

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, May 3, 2023

7:00 p.m. – Rye Town Hall

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

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. He explained that the agenda includes several continuances.

II. BUSINESS

Continuations

Motion by Chris Piela to continue the application of Jeffrey W. Keefe for property owned and located at 3 Brackett Road, Tax map 22, Lot 72 to the May 17, 2023 meeting. Seconded by Sandra Chororos.

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

Motion by Patrick Driscoll to continue the application of Anthony & Susan Farmer for property owned and located at 440 Sagamore Road, Tax Map 18, Lot 51 to the May 17, 2023 meeting. Seconded by Chris Piela.

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

The board adjusted the numbering of the updated agenda.

Motion by Patrick Driscoll to continue the application of Marlene Veloso & Charles Fast for property owned and located at 850 Washington Road, Tax Map 11, Lot 130 to the May 17, 2023 meeting. Seconded by Chris Piela.

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

Motion by Chris Piela to continue the application of Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 for both an equitable waiver and variances to the May 17, 2023 meeting. Seconded by Patrick Driscoll.

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

Motion by Chris Piela to continue the application of Frank Goguen for property owned and located at 29 Gray Court, Tax Map 5.2, Lot 87 to the May 17, 2023 meeting. Seconded by Patrick Driscoll.

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

Chair Crapo explained ZBA meeting procedures.

Approval of Minutes - April 5, 2023

- Correction to page 16 - spec'd
- Corrections to page 19 and 21 - refer to Member Madden as Ms. Madden

Motion by Patrick Driscoll to approve the April 5, 2023 Minutes as amended. Seconded by Chris Piela.

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

III. APPLICATIONS

- 1. Mukherjee Living Trust Sumeeta Mukherjee Trustee 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; wetland buffer. Property is in the General Residence, Coastal Overlay and SFHA, Zone VE. Case #07-2023.**

Shannon Alther of TMS Architects, representing the applicant, presented the application. He summarized previous discussions he'd had with the board regarding septic system location, work occurring near the property line, and some of the materials encroaching into the marsh area. He explained that he had a second site walk with the Rye Conservation Commission, and has an updated landscaping plan to present. He explained that the project still requires two variances because the entire property exists within the 100' buffer zone. He also noted that the structure predates the zoning ordinance.

Mr. Alther outlined the applicant's primary request: to complete work on top of the existing footprint. He added that the applicant is planning to use pervious materials in place of impervious materials, decreasing the amount of impervious coverage from 38.7' down to 26.3' so that no variance would be needed. He also explained the updated design of the septic system, which can now be located within the buildable zone.

Mr. Alther presented an updated landscaping plan based on the RCC's site walk and discussed the specifics of a plan to remove railroad ties, regrade the slope into the property line, and relocate the fence within the property line.

Mr. Alther distributed an updated plan based on the RCC's observations on the site walk. He added that the board should have received a letter from the RCC. He presented the items discussed on the site walk, pointing out details of the new landscaping plan.

Chair Crapo asked for clarification regarding a non-native species included in the landscaping plan and confirmation that all proposed plantings are within the boundary line. Mr. Alther confirmed.

Mr. Alther explained that the applicant will not be increasing the height of the building beyond the 28' maximum, they will attempt to make the house comply with FEMA, and the existing three-bedroom septic is designed to be replaced. He continued that the 30 foot setback in the 100' buffer is the reason they're before the board, and commented that although it's difficult to come back, the RCC's feedback was helpful and he was glad to have gone through the process.

Vice-Chair Driscoll commented that he didn't see a silt sock discussed in either TF Moran's plans or the RCC's recommendations. He asked if silt socks were discussed. Mr. Alther confirmed that silt socks will be included in the overall process for construction. Vice-Chair Driscoll asked if Mr. Alther would be comfortable with a condition of appropriate silt fencing used throughout the project. Mr. Alther confirmed commented that NHDES application provisions for silt socks, especially with the removal of railroad ties.

Chair Crapo asked if, in removing silt socks, machines will be needed. Mr. Alther explained that machines would not be needed.

Member Chororos pointed out that the RCC did make separate recommendations, and asked Mr. Alther if he is in agreement with those recommendations. He did, and pointed out the inclusion of those recommendations on the diagram.

Speaking to Planning/Zoning Administrator Reed and Mr. Alther, Chair Crapo asked if another variance would be needed for the removal of railroad ties and regrading. Planning/Zoning Administrator Reed explained that no other variances are needed because they're staying on their wetland buffer, not going into the wetland. Mr. Alther explained that, according to DES, this process is considered a temporary impact, not permanent.

