that.

Steve Riker, Certified Wetland Scientist from Ambit Engineering discussed the Wetlands Delineation he performed on April 27, 2021, and explained that the flags were survey located by Horizons Engineering and were depicted on their site plans as a part of their application materials. He also explained the purposes and methodology of a Functions and Values Report and discussed his findings for this property. He clarified that he did this before Horizons performed their drainage analysis. He stated that his summary and conclusions were revised 12/14/23 to reference the new plans submitted by Horizons and Woodburn and Co. and the size of the house is revised in the report.

Attorney Kieser asked Mr. Riker to discuss the permeable driveway as opposed to impermeable.

Mr. Riker explained that he would like to see pervious surfaces when possible as it's an improvement to low-impact development as opposed to an impervious surface which generates runoff.

Attorney Kieser asked if the bioretention basin fulfills some of the same treatment as a rain garden. Mr. Riker stated that he believes it does, a rain garden is another low-impact development technique that's used to treat stormwater in residential settings.

Member Chororos asked if the applicant is still agreeable to the four conditions proposed by Jason Rucker. Attorney Phoenix stated they would agree and asked Mr. Crater if rip rap would be problematic in the wetland.

Mr. Crater stated that he'd rather not have rip rap, but if there's erosion it could help. He stated that the first three conditions don't make sense in this case and it would make more sense if it were the responsibility of the town. He explained that while it would be beneficial for the neighborhood, it doesn't make sense as a condition for this project.

Attorney Phoenix stated that Mr. Riker advised that rip rap in a wetland requires a DES permit and their expert doesn't think it's necessary. He clarified that the applicant would agree to clean it out and maintenance of the culvert would be the responsibility of the town, they just want an easement to do it. Over time the owner won't need to clean anything that's off their site.

Chair Crapo stated that at a minimum he would like some language to address the applicant jetting the town pipes. He noted that while Jason Rucker is the Public Works Department Director, he could have over spoken from a legal standpoint, referring to the applicant's vendor doing work on a town-owned asset. He stated that he would like, at minimum, an asterisk stating "as permitted by town counsel and selectmen authority". He noted that relief in storm events relies on that outlet and it would be a problem if it were clogged. He stated that a mechanism is needed in case it's not legally permitted; a maintenance easement lets the town go down and jet it.

Attorney Phoenix discussed the pipe's maintenance noting that it's been there for decades without maintenance and two engineers have reported that the amount of water going through the pipes won't change.

Attorney Kieser, referring to a July 27, 2023 letter from Sebago, noted their advice that the applicant should consult with public works about maintenance and restoring the pipe's capacity. The report also addresses rip rap and the removal of vegetation. She shared her interpretation that

language should be more flexible and involve consultation with public works. While the applicant should not overstep and inject anything into the pipe, they could provide an easement to the town.

Chair Crapo referred to paragraph 3 and suggested the board revisit it if considering conditions.

Member Patten stated that he doesn't agree with those conditions as it's a slippery slope.

Attorney Kieser expressed that they need to prevent putting a burden on ongoing owners to handle the town's infrastructure, noting that there would be an improvement to the culvert right out of the gate. She noted that nobody currently tends to that property.

Chair Crapo asked about the potential risks to the functionality of the adjacent wetland. Attorney Kieser stated that from wetland to wetland is 94'; the house is more than 100' from the big wetland. She stated that the functions and values report is based on the onsite wetland.

Attorney Phoenix discussed the requested relief, noting that flooding in the area is caused by the low-lying area, high tides, wind, etc., and that two engineers have reported that this project would not harm the neighborhood. He addressed the relief from §190-6.1A and B recommended by the Building Inspector and explained why it doesn't apply to this lot as it existed before zoning. He discussed the requirements for special exceptions and stated that they've documented and proven that use is permitted in this area, and use is not injurious nor detrimental. He stated that they meet all setback requirements except the rear, where the setback is made better. He stated that stormwater would be directed into the bioretention basin which provides treatment and the landscaping plan will help with uptake. He also discussed the lot size, flood zone, and criteria for the driveway and reiterated that Mr. Riker has concluded that construction will have the least detrimental impact on the wetland and won't cross the wetland, just the buffer. He spoke to all special exception and variance criteria and proposed that all be met.

