

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, April 5, 2023

7:00 p.m. – Rye Town Hall

Members Present: Vice-Chair Patrick Driscoll, Chris Piela, Chair Shawn Crapo, John Tuttle, Sandra Chororos

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

I. CALL TO ORDER

Chair Crapo called the meeting to order and led the Pledge of Allegiance at 7:00 p.m. He explained that the board has a long meeting agenda and there may be a need for a second meeting. Members of the board introduced themselves and Chair Crapo explained meeting procedures.

II. BUSINESS

Chair Crapo stated that the first order of business is to appoint officers.

Nomination by Patrick Driscoll to appoint Shawn Crapo to the position of Chair of the Board of Adjustment. Seconded by Sandra Chororos. Shawn Crapo accepted the position.

Vote 4-0-1 (P. Driscoll, C. Piela, J. Tuttle, S. Chororos)

Abstained: S. Crapo

Nomination by Chris Piela to appoint Patrick Driscoll to the position of Vice-Chair of the Board of Adjustment. Seconded by Shawn Crapo. Patrick Driscoll accepted the position.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Nomination by Sandra Chororos to appoint Chris Piela to the position of Clerk of the Board of Adjustment. Seconded by Shawn Crapo. Chris Piela accepted the position.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Nomination by Chris Piela to accept the application of Jenn Madden and appoint her to the position of Alternate Member of the Board of Adjustment. Seconded by Patrick Driscoll.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Approval of Minutes - March 1, 2023

- Administrative correction to numbering system on pages four and five.
- Correction to page seven, paragraph three, and page 12 for clarification: Chris Piela's letter was submitted as a resident and abutter of the discussed property, not as a member of the board.
- Correction to page 16 where "20' from the wetlands" should read "200' from the wetlands".
- Correction to page 11, paragraph four where, "offroading" should read, "offloading".
- Correction to page 19 for clarification: Member Chororos' comment refers to the project as tasteful, not the retaining wall.

Motion by John Tuttle to approve the March 1, 2023 minutes as amended. Seconded by Sandra Chororos.

Vote 3-0-2 (S. Crapo, J. Tuttle, S. Chororos)

Abstained (P. Driscoll, C. Piela)

Continuations

Planning/Zoning Administrator Reed updated the board on application #3 on the agenda and shared that they've hired a surveyor and should be prepared to come before the board in May.

Member Tuttle and Planning/Zoning Administrator Reed discussed the procedure of additional fees charged for extended continuations.

Motion by Patrick Driscoll to continue the application of Robert Lang on behalf of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road to the May 3, 2023 meeting. Seconded by Chris Piela.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

The board discussed the possibility of a secondary meeting.

Motion by Patrick Driscoll to continue applications five and six submitted by Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 to the May 3, 2023 meeting. Seconded by Chris Piela.

Vote 4-0-1 (P. Driscoll, C. Piela, S. Crapo, S. Chororos)

Abstained (J. Tuttle)

Motion by Chris Piela to continue applications seven and eight for properties owned and located at 1182 Ocean Boulevard, Unit 2, Tax Map 17.3, Lots 32-2 and 1182 Ocean Boulevard, Unit 3, Tax Map 17.3, Lot 32-3 to the May 3, 2023 meeting. Seconded by Patrick Driscoll.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Motion by Chris Piela to continue application 12 submitted by Jeffrey W. Keefe of 380 Ocean Blvd. Unit #11, Portsmouth NH for property owned and located at 3 Brackett Road, Tax Map 22, Lot 72 to the May 3, 2023 meeting. Seconded by Patrick Driscoll.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

III. APPLICATIONS

1. Ted & Pauline Simeonov, Aleph LLC owners of 720 Brackett Road, Tax Map 17, Lot 65 request an Administrative Appeal from the Building Inspector's letter dated November 22, 2022, for address 691 Brackett Rd, Tax Map 17, Lot 34 per §190-5.7B and §202, Attachment 5, Appendix E as it relates to a driveway. Properties are in the Single Residence District. Case #10-2023.

Chair Crapo discussed the matter of an administrative appeal related to a letter issued 11/22/22 in response to a complaint that the variances for the relief granted for the existence of a driveway installed four years ago was improper. He commented that the appeal period for the 2018 construction has long ended; it was 30 days after the 2018 set of dates. He stated that the board doesn't have jurisdiction over this matter and cited the general code 7.2 appeals procedure.

Member Piela explained that he agrees with Chair Crapo. He added that he read through the file to understand the concern regarding the 2018 driveway and wondered what is a reasonable time to articulate a complaint. He also wondered if there is any evidence to say that there was formerly a permeable driveway.

Vice-Chair Driscoll stated that, in reading through the package and looking at what the town council has weighed, he agrees that the board doesn't have jurisdiction over this.

Motion by John Tuttle to not take jurisdiction over the application by Ted & Pauline Simeonov, Aleph LLC owners of 720 Brackett Road, Tax Map 17, Lot 65 for an Administrative Appeal from the Building Inspector's letter dated November 22, 2022, for address 691 Brackett Rd, Tax Map 17, Lot 34 per §190-5.7B and §202, Attachment 5,

Appendix E as it relates to a driveway for all aforementioned reasons. Seconded by Chris Piela.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

2. Mukherjee Living Trust Sumeeta Mukherjee Trustee of 60 Deer Meadow Road, North Andover, MA for property owned and located at 1701 Ocean Blvd, Tax Map 13, Lot 6 requests variances from §190-2.4.C(3) for second story building addition and deck 10' +/- from the front boundary where 30' is required; from §190- 3.1.H(1)(b) for the work within 75' of the wetland buffer. Property is in the General Residence, Coastal Overlay and SFHA, Zone VE. Case #07-2023.

Shannon Alther of TMS Architects presented the application on behalf of the applicants. He summarized the board's concerns from their February meeting regarding the number of variances

He clarified that the septic system design has been updated and explained that the variance for the septic system is not needed. He also explained that the elevations of the railings were previously higher than the 28' coastal overlay height restriction, which has been adjusted on the plans so there is no request for a height variance.

Speaking to Mr. Alther, Member Tuttle asked for clarification if he is looking for a vote, or just giving an update.

Mr. Alther explained that he would like to have a vote and that he still has to give an answer to DES regarding septic approval and wetlands. He explained that he wanted to finish ZBA items and RCC-related items that will go to the meeting next week. He stated that if the board reviews the project and agrees that they want the RCC to have the final say, he's fine with that.

Planning/Zoning Administrator Reed explained that the applicant is not looking for septic relief, which is the only thing the RCC is asking for.

Chair Crapo noted that they had some work within 75' of the wetland buffer.

Mr. Alther addressed the notes from the first meeting and stated that he can explain some of the bigger issues.

Speaking to Mr. Garvan, Chair Crapo asked if waiting until the Thursday night RCC meeting is going to gain much more than what's already been learned.

Mike Garvan of 220 Washington Road, with the Rye Conservation Commission, explained that the RCC had a site walk when Mr. Alther had preliminary plans, and the septic and retaining wall were discussed as well as the existing fence, which needs to be repaired. He explained that they were told if they didn't have everything set to go, they couldn't have another site walk or issue another recommendation letter. He wasn't sure what had happened in the last three weeks or why the applicant is on the agenda for the next week, but stated the RCC isn't comfortable issuing another recommendation without seeing the final plans and doing a second site walk. Mr. Garvan also explained that he was at the first site walk but not at the meeting where Mr. Alther presented three weeks ago.