Chair Crapo opened to the public at 7:28 p.m.

Susan Shepcaro of the Rye Conservation Commission explained that Mr. Alther has listened to the RCC and worked very hard to come up with a great project. She commented that it's a positive improvement due to the new septic system and other changes. She explained that the RCC strongly supports the project.

Hearing no further comments, Chair Crapo closed the public session at 7:29 p.m.

Vice-Chair Driscoll and Chair Crapo discussed the proposed condition of silt sock fencing during and after construction to lessen the impact on the surrounding areas. Chair Crapo commented that the applicant has no problem adopting the provisions of the 4/24/23 letter.

Member Piela commented that he appreciates that the applicant is staying within the buildable zone. Vice-Chair Driscoll agreed, adding his appreciation for the applicants' considering the best use of the land through the additional site walks.

Chair Crapo explained that the board is voting under the assumption that there will be two conditions attached to an approval.

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

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.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Shawn Crapo – Yes
Chris Piela – Yes
John Tuttle – Yes

Motion by Patrick Driscoll to approve the application of Mukherjee Living Trust Sumeeta Mukherjee Trustee for property owned and located at 1701 Ocean Blvd, Tax Map 13, Lot 6 as advertised and presented with the following two conditions:

- The use of appropriate silt fencing during and after construction to eliminate and lessen impact on the surrounding areas.
- The applicant must satisfy the recommendation points 1, 2, 3, and 4 of the 4/24/23 Rye Conservation Commission letter.

Chair Crapo clarified the appropriate duration of time the silt sock shall be used and seconded the motion.

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

2. **Michael E. Megna, Member of 665-667 Wallis Road, LLC, for property owned and located at 665-667 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 3 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.**
3. **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 3 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 3 residential units; and relief from the Building Code §35-14.C(1) and RBC §35-14.D.1(c) to permit an advanced septic system leachfield 2.5' from ledge where 6' is required. Property is in the Commercial District, Single Residence District, Aquifer & Wellhead Protection District. Case #15b2023.**

Attorneys **Tim Phoenix** and **Monica Kieser** of Hoefle, Phoenix, Gormley, & Roberts presented the application on behalf of the applicants and introduced **Jennifer Madden, John Madden, and Michael Megna**, who were also present.

Attorney Phoenix explained that this presentation is a continuation of a hearing last month. He explained that the board was looking for clarification on some items in the application.

Chair Crapo commented that the package he received has an appendix which lists four units. Attorney Kieser clarified that that was an error and they are only requesting three units.

Attorney Phoenix explained that the scope is being reduced to three units. The two existing units are prior non-conforming units, that the applicant would like to convert to condos. While the new

unit is not a conversion, it would require variances to expand the building and have condo ownership. He addressed the layout and size of parking spaces and explained that they will also need septic and building code relief. Attorney Phoenix also addressed a question regarding subdivisions, and referenced a plan from 1983.

Attorney Phoenix discussed coordination between the applicant and Carey and Giampa regarding septic and state subdivision approval. He added that Alex Ross prepared a letter for their April 26, 2023 submission explaining his conversations with representatives for DES. He explained that they have local subdivision approval as well as state. Attorney Phoenix commented that the structure was built in 1964 when residences were allowed in the commercial zone, which is not currently the case. He added that the area is mostly residences, and the commercial zone allows for retail, which would be much more intensive than a residence. He addressed concerns regarding traffic in the area and stated that two additional cars would be a negligible increase. Attorney Kieser noted that this underscores why residential use would be better.

Referring to the updated zoning chart, Attorney Phoenix outlined the reasoning for each requested variance. He also spoke to the need for increased housing in the state and noted that this unit would offer relatively less expensive housing options in Rye for younger couples or retirees to downsize and continue living in the area.

Attorney Phoenix clarified what had been discussed at the prior meeting and invited questions. Attorney Kieser explained the need to address the building code waiver, which was not discussed at the previous meeting.

Mr. Ross explained that he discussed the project with the neighboring business owners, who are not currently opposed to the project.

The board discussed the challenges presented by a residential unit in a commercial zone. In response to Ms. Madden's question, Chair Crapo and Attorney Phoenix explained the purpose of including verbiage in the deed to inform a potential buyer that the unit is located in a commercial district. Chair Crapo noted that typically a residential unit abutting a commercial unit would require a buffer between the zones to protect against noise, light, etc.