Chair Crapo asked if there are any changes that need to be addressed regarding runoff or gutters.

Attorney Kieser stated that the proposed house would have gutters, whereas the last plan relied on drip edges. She stated that more water would go through the gutters to the pond than before and while there is something that would look like a drip edge, it's just aesthetic.

Jen Ramsey stated that the roof pitch didn't change. She described the changes that did occur including the detail over the main entry, a limited laundry room, and an omitted office and bathroom. She stated the garage was made a true one-car garage with no extra storage.

Attorney Kieser, referring to the RCC letter, clarified that the ridge has always been compliant at 28'. She stated that there's no change except the addition of the gutters over drip edges that existed before.

Chair Crapo asked if the gutters would be piped into the retention pond and Mr. Crater confirmed that the water would have to come through the driveway to come out into the bioretention pond and confirmed that it has to go under the garage to reach the bioretention basin.

Chair Crapo opened to the public at 8:44 PM.

Heidi Milardo, 42 Surf Lane, explained that she's representing her mother, Sharon, who asked her to bring photos to show that there was flooding on the Northeast corner of the lot.

Mary Alice Patten, 45 Surf Lane, submitted photos to the board dated 1/13/24, handed out by Heidi Milardo, 42 Surf Lane.

Steve Wentzell, 12 Surf Lane, explained that the pipe running under the street flooded two houses on either side of the pipe. He noted that the original application requested 17 variances and asked how many are currently being requested. Referring to a discussion from the August 2023 meeting, he questioned the efficacy of the statement that building the house is not going to increase runoff or prevent absorption. He discussed flooding issues in the neighborhood, despite another raingarden effort to mitigate.

Sharon Ashworth, Mary Alice Patten's daughter, 45 Surf Lane, asked Mr. Riker about water and soil tests that have been conducted repeatedly at this property.

Mr. Riker stated that he can't speak to others' work on that lot, only to the work that he's done.

Chair Crapo clarified that the proposal cannot increase the flow of water from that property onto others post-construction. How they deal with water on the land is not before the board except for the fact that there is a wetland on the property. He expressed that the board must take expert opinions (both the town's and the applicant's) at their values.

Member Piela stated that the owner did not pay for the expert out of tax dollars.

Attorney Kieser described the slab on grade design and Attorney Phoenix explained that this project will have building permits reviewed by the building inspector, which is built-in protection.

Attorney Kieser explained that the new proposal increases the distance to Ms. Patten's lot line. Originally there was 9' to the lot line, but now there's 23' which is a significant improvement and preserves the channel in water.

Dwight Tuttle, 50 Jenness, asked if the retention area has a pipe draining toward the culvert.

Chair Crapo explained his understanding that there's a relief valve to prevent the wetland from flowing back up.

Attorney Phoenix stated that there was a pipe from the rain garden to the wetland.

Mr. Tuttle stated that this property was filled in 20 years ago and it's too much house for the lot.

Beth Tuttle, 50 Jenness Ave., explained that she had to put in her own free-standing drainage system. She discussed the culvert and stated that she wasn't able to utilize town infrastructure to solve the problem. She expressed concern at the ongoing maintenance that would carry with the deed as well as concerns about enforcement.

The board discussed town management and enforcement of the issued conditions.

Member Piela discussed §190-5.7 regarding drainage noting that the DPW director stated that it couldn't handle water flow, but two experts say no additional flow is going to occur. He explained that the board is reliant on the DPW Director's comments about what should be done to ensure capacity to accommodate additional flow now and in the future, which is what the easement would provide.