Vice-Chair Driscoll commented that the RCC put together a substantial list of what they'd like to see from the property and it doesn't look like much is conflicting, unless something has changed between the letter two months ago and today. He added that if Mr. Alther is okay with conditioning the approval on the RCC's secondary site walk, the risk is up to him. Vice-Chair Driscoll recommended approval to be conditioned upon a secondary site walk with the RCC.

Chair Crapo commented that he's having trouble seeing how the board would give the final approval to the RCC.

Vice-Chair Driscoll explained that they don't need the RCC for the septic, and the RCC has already looked at everything else.

Mr. Alther commented that there were some additional details regarding the fencing and retaining wall that they plan to present to the RCC next week.

Chair Crapo noted that the board has amended applications to say that if they deal with wetlands, they need the RCC's input. He added that while the board values the RCC's input and it's often used for guidance, it's not required in order to go forward. He also added that if the board feels as though a decision can be made with what's before them, then they could continue, but ultimately the board will need RCC's weigh in, and he'd rather continue the application and wait for the RCC's commentary.

The board discussed the benefits of moving forward with the application as it stands or waiting until the RCC has reviewed the updates to the application.

Attorney Tim Phoenix of Hoefle Phoenix Gormley & Roberts commented that they'd like to move forward, but want to make sure that the board has enough information to feel comfortable in making a decision.

Mr. Alther commented that they're waiting for the state to approve the septic, and to be sure that the designed septic location meets the criteria of the town and the zoning as well as the state component. There are also details regarding the removal of railroad ties at the edge of the property, which is something they'd like to discuss with the RCC.

The board discussed the approvals needed from the board and the approvals needed from the state.

Chair Crapo commented that he'd rather wait to see the final plan regarding the railroad ties and how it impacts the activity in the wetlands.

Member Chororos asked Mr. Garvan if he had any additional comments.

Mr. Garvan stated that he didn't want to speak for the entire board, but explained that the RCC thought it was a reasonable project at the site walk, so he doubts there would have major objections to replacing the fence and removing railroad ties along the wetland, but added that they haven't seen the final design.

Mr. Alther commented that, in the interest of time, he would like to take the board's advice, and didn't want to force the board into a tricky decision.

Member Tuttle stated that he feels it's cleaner to wait until the plan has been discussed with the RCC.

Mr. Alther requested a continuance to the May 3, 2023 meeting.

Motion by Chris Piela to continue the application of Mukherjee Living Trust Sumeeta Mukherjee Trustee of 60 Deer Meadow Road, North Andover, MA for property owned and located at 1701 Ocean Blvd, Tax Map 13, Lot 6 to the May 3, 2023 meeting. Seconded by John Tuttle.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Mr. Alther thanked Mr. Garvan for his comments.

Chair Crapo briefly discussed the relief previously granted to the Reaneys last fall with Planning/Zoning Administrator Reed and Attorney Monica Kieser.

Jenn Madden arrived and swore in at 7:42 p.m.

3. Robert Lang on behalf of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road request a variance from §190-5.0.C for a driveway 6' where 10' is required and from §190-2.3.C (2) for a shed 12' from the side boundary where 20' is required. The property is in Single Residence District. Case #55-2022.

Application continued to the May 3, 2023 meeting (see motion above).

4. Wentworth by the Sea Country Club for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 requests variances from §190-2.3.C(2) for 32 parking spaces in or partly in the 20' side setback; from §190-3.1.H(2), a, g for parking 11.' from wetlands where 75' is required; and from §190-5.0.C for 7 off-street parking spaces within or partly within the 10' lot line setback. Property is in the Single Residence District. Case #03-2023.

Attorney Phoenix spoke on behalf of the applicant along with **Bob Diodati, Vice President; Chad Mitchell, General Manager; Jason Bastille, Superintendent; Corey Caldwell**, who completed the technical work, and **Peter Stanhope, Appraiser** (via Zoom).

Attorney Phoenix reported that some months ago he was involved with Jenn Madden and other partners for a project on Wallis Road that will be heard by the board at this meeting. He explained that Member Madden will be sitting on a matter presented by Attorney Phoenix. He stated that he is comfortable and has no concerns, but wanted to bring it to the attention of the board and the public, in case there were any concerns.

Chair Crapo stated that recusal is up to the member. He explained that in each case, the member should do a gut check and analysis of themselves and their perceived ties. If there is any financial gain or loss to be had, it is a given that a member would recuse themselves. Chair Crapo asked Member Madden to consider whether she feels she can be fair and impartial in applying the zoning laws as they are to the application.

Member Madden explained that she feels comfortable, and the connection hadn't occurred to her until Attorney Phoenix brought it up.

Chair Crapo explained that Member Madden was already slated to sit in Vice-Chair Driscoll's stead several meetings ago, and had no shared agenda with the matter before the board.

Member Madden added that she sits on Attorney Phoenix's applications regularly.

Chair Crapo commented that Member Madden shared with them months ago that she would eventually be before the board with Attorney Phoenix.

Hearing no objections, Attorney Phoenix continued. He explained that Attorney Tilsley submitted a letter in January challenging the application on the basis of Fisher v. Dover. He asked the board if they'd like him to address the matter.

Chair Crapo stated that it would be cleanest if he did.

Attorney Phoenix explained that it's a simple matter and explained Fisher v. Dover to the board and the reasons it doesn't apply to this application; namely, there has never been a denial of a similar project by the Zoning Board. He added that there was a denial to a similar project by the Planning Board in 2004, but for zoning purposes, the prong of the Fisher Test does not exist. Attorney Phoenix stated that he also has a letter and an outline of concerns raised by the Planning Board nearly twenty years ago that he would be happy to review for the board.

Chair Crapo asked if the Planning Board's denial was related to a need for variances.

Attorney Phoenix responded no, it was just the Planning Board application.

Member Madden asked for clarification on the timeline of the Planning Board's denial. She commented that Planning/Zoning Administrator Reed found the approval, but it was very different, and it ended up being for parking behind the sports complex.

Attorney Phoenix gave the history of the 2004 application. He explained that the Planning Board denied an entry and roadway to the sports complex with parking in same area. At the same time, the club wasn't concerned because they found a better way for parking. He explained that while Fisher v. Dover has a different rule, there is case law that states these rules are not to be narrowly or technically imposed. Attorney Phoenix explained that he doesn't see how it applies to the Zoning Board; there has to be a previous denial by the Zoning Board, of which there is none.

Chair Crapo asked for clarification that the lot lines that these setbacks are from are within the country club's subdivision, not from outside properties.

Attorney Phoenix confirmed. He added that the golf course existed there long before those homes were built, and people bought them with full knowledge that there was an operating commercial activity, a golf course.

Chair Crapo asked for the timeframe for the construction of the subdivision on Heather Drive.

Attorney Phoenix responded that the subdivision was started in 1994.

Member Madden and Chair Crapo discussed the property at 7 Heather Drive.