Member Chororos pointed out that the entire lot is in the Aquifer District and, referring to §190-3.6H, explained that non-conforming uses may not be expanded in this area. Attorney Kieser explained that residential uses are permitted in the Aquifer and Wellhead Protection District. Attorney Phoenix outlined the uses requiring a conditional use permit and explained that this lot doesn't fall in that category. Member Chororos explained that she wanted to point out that the lot is in the Aquifer District, as that matters to a lot of people.

Attorney Kieser explained that total lot coverage will be decreasing, expansion of the building is only in the stairwell area, there will be no increase in impervious surface, and the septic system is being dramatically improved. In response to Member Chororos' question, Attorney Kieser clarified that there would be three separate units with three single tanks in one leachfield. She explained that the sewage load is 900 gallons per day total.

Mr. Ross explained that, due to the lot's placement in the Aquifer and Wellhead Protection District, they walked the site with Marc Jacobs, a soil scientist, and confirmed that it's all acceptable soil for what's planned.

In response to Member Chororos' question, Attorneys Phoenix and Kieser clarified that there will be a total of six bedrooms with allotment for seven cars. There was also discussion of the parking layout, and Mr. Ross explained that the parking area is now designed to include a 24' wide isle, making it easier to access. Attorney Phoenix also explained that common areas include the driveway, the land in front and back, as well as the entryways.

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

Speaking to Attorney Phoenix, Chair Crapo asked if there is something compelling Carey and Giampa to put in their system. He pointed out that at the moment, they're using the shared system. He asked for clarification that this plan proposes to cut this building's ties with that system, but the border is still going to be used for that old system. He asked if there's anything in place that states an end date.

Attorney Kieser stated that the parties released each other from their shared obligations for maintenance and the systems were separated. She added that it wasn't clear that they were separated when Mr. Ross visited the site. She continued that there is a lot of confusion and explained that in the purchase of the property, the former owner represented that the systems were separated and they stopped using the line running to the shared leach field.

The board discussed the design of the septic system with Attorneys Phoenix and Kieser. Attorney Kieser stated that, in reviewing the recorded document, they were confused as to whether the systems are still shared. She added that subdivision was permitted in 1983 with no followup on requirements or variances granted in 2018.

Attorney Phoenix explained that he contacted Millennium Engineering, who said they were looking into it. He also commented that it seems like an enforcement issue.

Attorney Kieser explained that representations on their plan would be an implicit condition. She added that they plan to disconnect from the shared system and install a top-of-the-line system in the back of the lot, which is dimensionally compliant.

Chair Crapo asked if the continued use of that system would tip lot-loading figures.

Mr. Ross explained that it would not and referred to the system's records, showing that 95% is on the parcel. He explained that he discussed this with the state and asked if the system was installed, but the neighbor hadn't yet installed his, would it hold up the process. The state explained that it would not.

Vice-Chair Driscoll asked if a condition would need to be placed in response to the 10% on the neighboring lot. Chair Crapo explained that the applicant has represented that they will cap or discontinue use. The board discussed the current shared septic and received clarification that the applicant will discontinue their pipe to it in favor of the new AOS system.

Attorney Kieser, in support of the Building Code Waiver, explained that any use on the property, commercial or residential, would require a septic system.

Chair Crapo asked if any further analysis has been done to ensure that the 40s/50s-era construction can support the project.

Mr. Ross explained that, considering the age of the structure, the foundation is in great shape. He added that reinforcement of the foundation will also be done.

Member Piela referred to §190-2.2I(2)(a)[1] and discussed boundaries, buffers, and non-conforming use in the commercial district.

Vice-Chair Driscoll discussed his concern regarding visibility and asked if the applicant has considered plantings in the front yard setback to be sure the sightlines remain clear.

Attorney Phoenix responded that, for liability purposes, the applicant would agree to that. He explained that the plan has to be vetted by the Planning Board, who typically states you can have plantings within a certain distance from the edge of the property and within a certain height. He added that the applicant plans to remove a large tree, which will be an improvement.

Referring to the site plan, Chair Crapo commented that a section of the driveway will likely need to be excavated in order to be level. He pointed out the grade increase between 102 and 103 as well as from left to right at the front of the property.

Mr. Ross explained that there's currently a curve running across the front of the property and up the driveway, which they could continue as they cut in.

Chair Crapo wondered if this would be considered another structure which needs a variance.

Attorney Kieser explained that it doesn't require a variance as it's under three feet and the grade change is outside the front setback.

Chair Crapo opened to the public at 8:29 p.m.