Alex Cappell of 58 West Atlantic Ave., representing his mother, explained that he grew up at this property and listed his credentials: BA in Earth System Science, Master of Science Degree in Environmental Modeling, Co-Published with the US Forest Service, with extensive environmental modeling experience. He explained that he created a powerpoint presentation with the RCC and his neighbors, which was sent to Planning/Zoning Administrator Reed in the Spring. He questioned the report that no net increase in water post-construction will occur and discussed the lot's trees, canopy structure, and transpiration.

Chair Crapo explained that the board has to look at surface water flows post-construction. He asked Mr. Cappell if his hypothesis is that the studies Horizons and Sebago conducted are inaccurate.

Ms. Woodburn explained that the engineering studies speak to surface drainage and don't address water in the ground or uptake in trees. She explained that she tried to research transpiration uptake for specific trees, but that information doesn't exist.

Mr. Cappel discussed the USGS report utilized by Horizons. He observed that there's not enough data to fully predict transpiration and uptake and questioned why the board would permit so many variances at such great expense to the community.

Member Piela asked if this is the only data set available and whether it's industry practice to use USGS parcels.

Mr. Cappel explained that the survey data is national and he's unsure if there are more detailed or granular studies. He wondered if this data lends a confidence margin that the board is comfortable with overriding town rules.

Chair Crapo agreed that Mr. Cappell raised excellent questions but wondered what the alternative would be.

Member Patten asked Mr. Cappell if there is a study that proves Horizons and Sebago wrong. He explained that if someone provided an expert report as robust as the ones presented, the board could take that into consideration.

Mr. Cappell stated that he hasn't conducted a report or hired others to do so.

Member Piela asked about Horizons' soil map and custom soil.

Mr. Crater explained that the USGS has a web soil survey which draws data from a survey set and is standard practice for drainage projects. He stated that sometimes DES may request a site-specific soil survey for state permits.

Attorney Kieser reiterated that Horizons' modeling assumes no trees on the lot, safeties are built in for those concerns, and they are addressing those things that are regulated.

Amy Prusinski, 48 Jenness Ave., explained that she's currently dealing with flooding and expressed her concerns about her property, and her neighbor's properties, and advocated for the applicant, noting that it will eventually be a problem they will have to deal with, too.

Chair Crapo explained that the board must do a zoning analysis based on the criteria.

Ms. Ramsey explained that the town recently adopted new FEMA maps and discussed the high water requirements. She explained that this home is compliant whereas most homes currently wouldn't be allowed to be built there because they're not compliant.

Brenda Murray, 57 West Atlantic Ave., stated that it's common sense that water is going to run off this property.

Susan Shepcaro of the RCC stated that if the board chooses to move forward with this application the RCC would definitely be willing to change the recommendation to mow once per year for invasive species and require maintenance of pervious pavers. She stated that one mow per year should be enough to stem invasives, though the RCC allows a Spring and Fall mow in some places. She agreed that no fertilizer should be used after growth is established. She stated that the RCC has had three site walks and at no point did they support this project because of the size of the project on a delicate lot.

Noting that the RCC's desire is to have an 85% survival rate of trees and shrubs, Chair Crapo asked for the RCC's position on care for trees. Ms. Shepcaro stated that organic matter should be used.

Ms. Woodburn discussed organic and slow-release fertilizers and explained that the proposed trees and shrubs shouldn't need fertilizers once established.

Ms. Milardo emphasized that the project is entirely in the wetland buffer.

John Tuttle, 50 Jenness Ave., explained that no abutter has had a parking variance granted or they have grandfathered use. He stated that it's especially important that there's no parking if they're going to put in a bio retention basin. He explained that Director Rucker recently denied his request to build a retention basin and pipe it to a wetland. He also noted that, unfortunately, sometimes engineering studies are wrong.

Chair Crapo stated that the engineering study considers the existing pipe. He asked Mr. Crater whether the model would work if the culvert were to become clogged.

Mr. Crater discussed the property's drainage and explained that if you were to block the culvert it would flood over the northern property line. He observed that the property is the low point of the neighborhood.

Attorney Phoenix stated that he appreciated the neighbor's comments and responded to Mr. Cappell and Mr. Tuttle's concerns.