Attorney Phoenix commented that the timeframe of construction and their location isn't entirely relevant. He added that there were some homes there in 2004, but Fisher does not apply if there is not an earlier denial to compare to the new one. Attorney Phoenix noted his respect for Attorney Tilsley and stated that he may wish to speak to this matter.

The board discussed the matter and Chair Crapo invited Attorney Phoenix to present what he needs to present.

Attorney Phoenix stated that Fisher v. Dover doesn't apply because you need to have an earlier denial. Aside from that, this application does have a material difference in circumstances. He explained the earlier purpose of the driveway, which was originally denied by the Planning Board, but the club found a better way to operate. He explained that the driveway to the Nineteenth Hole was always there. He explained that the planned use has intensified. While membership is capped, club use has intensified, especially since Covid, which is creating a parking issue on site: people start parking on Heather Drive. He explained that this plan is to provide parking on site with access from Heather Drive, and if approved, only a couple of houses will be passed on Heather Drive. He continued that Fisher also allows a hearing of a new application if it addresses the previous concerns, or is requested by the board. He noted that it would need to be by the same board, not the Planning Board. He added that the previous Planning Board decision was concerned with vehicular and pedestrian interface. He explained that this proposal is designed to address that concern. He added that the previous concerns including truck traffic, emergency access only, and pedestrian traffic no longer apply.

Referring to the Planning Board's minutes, Member Madden asked about the use of a gate for emergency and utility vehicles.

Attorney Phoenix explained that the new driveway to the sports complex was built in 2005. He deferred to Bob Diodati to answer Member Madden's questions regarding the gate.

Bob Diodati, 60 Wentworth Road, explained that when the area was proposed as the emergency road to the sports center, there was talk of a gate to keep traffic other than emergency vehicles out of the area. Now, the gate is at the base of the parking lot, which is opened when trucks and emergency vehicles need to access the road. He explained that it was never a condition to his recollection, and it was certainly never a condition of the Nineteenth Hole parking because that was denied and it wouldn't have been part of the approval for the main roadway to the sports center.

Member Chororos asked what metrics were used to determine the number of spaces needed.

Attorney Phoenix explained that it's all that could fit in the area.

Member Chororos clarified that they were trying to maximize what would fit in the area.

Chair Crapo commented that that discussion would be more relevant in the second phase of the discussion. Right now, the board is addressing whether or not they can hear the application and whether or not Fisher v. Dover applies.

Attorney Roy Tilsley of Bernstein Shur corrected the record and stated that he does not represent the entire association. He stated that he represents the current property owners on Heather Drive and listed those individuals.

Chair Crapo asked if they have their own Homeowners Association.

Attorney Roy explained that he isn't sure. In response to Chair Crapo's clarification that Attorney Roy is not representing all, he explained that there is one other property on Heather Drive that's currently unoccupied and changing hands; that owner is not part of his representation.

Chair Crapo asked Attorney Roy if his representation includes the direct abutter, where part of the parking is within the easement. Attorney Roy confirmed and explained that he works with the individual property owners.

Attorney Roy raised the topic of recusal and explained that Zoning Board members are held to a jury disqualification standard. He continued that Attorney Phoenix's representation of Jennifer Madden later in the meeting would violate the jury disqualification standard. He noted that Member Madden should not sit on the board if she employs one of the Attorneys before the board and asked that Member Madden reconsider her decision not to recuse herself because it's required under New Hampshire law.

Chair Crapo explained that, in the event that Member Madden changes her decision, it would then become a board of four members. In that case, Chair Crapo would ask the applicant if they would like to continue with a board of four or continue at a different meeting. Chair Crapo stated that it's Member Madden's decision based on the criteria, the board and public can't bounce a member from sitting, it is the member's choice, but it does include the juror standard.

Attorney Phoenix, speaking to Attorney Roy, explained that he only found out that Member Madden was sitting this afternoon. Attorney Roy acknowledged that and Chair Crapo noted that Attorney Roy was not suggesting any improprieties by his request.

Attorney Phoenix spoke to his understanding of the juror's standard and explained that he would defer to Attorney Roy. Chair Crapo noted that Attorney Roy's statement is not inaccurate.

Member Madden stated that she can make a fair and impartial decision, and she discussed with the board and Attorney Phoenix whether that's relevant considering Attorney Roy's explanation of the juror's standard.

Member Piela stated his opinion that it would give the other party an opportunity to appeal.

Chair Crapo stated that he feels it's cleanest if Member Madden recuses herself, but he can't make her recuse herself.

Member Madden recused herself from the application.

Chair Crapo invited the applicants to discuss whether they would like to continue before a board of four. He stated that there are risks in terms of voting; it has to be at least three to one. In response to Attorney Phoenix's question, Chair Crapo stated the board would be sure to have five members seated should they choose to continue next month.

Attorney Phoenix stated that they would like to continue; but, for the benefit of the club and the neighbors, they would like a decision on Fisher v. Dover.

Chair Crapo stated that he'd like to seek counsel from the town Attorney and an opportunity to review the case and footnotes to understand whether it applies to a broader definition of a land use board decision.

The board discussed possible dates and decided to continue the application at a meeting on April 19, 2023. Available board members were discussed and it was discussed that Attorney Tilsley would also present at the meeting.

The board discussed whether Member Madden would be able to sit if the continuation happened on April 19th; Attorney Tilsley stated that he would still object.

Attorney Phoenix asked if the applications for Leigh & Darren D'Andrea could also be moved to the April 19th meeting. Chair Crapo responded no, and explained his reasoning.

Motion by Chris Piela to move the application of Wentworth by the Sea Country Club for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to a meeting to be held on April 19, 2023 at 7:00 p.m. Seconded by John Tuttle.

Member Madden recused herself from the application.

Vote 4-0-0 (C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Vice-Chair Driscoll replaced Member Madden's seat at the meeting at 8:24 p.m.

5. 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 an overhang 23.7', chimney 21.9', steps 21', retaining wall 15.3', and patio/deck 9' from the rear boundary where 25' is required; from §190-2.4.C(3) for steps and a paver pad 17.5'; a bioretention pond +/- 2 ft from Jenness Avenue and +/- 6 ft from Surf Lane; from the front yard boundary where 23.5' for Jenness Avenue and 8' for Surf Lane is required; from §190-3.1.F, H(2)(a)(e)(f)(g) for tree removal, house 5.3', steps 13', and driveway 20' from the wetland where 75' is required; from §190-3.4.E for 17% dwelling coverage where 15% 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 off-street parking spaces within the front setback where that is prohibited. Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06a-2023.

Application continued to the May 3, 2023 meeting (see motion above).

6. Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue, Tax Map 8.4, Lot 48 request special exceptions pursuant to §190-3.1.G(2) for a driveway located in the wetland buffer; and §190-3.4.C to develop a vacant coastal lot in accordance with Criteria §190-3.4.C(1)-C(8). Property is in the General Residence and Coastal Overlay Districts, and SFHA Zone AE(8). Case #06b-2023. Request continuance to the next available meeting.

Application continued to the May 3, 2023 meeting (see motion above).