Tom King of 535 Wallis Road posed a question for clarification regarding the septic system. He explained that he lives down the road, also in a commercial district, and recently installed an AOS system. He explained that he was instructed to allow 4' in for his leach field with an AOS system, and added that that's the requirement in the code. He asked for clarification as to how the applicant was able to get around that requirement, especially in the Berry's Brook Watershed.

Chair Crapo commented that the applicant is applying for a variance, which must be weighed. He added that the proposed septic is out in the middle of the woods. He discussed the height of the mound and asked for clarification of the applicant's request for relief.

Mr. Ross explained that they're using an AOS septic system to get secondary treatment, and there are a lot of options for the leach field itself. He continued that the state gives different depths to ledge and seasonal highs depending on what's used. He explained that they're using AOS tanks with an advanced enviro leach field. With that combination, the state allows 2.5' to ledge; the state has acknowledged advantages of using this system. If an AOS system were used with a stone and pipe system, it would require 4'. He explained their aim: to minimize the disturbance of woods and the amount of fill while using the best system that meets the state standards. He added that this system is very similar to what was approved by the board in 2018.

Attorney Kieser discussed additions of fill under the building code's design criteria. She explained that they're not allowed to add fill according to the building code.

Chair Crapo noted that the town of Rye tends to be more restrictive with building codes than the state.

Planning/Zoning Administrator Reed read a letter submitted to the board by Jim Giampa.

Vice Chair Driscoll asked if there is any benefit to the septic filtration if there's 4' compared with 2' in the leach field.

Mr. Ross explained that there wouldn't be any benefit to increasing to 4' with the proposed system.

Chair Crapo, speaking to Mr. Ross and Attorney Kieser, asked if the state-approved septic sand is considered the same fill that Attorney Kieser was referring to earlier. Attorney Phoenix responded no, that's part of the system. Chair Crapo commented that two additional feet of sand would not put them in violation of the fill provision.

Attorney Phoenix explained that the distance to the 4' is considered from the existing grade.

Attorney Kieser explained that you can't add fill to achieve a distance unless permission is requested. She added that instead of asking for a waiver from the 4' requirement, they're installing an advanced system.

Chair Crapo discussed the requested variance to §190-2.2.H and asked if they had discussed this with the building department. Attorney Kieser explained that they did not take advantage of the amnesty law as there was a time constraint, and they're not illegal units. Attorney Phoenix explained that they're permitted as prior non-conforming uses.

Chair Crapo wondered why they would need a variance to that section. Chair Crapo discussed the variance with Attorneys Kieser and Phoenix.

John Madden of 620 Central Road, a member of the applicant team, relayed a conversation with an abutting neighbor, Chris Garren, who supports the project. He stated Mr. Garren's concerns with the potential for short-term rentals and his comment that the project would be an upgrade compared with what's currently there.

Hearing no further comments, Chair Crapo closed to the public at 8:45 p.m.

Chair Crapo commented that he's still unsure of the hardship. He explained that it's not a family who needs to expand, and it's already non-conforming use in a commercial zone.

Member Piela stated that he's not concerned with the addition of a third unit. He added that he's looking at it from the perspective of a commercial district and he'd rather have three residences than one convenient store. He discussed the relative benefits of adding a residence to a commercial district as opposed to the alternative, noting that a commercial use would potentially increase light, noise, etc., where a residential use lessens those potentialities.

Vice Chair Driscoll noted that if a business were to use the property, they would still have to comply with zoning and planning restrictions. He added that residences aren't allowed in the Commercial District, and they would be going against the purposes of the Zoning Board by increasing the amount of residential use.

Member Tuttle explained that he likes this proposal better than the previous proposal. He added that he is aligned with Member Piela and noted that Attorney Phoenix could have requested five units.

Member Piela discussed the traffic load and the property's proximity to the school. Member Tuttle noted that the traffic is not the issue of the applicant, it's a town issue.

Vice-Chair Driscoll observed that it's a unique neighborhood with mixed residential and commercial use in the surrounding properties. He noted that, while he would prefer the structure remain a two unit, the proposal has improved. He also discussed the condition of the front yard site line, and stated that he wants to make sure everyone is protected. He added that the property owner has a responsibility to make it safe for townspeople and abutters. He also wanted to make sure the owner observes the deeded septic. He stated that he's okay with the application with the addition of the two conditions.

Member Chororos stated that she was not in favor of four units, she is more comfortable with three units, though she is not crazy about the parking. She added that, aesthetically, it looks a lot better and blends into the residential neighborhood more than a commercial property would.