Chair Crapo closed to the public at 10:18 PM

Member Piela stated that he appreciates the applicant resizing the structure. He discussed his previous concerns about the pervious driveway up against the wetland, but in light of the experts' endorsement, feels that the pervious pavers should be retained. He discussed the other requested relief and reflected that minimal relief is being requested. He emphasized that all expert opinions before the board state that water will not leave this property any more than it already does; in fact the project may improve water flow off of this property.

Member Chororos read from the Ambit Engineering Functions and Values Assessment, emphasizing that there were three expert reports showing that there will be no increase in water flow and no significant impact on the wetlands themselves.

Member Piela noted that it's a significant wetland for the purpose it serves in the neighborhood as a water retention pond.

Chair Crapo discussed the updated FEMA standards, noting that this home has taken those factors into account.

Member Patten echoed his appreciation of the downsizing and accommodations made since the previous meeting. He stated that, while it's an emotional issue in the neighborhood if the same proposal were in front of the board, he would still have difficulty denying it based on what's been reported. Since the board doesn't have any report to refute the three expert reports presented, it's difficult to believe that if the board did anything but approve, they wouldn't bring it to court. He stated that he doesn't think public safety is diminished (though it's controversial), it also doesn't affect light, safety, or openness of environment. He stated that the real issue is they have a bad water problem in the neighborhood and the recent flood exacerbates feelings around that. He noted that the existence of a wetland satisfies one of the criteria (special conditions) in that it makes the property unique.

Member Chororos observed that they decreased the size of the home, increased distances from structures to both the wetland and the lot lines, it required no relief for coverage requirements, the smaller home decreased impervious coverage, and it provided more space for stormwater management.

Member Mitchell expressed his concerns about the two abutters to the north east regarding water. He stated that storm drain maintenance is critical and he doesn't know how that will take place. He stated that it doesn't seem fair that abutters would have to hire their own engineer to argue with the other engineers.

Member Piela noted that the Sebago study serves the purpose of peer review.

Chair Crapo stated that while the applicant is not happy with giving up space and making it a smaller home, it seems that they got the functionality of a home and achieved some open space. He stated that he doesn't know that it's reasonable to make the lot completely non-buildable. He reflected that the most recent design doesn't seem like it would tip the scales and flood the neighborhood as the previous design might have. He also noted that the zoning changed after their purchase of the lot and that's a major factor.

Member Piela read aloud the proposed RCC conditions.

Member Chororos read aloud the proposed DPW conditions.

The board discussed and amended the language of the proposed conditions.

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

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, for reasons previously stated.

Rob Patten - Yes, for reasons previously stated.

Shawn Crapo - Yes, as stated.

2. The spirit of the ordinance is observed:

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, for reasons previously stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

3. Substantial justice is done:

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

4. The values of surrounding properties are not diminished:

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

7. The proposed use is a reasonable one.

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

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

John Mitchell - Yes.

Chris Piela - Yes, for reasons stated.

Sandra Chororos - Yes, as stated.

Rob Patten - Yes, as stated.

Shawn Crapo - Yes, as stated.

Motion by Chris Piela to approve the variances requested by Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 as presented with the following conditions:

- 1. The planting plan currently proposed and presented will be implemented.**
- 2. Where the planting plan calls for no-mow fescue the area should not be mowed except once per year to prevent invasive species.**
- 3. A survival rate of at least 85% after one year is considered adequate.**
- 4. Pervious pavers to be maintained as required by the manufacturer to maintain their pervious nature.**
- 5. No fertilizer after plantings have been established. Any fertilizer used to be slow release.**
- 6. The applicant to provide easements to the town of Rye for storm drain inlet inspections and maintenance.**
- 7. The applicant will review the inlet-protection issue with the Rye Public Works Director to determine what steps to be taken to ensure the long-term operation of the storm drain inlet function.**

Seconded by Rob Patten.

Vote 5-0-0 (J. Mitchell, C. Piela, S. Chororos, R. Patten, S. Crapo in favor)

1. Is it injurious or detrimental to the neighborhood?

John Mitchell - Yes.