7. Summer at the Beach Trust, Susan Mesiti, Trustee, for property owned and located at 1182 Ocean Boulevard, Unit 2, Tax Map 17.3, Lots 32-2 request variances from §190-3.1.H(1)(a) and §190-3.1.H(2)(a)(g) to convert a patio to a deck 50' from the highest observable tide level where 100' is required; §190-2.4.C(2) for a generator 3' from the side yard boundary where 20' is required; from §190-3.4.E for 72.6% impervious surface coverage where 72% exists and 30% is required; from §190-3.4.D to convert a deck to living space at 35.8' where 28' is required, and from §190-6.3.A for expansion of a nonconforming structure. Property is in the General Residence and Coastal Overlay Districts. Case #13a-2023.

Application continued to the May 3, 2023 meeting (see motion above).

8. Paradise at the Shore Trusts I and II, Susan Mesiti, Trustee, for property owned and located at 1182 Ocean Boulevard, Unit 3, Tax Map 17.3, Lot 32-3 request variances from §190-3.1.H(1)(a) and §190-3.1.H(2)(a)(g) for a structure 50' from the highest observable tide level where 100' is required; from §190-3.4.E for 72.6% impervious surface coverage

where 72% exists and 30% is required; from §190-3.4.D to convert a deck to living space at 35.8' where 28' is required, and from §190-6.3.A for expansion of a nonconforming structure. Property is in the General Residence and Coastal Overlay Districts. Case #13b-2023.

Application continued to the May 3, 2023 meeting (see motion above).

9. Joseph Nicols, Nichols Environmental, LLC for Dominick & Keri Graham of 102 Chester Road, Fremont NH for property owned and located at 327 South Road, Tax Map 4, Lot 51 request a variance from §190- 2.3.C(5) for installation of 2 a.c. units 19' from the side boundary where 20' is required. Property is in the Single Residence District. Case #14-2023.

Joseph Nichols of Nichols Environmental, representing the applicants, introduced himself and the builder, **Kyle Perlowski**, of Persimmon Homes.

Mr. Nichols summarized a history of the lot. He explained that 327 South Road had a house in disrepair. The home was demolished and rebuilt, the foundation certification was done by David Hislop of Nighthill Land Surveying. When the applicant applied for a building permit and A.C. units became a problem because of the location near the septic tank. He explained that due to the house's layout, the most economical and best position for them based on HVAC location is to the side. He explained that they're asking for relaxation from the 19' setback to 20'. He added that the lot of record was existing prior to zoning regulations. It's currently 83.5' at the road width, and 96.2' to the rear of the property. Building permits have been issued and building is under construction, septic has been approved, the applicant is just here for relaxation for the a.c. units only.

Chair Crapo stated that his perception of the line is that it was in a much different place, he asked if the project is not in Rye Beach. Mr. Nichols confirmed and explained that the abutting line is to the west. He explained that the Rye Beach line is to the west, 309.14 property line. He added that the town of Rye takes jurisdiction over air conditioning units where other towns do not. Mr. Nichols reiterated that the building meets all setback requirements, they have a foundation certification, and the pad is considered a structure that it sits on.

Chair Crapo asked if the unit itself isn't considered a structure. Planning/Zoning Board Reed explained that it's the dimensions of the pad that the applicant is looking for relief from. The board discussed what relief is needed for this type of structure.

Vice-Driscoll asked about the location of the A.C. units, which was not noted on the plan. Mr. Nichols explained the plan in more detail. Vice-Chair Driscoll also asked about the specs on the A.C. unit condensers. Mr. Nichols explained that he doesn't have the specs, they used what the HVAC company required.

Chair Crapo asked about an existing abutting gravel drive, and if that is its own entity. Mr. Nichols explained that it's attached to the property.

Mr. Nichols explained that there are no houses located within 250'.

Member Tuttle asked why the A.C. units couldn't be placed in the rear of the property. Mr. Nichols explained that the rear setbacks, the septic tank, and the location of the porch made the side of the property a better location. He added that the HVAC company found the side property to be the most efficient location.

Chair Crapo opened to the public at 8:32 p.m.

Bob Hudson of 322 South Road, an abutter of the property, requested that the board honor the existing zoning ordinance as is and deny the application. He explained that this is not a hardship but a convenience and is contrary to public interest, to the neighborhood, and is an injustice to the surrounding properties. He explained that one side of the house is wide open and the foundation is elevated and heavily exposed. He argued that this should have been considered by the applicant when they designed the house. He explained that the previous house on the lot was above 32' wide and within the setback for 100 years. He explained that there's room on the back of the house and it's not a hardship to place the units to the rear of the property.

Chair Crapo, speaking to Mr. Hudson, pointed out that the requested relief is for one foot. He asked Mr. Hudson to explain how the one foot difference goes so egregiously against the spirit of the ordinance.

Mr. Hudson replied that it's a disfavor to the neighborhood, the homeowner tore down the existing house and built a very large house on a lot with a hardship attached to it, and it sets a precedent. He noted that there are four sides to the house and the AC units could be placed elsewhere. He also pointed out that the applicant requested two AC units in the application, but as presented it seems that the applicant is requesting four. Mr. Nichols clarified that it's two units.

Chair Crapo pointed out the units illustrated on the plan. Mr. Hudson explained that he'd seen the plan and also sent an email regarding the units earlier in the day. He pointed out that there is room in the backyard within the setback to place the units.

Jerry Gittlein of 320 South Road explained that he can attest to what Mr. Hudson shared. He expressed the importance of following the rules of the ordinance, no matter how small, and place the AC units in an alternate place that wouldn't require a variance.

Troy Erreson of 312 South Road agreed with Mr. Hudson and Mr. Gittlein and stated that it sets a precedent. He added that it's a gigantic house on a small lot and it should have been considered in advance. He explained that the units would be very visible from neighbors' homes and from the street.

Mr. Nichols explained that the height of the house was dictated by the septic design, which can't be changed. He added that the height of the grade in the back of the house had to come up because of ledge depth and the high water table. He added that the original house had a system in

the water table and explained that impervious surface has been reduced from the existing to the proposed.

Chair Crapo asked if they are still at the point of framing. Mr. Nichols confirmed.

Member Piela asked if there were variances granted for this property before it was constructed. Mr. Nichols explained that it meets all building criterias.

Chair Crapo asked what prevents these units from going in the rear of the house. Mr. Nichols explained that the septic tank is off to one side, and the porch is also in the back.

The board reviewed the rear layout and elevation.

Hearing no further comments, Chair Crapo closed the public session at 8:42 p.m.

In response to a question from an abutting neighbor, the board discussed the number of requested units. Chair Crapo noted that the number of units seemed to be ambiguous.

Vice-Chair Driscoll commented that whether the applicant is requesting two or four units doesn't change the way he views the application. He explained that the applicant's testimony is that the requested relief is not for the condensing units themselves, but for the pad. He added that the applicant hasn't presented any specs for the condensing units, and he can understand the abutters' opposition. He doesn't see how he can use the variance criteria to vote against a pad, which is no different from a patio or driveway. He explained that the applicant can get the variance for the pad encroachment, but everything they've presented is not for the condensing units, which would make noise and affect the neighbors in a negative way, but for a pad which sits at ground level.

Chair Crapo reopened to the public at 8:44 p.m. to ask Mr. Nichols why the pad needs to be a foot beyond the unit, if the units themselves fit within the setback.