Vice-Chair Driscoll commented that this property is going to be a lightning rod - he explained that it would be a large structure in a place where there has typically been more low-profile structures.

Chair Crapo, Member Piela, and Attorney Kieser had a discussion to clarify which variances are needed.

Chair Crapo called for a vote on a variance from §190-2.11.C(2) for expansion of a second floor 12.9' from the side boundary where 20' is required.

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

2. The spirit of the ordinance is observed:

Sandra Chororos – No
Patrick Driscoll – Yes
Chris Piela – Yes

John Tuttle – Yes
Shawn Crapo – No

3. Substantial justice is done:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

Vote 3-2-0 (P. Driscoll, C. Piela, J. Tuttle in favor, S. Chororos and S. Crapo not in favor)

Chair Crapo called for a vote on a variance from §190-6.2.A for expansion of nonconforming residential units.

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

2. The spirit of the ordinance is observed:

Sandra Chororos – No
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

3. Substantial justice is done:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

Vote 3-2-0 (P. Driscoll, C. Piela, J. Tuttle in favor, S. Chororos and S. Crapo not in favor)

Chair Crapo called for a vote on a variance from §190-6.3.A for expansion on nonconforming structure to a two-story building with 3 residential units.

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes

John Tuttle – Yes
Shawn Crapo – No

2. The spirit of the ordinance is observed:

Sandra Chororos – No
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

3. Substantial justice is done:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – No

Vote 3-2-0 (P. Driscoll, C. Piela, J. Tuttle in favor, S. Chororos and S. Crapo not in favor)

Chair Crapo called for a vote on relief from the Building Code §35-14.C(1) and RBC §35-14.D.1(c) to permit an advanced septic system leach field 2.5' from ledge where 6' is required.

Would enforcement of the specific provisions do manifest injustice and be contrary to the spirit and purpose of the Building Code and public interest?

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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

Motion by Patrick Driscoll to approve the variance application requests for Michael E. Megna, Member of 665-667 Wallis Road, LLC, for property owned and located at 665-667 Wallis Road, Tax Map 16, Lot 21 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 3 residential units with the following conditions:

- **The property owner observes the deeded septic agreement referred to in their application.**
- **The property owner keeps clear sight lines in the front yard setback, which is 30' from the front property line, to keep fencing or landscaping 30" or lower to grade.**

Seconded by John Tuttle.

The board discussed a third condition.

Motion by Member Piela to add the following condition:

- **Restriction to make new owners aware of abutting commercial properties.**

Seconded by John Tuttle.

Vote 3-2-0 (P. Driscoll, C. Piela, J. Tuttle in favor, S. Chororos and S. Crapo not in favor)

Motion by Chris Piela to approve the Building Code relief as advertised and presented with the same conditions that were applied to the requested variances. Seconded by John Tuttle.

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

Chair Crapo called for a vote on the request for 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 3 unit dwelling and conversion to condominium form of ownership.

Is it neither injurious nor detrimental to the neighborhood?

Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Sandra Chororos – No
Shawn Crapo – No

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

Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Sandra Chororos – No
Shawn Crapo – No

Vote 3-2-0 (P. Driscoll, C. Piela, J. Tuttle in favor, S. Chororos and S. Crapo not in favor)

Motion by John Tuttle to approve the special exception as advertised with the conditions from the variance. Seconded by Chris Piela.

Vote 3-2-0 (P. Driscoll, C. Piela, J. Tuttle in favor, S. Chororos and S. Crapo not in favor)

The board took a break and reconvened at 9:22 p.m., at which point Chair Crapo discussed the time available for the remaining applications.

Motion by John Tuttle to continue applications ten and twelve to the May 17, 2023 meeting. Seconded by Chris Piela.

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

- 4. 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 from the side lot line 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.**

Bruce Scamman with Emmanuel Engineering and James Verra and Associates presented the application on behalf of the applicant. Referring to a map, he gave an overview of the property, the intersection of concern, and presented the plan. He pointed out an existing shed 11.8' from the property line, 21.8' on the other side, where 20' is required. He explained that this shed existed prior to the applicant's purchase of the home. In response to Chair Crapo's question, Mr. Scamman explained that the shed is being codified and will remain on the property. He explained that the existing paved driveway is less than 6' to the property, but the proposed driveway would be further away. He noted that the applicant would like to avoid backing into Central Road for safety concerns and presented a plan to remove a driveway, turn the garage into living space, and rebuild the existing driveway with a hammerhead turnaround.