Chris Piela - Yes.

Sandra Chororos - Yes.

Rob Patten - Yes, the expert testimony about the water is the chief reason why I would say yes.

Shawn Crapo - Yes.

2. Is it in harmony with the general purpose and intent of the zoning ordinance and is it in accordance with the general or specific rules contained therein?

John Mitchell - Yes.

Chris Piela - Yes.

Sandra Chororos - Yes.

Rob Patten - Yes.

Shawn Crapo - Yes.

Motion by Chris Piela to grant the special exceptions for Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 as presented with the same conditions as previously stated on the related variances. Seconded by Sandra Chororos.

Vote 5-0-0 (J. Mitchell, C. Piela, S. Chororos, R. Patten, S. Crapo in favor)

Motion by Chris Piela to continue the request for rehearing and reconsideration to the March 6, 2023 meeting. Seconded by Sandra Chororos.

Vote 5-0-0 (J. Mitchell, C. Piela, S. Chororos, R. Patten, S. Crapo in favor)

Motion by Shawn Crapo to adjourn at 11:02 PM. Seconded by Chris Piela. All in favor.

Respectfully Submitted,
Emilie Durgin

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Leigh & Darren D'Andrea

Property: 0 Jenness Avenue, Tax Map 8.4, Lot 48
Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8).

Application case: Cases #06a-2024 and 06b-2024

Date of decision: January 17, 2024

Decision: The Board voted unanimously to grant the following special exceptions of the Rye Zoning Ordinance as advertised and presented:

- §190-3.1.G(2) for a pervious driveway 29.35' in the wetland buffer and from
- §190-3.4.C for a 1,331 s.f. home on a vacant lot in the coast overlay district with criteria per §190-3.4.C(1)-C(8).

The above special exceptions were granted with the following conditions based upon the Rye Conservation Commission's January 14, 2024 letter and the DPW Directors requests as mentioned in the August 30, 2024 minutes:

1. The planting plan currently proposed to be implemented.
2. Where the planting plan calls for no mow fescue, the area should not be mowed, except once per year to control the invasives.
3. A survival rate of at least 85% after one year is considered adequate.
4. Pervious pavers to be maintained as required by the manufacturer as pervious.
5. No fertilizer after plantings have been established and fertilizer to be used shall be slow release.
6. Applicant shall provide an easement to the Town of Rye for the storm drain inlet inspection and maintenance.
7. The applicant will review the storm drain inlet and work with the DPW Director to determine what steps to be taken.


Shawn Crapo, Chair

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: Leigh & Darren D'Andrea

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- §190-2.4.C(1) for rear deck/egress 21.82' from the rear boundary.
- §190-2.4.C(3) for a bioretention basin 0' ft (Jenness Avenue side, 9 +/- to road) and bioretention basin 0' ft (Surf lane > 10ft to road).
- §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, House 11.24'/26.99', Overhang 9.87'26.05', rear deck +/- 16.69' and pervious driveway 29.35' from the wetland.
- §190-6.1.A and from §190-6.1.B(1)(2), (C) for a 9,998 square foot lot area with 200' of frontage on a nonconforming lot.
- §190-5.0C for 1 off-street parking space within the front setback

The above variances were granted with the following conditions based upon the Rye Conservation Commission's January 14, 2024 letter and the DPW Directors requests as mentioned in the August 30, 2024 minutes:

1. The planting plan currently proposed to be implemented.
2. Where the planting plan calls for no mow fescue, the area should not be mowed, except once per year to control the invasives.
3. A survival rate of at least 85% after one year is considered adequate.
4. Pervious pavers to be maintained as required by the manufacturer as pervious.
5. No fertilizer after plantings have been established and fertilizer to be used shall be slow release.
6. Applicant shall provide an easement to the Town of Rye for the storm drain inlet inspection and maintenance.
7. The applicant will review the storm drain inlet and work with the DPW Director to determine what steps to be taken.


Shawn Crapo, Chair

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.