Mr. Nichols explained that the builder based it on the actual setback off the building and the unit size itself.

Chair Crapo stated that right now the plans show a 20' side setback to the drip edge and the building has maxed out. He asked if the physical units are going to be under the drip edge.

Mr. Nichols responded that they will be over, and they calculated exactly what they would need based on the unit size.

Vice-Chair Driscoll pointed out that he'd asked this question earlier and was told it was just the pad.

Mr. Nichols explained that the units sit on the pad, and they are before the board because the regulation states that the pad needs the setback.

Vice-Chair Driscoll noted that they don't have the condensing unit specs to give to the board. Mr. Nichols explained that the builder came up with the specs with the HVAC company, and that's what was needed for the size.

Chair Crapo explained that the AC unit structure itself needs setback relief as well as whatever you put it on. Mr. Nichols confirmed that he understood and explained that a specific dimension was needed to give to the surveyor, which is how they developed the sketch and determined the 19'. He explained that he doesn't have specs on it.

Chair Crapo explained that the drawing presented has a drip edge cutting halfway through the unit, and shows the unit up against the side of the house.

Mr. Nichols explained that the drip edge comes down and is approximately 18" wide, so the unit is roughly 2'.

In response to Chair Crapo's question, the surveyor explained that the units themselves are 22" x 22". Chair Crapo asked how far the units have to be off the building, which the surveyor did not know.

The board discussed the dimensions of the unit should the unit need to have additional space from the building.

Vice-Chair Driscoll explained that the board has to apply the criteria to the application, and they need to know what the builder has specced for two or four units and the pad they will be placed on in order to make the decision.

Mr. Nichols reiterated their request for one foot of relief in order to complete the project.

Member Piela suggested that the applicant has the opportunity to request a continuance in order to get some more of the specifications.

Chair Crapo stated that the board doesn't have sufficient enough plans in order to tackle this application.

Mr. Nichols asked if the board was looking for an actual diagram of the dimensions. Chair Crapo stated that the board needs to know what's being asked for and stated that the dimensions presented in the application don't add up.

The surveyor added that the pad is 24", whereas the unit is 22". Chair Crapo asked for clarification that the pad only overhangs one inch on either side of the unit. The surveyor confirmed.

Mr. Nichols explained that the unit will be outside of the overhang drip edge, which is why they're asking for the relaxation of the 19'.

In response to Chair Crapo's question, Mr. Nichols explained that the unit is 2'x2' and would be 6" off the house.

Chair Crapo stated that you can't achieve those dimensions in 19' off the boundary. Mr. Nichols stated that the house itself is 21.3'. Chair Crapo noted that the house on the presented drawing is represented as 20' to the drip edge. Mr. Nichols discussed measuring to the foundation versus measuring to the drip edge; the board clarified that they measure to the drip edge. Mr. Nichols explained that the unit is 6" from the foundation, not the drip edge, and the foundation certification is for 21.3'

Vice-Chair Driscoll pointed out that Mr. Nichols is using the dimensions to demonstrate sizing. He explained that calculating the dimensions is a waste of time and he can't vote favorably on the application if he can't see what the size and specs of the AC unit are. He also noted the importance of clarifying whether there would be two units or four.

Motion by Chris Piela to continue the application of Joseph Nicols, Nichols Environmental, LLC for Dominick & Keri Graham of 102 Chester Road, Fremont NH for property owned and located at 327 South Road to the May 3, 2023 meeting. Seconded by John Tuttle.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Speaking to Mr. Nichols, the board made suggestions of what information should be prepared prior to the May 3rd meeting.

10. Michael E. Megna, Member of 665-667 Wallis Road, LLC, for property owned and located at 665-557 Wallis Road, Tax Map 16, Lot 21 requests a special exception from §190-6.4; from §190-7.1.A (3); and §190-5.3 for expansion of existing 2 unit dwelling to a 4 unit dwelling and conversion to condominium form of ownership. Property is in the Commercial District, Single Residence District, Aquifer & Wellhead Protection District. Case #15a-2023.

11. Michael E. Megna, Member of 665-667 Wallis Road, LLC, for property owned and located at 665-557 Wallis Road, Tax Map 16, Lot 21 requests variances from §190-2.2.H for expansion of a 2 unit dwelling to a 4 unit dwelling unit with condominium form of ownership; from §190-2.11.C(2) for expansion of a second floor 12.9' from the side boundary where 20' is required; from §190-6.2.A for expansion of nonconforming residential units; and from §190-6.3.A for expansion on nonconforming structure to a two-story building with 4 residential units. Property is in the Commercial District, Single Residence District, Aquifer & Wellhead Protection District. Case #15b2023.

Attorney Tim Phoenix presented the application on behalf of the applicant and owner **Michael Megna**, who was also present. He also introduced **Jenn Madden**, **Attorney Monica Kieser**, and **Alex Ross**, who did the technical work.

Noting that some of the board's packets may not be complete, Attorney Phoenix distributed complete packets.

Attorney Phoenix oriented the board to the building's location. Chair Crapo noted that he once plowed for the previous owner, but no conflict of interest exists.

Attorney Phoenix explained the proposal for the current duplex to expand by placement of two additional units on the second floor within the same footprint, located on the same foundation. He noted that they would need side setback relief in order to expand. He also explained that it's a 35,000 square foot lot; most of the lot is in the commercial zone, $\frac{1}{4}$ of the lot is in the residential zone.

Chair Crapo asked if the structure would be torn down and rebuilt. Attorney Phoenix responded no, the roof would be removed in order to expand upward. Chair Crapo asked if a second floor could go on the building, considering the style of construction.

Mr. Ross explained that when they apply for the building permit they will review the structure and reinforce it as necessary. He explained that that review hasn't been completed yet.

In response to Member Piela's question, Mr. Ross explained that reinforcements wouldn't require additional variances. The board discussed whether reinforcements would require any additional variances.

Attorney Phoenix explained what the process would entail should they tear down the structure and rebuild as compared with the plan to expand the original structure. He added that the two existing units need a special exception to convert, and the two new units would require a variance to permit them.

Attorney Phoenix spoke about the commercial zone, explaining that residential use is not permitted in the commercial zone, but there have been two residents who have leased these units since 1965. He explained that while residences are not permitted in this zone, the greater surrounding area is all residential, and it makes sense to allow residential use to continue, and two add two additional units.

Chair Crapo reviewed §190-2.11 regarding the Commercial District and discussed those permitted uses.

Attorney Phoenix also noted that this unit shares a septic system with the Carey & Giampa lot, so the plan includes the addition of a septic system in the back. He explained that Carey & Giampa got a variance to put a septic system in the back of their lot, which has since expired, and they will be coming before the board to have their septic system reapproved.

Speaking to Mr. Ross, Member Chororos asked if the placement of the stake is for the proposed septic system. Mr. Ross explained that the stake marks the placement of their instrument.

Chair Crapo stated that he still has issues with the nuances in Commercial District zoning which, he noted, seems contrary to the master plan.

Attorney Phoenix asked the board whether they'd like for him to discuss the variance requirements, or do they want to take the position that the zoning law is incorrect.

Chair Crapo suggested that it's sometimes cleaner to evaluate and grant a variance to something, even if it doesn't apply.

Attorney Phoenix pointed to information regarding the new AOS septic system which would serve all four units. He added that there's additional information in the submission regarding the relationship between this lot and the Carey & Giampa lot. Attorney Phoenix expressed his surprise that Carey & Giampa had submitted a letter without speaking to him first and explained the history of the relationship between the two properties.

Attorney Kieser added that the new septic tank is an improvement to the lot.

Member Madden explained that when Carey & Giampa septic system variance lapsed, they worked with them on the timing to leverage two installations at the same time. She clarified that the Carey & Giampa letter is not accurate and that she's been in communication with them about this matter.

Chair Crapo asked if the intention was to make these units residential, not commercial. Attorney Phoenix confirmed.

Attorney Phoenix expressed that these units would be a good addition to the town as they provide cheaper residences than are otherwise available. He outlined the variances and special exceptions needed for the four-unit property and added that Planning Board approval would also be needed for the septic system and for conversion of the two existing units.

Chair Crapo, asked for clarification regarding Planning Board approval for the conversion.

Attorney Phoenix explained that they would need to go to the Planning Board to get approval for conversion of the two existing units to condominiums. He explained that the two new units won't be converted, but would require a variance in order to have four units.

Member Chororos asked for clarification regarding the parking, which Attorney Phoenix stated is okay and wouldn't require relief.

Mr. Ross, referring to the plans, pointed out the existing garage and other available parking spaces.

Member Chororos asked about the dimensions of permeable pavers, the intended number of cars, and the condominium rules regarding parking.

Attorney Phoenix explained that the rule allows for two cars per dwelling unit, for a total of eight cars. Mr. Ross explained that each of the spaces is 9'x18'.

Member Chororos asked about the existing lot coverage versus the proposed asphalt driveway. She noted that dimensions go from 29.37 to 21.07 and asked for clarification regarding the 800 square feet and the 14.7 overall coverage.

Mr. Ross explained that part of the driveway would change. The board discussed the design of the driveway with Mr. Ross. He explained that there is an old leach field septic system, and the proposed would be a new pretreatment septic that would not be shared, which is an improvement. He also noted that the proposed plan decreases overall lot coverage.

In answer to the board's questions, Mr. Ross clarified that the current is one big leach field for all units, and the proposed would provide an individual tank for each unit.

Attorney Phoenix commented that the commercial district allows 75% of an area to be occupied by buildings and other impervious structures, but it doesn't specify overall coverage. The board discussed requirements for overall impervious coverage. Attorney Phoenix noted that the proposed plan would reduce coverage overall, which is an improvement.

Member Tuttle, speaking to Ross, asked for clarification regarding an 18'x18' section to the left of the garage intended for parking. The board discussed the town's required parking space dimensions.

Attorney Phoenix thoroughly explained each of the variance criteria as they relate to this application.

Attorney Kieser explained how the advanced onsite septic solution works compared with a conventional system.

Chair Crapo asked why the compressor wouldn't be located in the garage, rather than outside on the lawn. He also asked if it's a requirement of the design of the septic system to have four separate tanks. He expressed his concerns that four tanks and four pipes intersecting may lead to more possible sources of breakdown as opposed to one tank with the lines leading to it.

Mr. Ross explained that the plan includes four tanks for maintenance of individual units, but there is no requirement to have four and it could be changed to one large unit. He added that the compressor could be housed in or on the side of the garage, it was placed in the yard for ease of maintenance. He added that it's a small compressor.

Chair Crapo asked if there was a battery back up. He explained that it's a large system, if there was a loss of power, there would be a compounded issue.

Mr. Ross responded that there is battery back up with a set of alarms in the tank. He anticipates a planning review, so there would be more detail of utilities shown. He explained that they worked with Gary Spaulding from AOS systems and this was his recommended layout.

Chair Crapo expressed his concern about parking, snow removal, and fire truck access.

In response to Chair Crapo's question, Mr. Ross explained the process for determining whether the structure could be built upon.

Vice-Chair Driscoll asked where the closest, most similar property is located in town. Attorney Phoenix wasn't sure. The board discussed similarly structured units in town.

Vice-Chair Driscoll asked where future residents might spend outdoor time, as it relates to abutters' safety and wellness.

Member Madden explained that there is space out back near the stairwell. Attorney Phoenix added that there is a grassy area.

Chair Crapo noted that there is currently woods where the septic is proposed and asked about the plan for that space. Mr. Ross explained that the proposed leach field and septic tanks would be lawn and kept free and clear of tree roots.

Member Chororos asked if the wooded area would become a lawn.

Mr. Ross pointed out a certain area that could remain wooded within the setback.

Chair Crapo asked what extent of underbrush and shrubs are allowed over the leach field.

Mr. Ross explained that in the direct area the surface should be exclusively lawn, but the surrounding areas could include underbrush or shrubs.

Chair Crapo opened to the public at 9:56 p.m.

Donna Childs of 675 Wallis Road expressed that traffic in the area is an issue and their driveway is constantly blocked by traffic to and from the school. She clarified that their business is for canine physical therapy. She suggested that expanding the two units would be reasonable, but parking is already an issue with only two units. She explained her concerns regarding septic as well as concern for the kids who cut through the wooded area to get to school and who use that area of the woods for play. She stated that they clear brush for kids to play, and would hate to see that go. She explained that adding four septic tanks seems like a lot. She also explained her concern about the potential for Airbnb or VRBO rentals and transient residents, which would change the neighborhood. She stated that Rye has a lot of condos, and there's no need for more, especially with the water issue.

Chair Crapo asked about the canine therapy business and how many dogs come through on average. Ms. Childs explained that they are busy, with at least one dog per hour for eight hours each day.

Speaking to Attorney Phoenix, Chair Crapo asked if, at a Planning Board meeting, people have to submit condo documents. He asked if those documents need to be recorded and if they could be amended down the line

Attorney Phoenix explained that the Planning Board will issue its decision with conditions. Typically the conditions are required to be in the condominium documents. Attorney Phoenix anticipated that the Planning Board would have interest in whether this will be airbnb. He stated that the applicant is willing to require 3 or 6 month rentals as opposed to short-term AirBnb rentals. He stated that the Planning Board will likely require that to be included in the condo docs as a condition, and will likely require that limitation to be in the deed.

Chair Crapo noted that the documents aren't before the ZBA, but asked if they will be before the Planning Board so that abutters would have an opportunity to give input.

Ms. Madden stated that she's spoken with Chris and agrees that it's a reasonable request that would be honored.

Chair Crapo explained his questions regarding the canine physical therapy business. He recalled an application for a property next door to the fish market, where a condition included an acknowledgement in the deed that the property is next to a fish market, so that the buyer didn't eventually complain about the smell. He suggested that the applicant consider a deed restriction so that potential buyers cannot later complain about the Canine Physical Therapy business next door.

Attorney Phoenix agreed and stated that deed restrictions of that nature are commonly used. He explained that the septic system is not a variance issue and added that the applicant is looking to do a reasonable project and shouldn't be held to the standard of people who are picking up kids from school. He noted the increase from two to four units isn't going to increase traffic overall and explained that the plan would be reviewed by the planning board. He asked if the board would focus on the variances needed and discussed a limitation to short-term rentals.

Chair Crapo discussed his familiarity with the Planning Board's process of review. He explained that he's wrestling with the fact the board is looking at a plan which is subject to modifications by the Planning Board for a driveway, parking locations, etc. He noted that in these cases, the board will typically state that the application is subject to Planning Board approval. He anticipated that this application would come back to the Zoning Board after Planning Board review. He also expressed that he doesn't think the parking plan works.

Attorney Phoenix explained that it's very seldom that he will seek Planning Board approval prior to Zoning Board approval; most often an application would need variances granted before the Planning Board will review an application. He added that Chair Crapo's concerns seem to regard issues for which variances are not needed. He also explained why he thought it would be unlikely that they would need to return before the Zoning Board.

Chair Crapo explained that there are items in the plan which don't need relief, but that's not to say that in the ZBA's analysis of the criteria, modifications to those things wouldn't come into play.

Attorney Phoenix stated that he respects Chair Crapo's position, but his legal response is that as long as the proposed changes don't trigger another zoning violation, they can be made.

Vice-Chair Driscoll commented that he's glad this application is before the Zoning Board prior to the Planning Board and noted that he's struggling with the same thoughts as Chair Crapo: while many of the concerns don't require a variance, the expansion of a second floor triggers discussion and consideration of other matters, such as parking.

Mr. Ross commented that they plan to fine tune the parking plan prior to going before the Planning Board. He added that they wanted to show that it will be very easy to accommodate what's needed, but they don't need a variance.

Vice-Chair Driscoll commented that Mr. Ross clarified that his concern was a difference of opinion as opposed to missing something procedural.

Chair Crapo opened to the public at 10:16 p.m., hearing no further comments, the public session was closed.

The board took a break at 10:17 p.m. and reconvened at 10:21 p.m.

Attorney Phoenix explained that, per zoning ordinance, residential use is not permitted.

Member Piela clarified that the board would need to issue a variance to make the two-family home legal. Then the board would need to provide a variance to allow a two-family dwelling. He then referred to the appropriate sections of zoning ordinance that would need to be applied in order to make the dwelling a legal apartment. He commented that the units aren't technically legal dwelling units without the variance that the board would grant.

Attorney Phoenix stated that they've met the test for the two units because they've been there and nobody has tried to stop it, and they are now lawful units. He explained that they were built before the zoning ordinance said you can't have a residence there.

Planning/Zoning Administrator Reed explained that Carey & Giampa once came before the Planning Board and questions came up regarding the septic of these two properties. It was determined that this was an illegal subdivision, but the town didn't do anything about it. While it was allowed to continue, they now have to follow today's zoning.

Vice-Chair Driscoll expressed concern that a Zoning Board approval might later come back and cause further complications.

Chair Crapo, speaking to Planning/Zoning Administrator Reed, asked if the Planning Board's finding had any restriction on what could happen in the future. She responded no, not that she was aware of.

Ms. Madden explained that the reason for the codification of the two existing units is to trigger the second two units, as you couldn't convert a condo that doesn't exist.

Crapo Crapo commented that there is a conversion process that's needed.

The board discussed the two-step process needed to convert the condominiums.

Member Tuttle asked Attorney Phoenix if the board were to approve the application, would they need to wait for an appeal period or if one could be conditioned upon the other.

Attorney Phoenix explained the process for appeal periods.

Attorney Phoenix and the board discussed the legality of the current property as a residence in the commercial district with the proposed expansion.

Speaking to Attorney Phoenix, Chair Crapo asked for clarification that the board would need to vote on both the variance and the use with special exception. Attorney Phoenix confirmed.

Referring to a plan signed by the Planning Board in 1983, Attorney Kieser explained that she doesn't believe the subdivision was illegal. The board discussed the history of the property and its previous complications.

Chair Crapo closed to the public at 10:34 p.m.

Member Piela commented that what the applicant is requesting seems minimal for the side yard setback. He agreed with the idea of moving the side parking in order to give more room for a turnaround. He added that the applicant has room to modify the layout and accomplish all parking spaces they need for a variance. He stated that while he's disappointed about the loss of trees, it's their property and their right to make those changes. He stated his concern that if they modified the structure, they could put themselves in the position to need additional setback relief. He commented that he drove up the driveway to check it out and it's an older house in need of updating.

Member Tuttle referenced the ZBA's minutes from the 12/5/18 meeting where Henry Boyd of Millennium Engineering testified that the subdivision was created illegally and there was no stormwater approval from the state for the subdivision.

Mr. Ross explained that the state assigns subdivision numbers, which they didn't have for that parcel, even though the town previously approved the subdivision.

Chair Crapo reviewed the 12/5/18 ZBA minutes.

Attorney Kieser explained that they needed a variance because they were cutting trees and needed to maintain a 50' buffer to abutting properties.

Attorney Phoenix, in response to the property being described as an illegal subdivision, stated that the town approved a subdivision with a duplex.

Chair Crapo clarified that the duplex was approved in its existing configuration.

Attorney Kieser explained her interpretation of the claim that the property was lacking stormwater approval by the state. She explained that the state doesn't issue stormwater approvals.

Attorney Phoenix addressed the order of operations: first address the special exception and then the variance.

Member Chororos considered the need for outside legal counsel and explained that the board doesn't have complete clarity on what's before them regarding the non-conformity of the property.

Vice-Chair Driscoll commented that it's a challenge to determine what to apply in terms of zoning. There is nothing clear in the requested variances that prohibits them from expanding. He wondered how the board would arrive at a decision while considering the historic use of the property. He noted challenges including the increase of cars, the lack of sidewalks for kids to walk safely to and from school, and the fact that the center of town is not a uniformly zoned area. He expressed concern that an approval would further tax the area by doubling the use of the property. He expressed the desire to vote properly on the application, which has the spirit of the ordinance but also needs to be legally backed.

Member Piela commented that he agrees with Vice-Chair Driscoll, and added that it is a commercial zone and another business could be placed on the lot, and while they would have to conform, it would face the same challenges. He added that another business on the lot could produce even more traffic than the proposed. He explained that it's a residence in a commercial district, so residential standards of traffic, light, and noise can't apply in a commercial zone.

Chair Crapo explained that he'd like to open to the public to discuss the Aquifer and Wellhead District and where that lies in relation to the septic. He added that the entire reason for the aquifer protection zone is to protect them from septic systems.

Member Chororos pointed out that the property is in the Berry's Brook Watershed.

Chair Crapo reopened to the public at 10:48 p.m. and asked what the effect, or lack thereof, of the Aquifer and Wellhead Protection District is as it relates to this property.

Attorney Kieser referred to the GIS map and explained that, in terms of the Aquifer and Wellhead Protection District, this property has a lesser coverage limit than the Commercial District, and they meet the requirement with coverage.

Attorney Phoenix explained that these are Planning Board issues. He reviewed the requirements for a Conditional Use Permit and explained the primary provisions that apply to this application.

Attorney Kieser, referring to the GIS map, explained that they are in the Aquifer Protection District, but not in the Wellhead Protection District.

Attorney Phoenix discussed a list of prohibited uses in the Aquifer and Wellhead Protection District, and residential septic is not a part of prohibited uses.

Ms. Madden commented that Berry's Brook is a small triangle on the northeastern portion of the property.

Chair Crapo reclosed to the public at 10:55 p.m.

The board discussed private residences in the commercial zone as well as the septic load as it relates to the Aquifer Protection District.

Chair Crapo stated that he's ready to continue this application and have Attorney Maher take a look at it to see what applies and what does not.

Member Chororos commented that it was a confusing application.

Planning/Zoning Administrator Reed asked if they'd like the Planning Board to review the application and make a recommendation to the ZBA.

Chair Crapo responded that he'd be in favor of that. In response to Ms. Madden's request for clarification, Chair Crapo explained that it's not 100% clear that the two units are legally existing to expand on. Attorney Phoenix pointed out that the property has legally existed for 30-40 years.

In response to Vice-Chair Driscoll's question, Attorney Phoenix clarified that they need a variance to go from two to four units because you can't have any residential units in that zone. Vice-Chair Driscoll explained that this is why he's confused.

The board discussed the special exception for condominium conversions with Attorneys Phoenix and Kieser.

Vice-Chair Driscoll discussed the need for more clarity of how the board would convert from two to four units.

Attorney Phoenix explained his argument that the increase in residential units in this location makes sense with the variance criteria based upon the location and history of this property, especially compared with other potential businesses that could move into that space.

Vice-Chair Driscoll again noted that he's looking to determine how to apply the zoning ordinances to what's before the board.

Chair Crapo reviewed and discussed zoning law as it applies to condominium conversion. He stated that he's not comfortable taking this to a vote at this meeting with what's before the board. He stated that he'd like Attorney Maher to review the information before the board takes a vote. He stated that this application has the potential to start a waterfall of conversions. He discussed the board's process in proceeding with the guidance of Attorney Maher.

Attorney Phoenix asked for permission to provide Attorney Maher with pertinent information. Planning/Zoning Administrator Reed explained that they could speak further about that matter.

Motion by Shawn Crapo to continue this application to the April 19, 2023 meeting in order to seek counsel from Attorney Maher. Seconded by Chris Piela.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

12. Jeffrey W. Keefe of 380 Ocean Blvd. Unit #11, Portsmouth NH for property owned and located at 3 Brackett Road, Tax map 22, Lot 72 requests variances from §190-3.1.H.2(a),(b),(e), and (g) for a deck/house 57', a septic tank 49', a leach field 75', a garage 96,45' and removal of trees from the wetland where 100' is required; from §190-5.7.C for stormwater management plan 5.43 CFS 2-year (+0.24), 9.75 CFS 10-year (+0.30); and 16.42 CFS 50-year (+0.35) where required; from §190-6.3.A for expansion of nonconforming structure. Property is in the Single Residence District and SFHA, Zone AE (8). Case #16-2023.

Application continued to the May 3, 2023 meeting (see motion above).

Motion by John Tuttle to adjourn at 11:12 p.m. Seconded by Shawn Crapo.

Vote 5-0-0 (P. Driscoll, C. Piela, S. Crapo, J. Tuttle, S. Chororos)

Respectfully Submitted,
Emilie Durgin

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Michael E. Megna, Member of 665-667 Wallis Road, LLC

Property:

665-557 Wallis Road, Tax Map 16, Lot 21

Property is in the Commercial District, Single Residence District, Aquifer & Wellhead Protection District.

Application case:

Case #15a-2023 and 1ba-2023

Date of decision:

~~5-4-2023~~ 4-5-2023

Decision:

Motion to continue to 4-19-2023 so that the Board may seek guidance from Town Attorney.


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

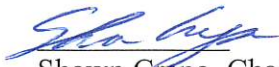
Applicant/Owner: Joseph Nicols, Nichols Environmental, LLC for Dominick & Keri Graham of 102 Chester Road, Fremont NH

Property: 327 South Road, Tax Map 4, Lot 51
Property is in the Single Residence District

Application case: Case #14-2023

Date of decision: ~~5-4-2023~~ 4-5-2023

Decision: The Board voted 5-0-0 to continue the application to the April 19, 2023 meeting.


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: Wentworth by the Sea Country Club, Inc.

Property: 60 Wentworth Road, Tax Map 24, Lot 61-26
Property is in the Single Residence District

Application case: Case #03-2023

Date of decision: ~~5-4-2023~~ 4-5-2023

Decision: The Board voted 5-0-0 to continue the application to the April 19, 2023 meeting.


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: Mukherjee Living Trust, Sumeeta Mukherjee Trustee
of 60 Deer Meadow Road, N. Andover MA

Property: 1701 Ocean Blvd, Rye NH Tax Map 13, Lot 6
Property is in the General Residence, Coastal Overlay and SFHA Zone VE

Application case: Case #07-2023

Date of decision: 04-05-2023

Decision: The Board voted 5-0-0 to continue the application to the May 3, 2023 meeting.


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: Ted & Pauline Simeonov, Aleph LLC owners of 720 Brackett Road, Tax Map 17, Lot 65

Property: Administrative Appeal from the Building Inspector's letter dated November 22, 2022, for address 691 Brackett Rd, Tax Map 17, Lot 34

Application case: Case #10-2023.

Date of decision: 04-05-2023

Decision: The Board voted 5-0-0 to not take jurisdiction over the application.


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: Jeffrey W. Keefe of 380 Ocean Blvd. Unit #11, Portsmouth NH

Property: 3 Brackett Road, Tax map 22, Lot 72
Property is in the Single Residence District and SFHA, Zone AE (8)

Application case: Case #16-2023

Date of decision: 5-4-2023 4-5-2023

Decision: The Board voted 5-0-0 to continue the application to the April 19, 2023 meeting.


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

Applicants/Owners:

Summer at the Beach Trust, Susan Mesiti, Trustee,
at 1182 Ocean Boulevard, Unit 2, Tax Map 17.3, Lots 32-2

Paradise at the Shore Trusts I and II, Susan Mesiti, Trustee,
at 1182 Ocean Boulevard, Unit 3, Tax Map 17.3, Lot 32-3

Property:

Properties are in the General Residence District, Coastal Overlay and
SFHA Zone VE (14)

Application case:

Cases# 13a & 13b - 2023

Date of decision:

04-05-2023

Decision:

The Board voted 5-0 to continue the application to the May 3, 2023
meeting.


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

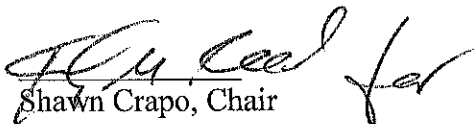
Applicant/Owner: Robert Lang, Applicant
Tucker D. Allard & Mary Coppinger, Owners

Property: 457 Central Road, Tax Map
Property is in the Single Residence District.

Application case: Case #55-2022

Date of decision: 04-05-2023

Decision: The Board voted 5-0 to continue the application to the May 5, 2023 meeting to allow the applicant to provide drawings with adequate distances to lot lines, turn-around and a plan that shows the removal of the existing parking/driveway.


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

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-2023 and 06b-2023

Date of decision: 4-5-2023

Decision: The Board voted 5-0-0 to continue the application to the May 5, 2023 meeting.


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.