Member Chororos asked for clarification for the dimensions, which Mr. Scamman discussed.

Mr. Scamman explained that the plan considered and tried to improve drainage, though it was never a problem. Regarding coverage, he explained that the property is in the Aquifer and Wellhead Protection District and gravel doesn't count as impervious surface; for this reason the plan includes a change of material to crushed stone. He added that dwelling coverage is 8.3 and increasing to 9.9 as the garage is being converted. Impervious coverage is currently 17.9 and will increase to 27.3 where 30 is allowed. He noted that 55-60% of the lot is in the Aquifer and Wellhead Protection District and the plan meets those regulations.

Member Tuttle asked if impervious coverage will be increasing. Mr. Scamman confirmed and explained that the garage will remain the same. He explained that the stone driveway was included as impervious coverage in one calculation but not in the wellhead protection numbers.

Chair Crapo noted that the driveway that's being removed is not as large as the proposed driveway.

In response to Member Tuttle's question, the board discussed which variances and permits may be required to complete this plan.

Vice-Chair Driscoll commented that the presented plans are very helpful and this presentation is much improved. He explained his concerns regarding snow removal and pointed out that, though the proposed drive would allow a car to pull out, you're also closer to the intersection. Speaking to Chair Crapo, he asked if snow removal would pose an issue with loose gravel and whether an apron of pavement would mitigate potential issues.

Chair Crapo addressed the concerns regarding snow removal and pointed out that the biggest concern is a need for a "left lane only" sign at the intersection.

Mr. Scamman pointed out that the regulation states 100' is needed and there is 169' from the center line of the driveway to the centerline of the intersection. He explained that, with that anticipation, they will be shorter to the end of the nose but definitely more than 100'.

The board discussed the possibility of conditioning approval upon a paved apron to help contain loose gravel. Chair Crapo pointed out the need to consult public works for their procedures.

Member Piela asked if abutting neighbors are comfortable with vehicles parked in the back yard in an area where that's non-typical. In response to Member Piela's question, Chair Crapo commented that the relief needed is to formalize their driveway. Planning/Zoning Administrator Reed added that the applicant only needs a variance if they're parking in the front setback, for which there is a 10' setback.

Mr. Scamman commented that they tried to angle the parking so it's very close to the deck and house.

In response to Member Tuttle's question, Mr. Scamman explained that the septic tank is by the shed, maybe under the shed. He explained that they didn't dig it up so they can't guarantee its location, but pointed to the location where the septic was pumped.

Chair Crapo discussed "pocket plans" and provisional septic plans.

Hearing no further comments, Chair Crapo closed to the public at 9:43 p.m.

Vice-Chair Driscoll commented that it's a straightforward plan and addresses his questions. He added that the applicant would benefit from doing their due diligence to see what they have for a septic tank or leach field so they don't have to eliminate the hammerhead turnaround. He agreed that this plan makes it safer for the applicant and others, and it doesn't make sense to add any conditions.

Chair Crapo discussed his view of the application. Neither Member Tuttle nor Member Piela stated concern with the plan. Chair Crapo commented that the shed was built at a time when guidelines were much looser. Now the board is legitimizing its location, but if the placement is to change the applicant may need to return before the board.

Chair Crapo discussed conditions for the application. Planning/Zoning Administrator Reed explained that the applicant will need a driveway permit from Jason and added that she would talk to Mr. Scamman later about whether or not they will go before the Planning Board.

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes

John Tuttle – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
Patrick Driscoll – Yes
Chris Piela – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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

Motion by John Tuttle to approve the application of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road as advertised and presented on May 3, 2023. Seconded by Sandra Chororos.

The board discussed, but ultimately decided against a condition for the driveway permit.

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

**Motion by Patrick Driscoll to continue application item seven to the May 17, 2023 meeting.
Seconded by Sandra Chororos.**

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

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.**
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.**

Chair Crapo and Vice-Chair Driscoll reiterated the board's procedures for reviewing applications after 10:00 and 11:00 p.m. and discussed expectations.

Attorney Tim Phoenix of Hoefle, Phoenix, Gornley, & Roberts introduced himself, **Monica Kieser, Leigh and Darren D'Andrea, Mike Sebert, Robbi Woodburn, Steve Riker, and Jennifer Ramsey.** Attorney Phoenix explained that the applicant has spent much of her life in Rye, and hopes this property will eventually become a forever home. He described the lot and explained that the driveway is roughly 10,000 feet, that originally there were two lots on a 1903 subdivision, and on the right side is a wetland to which a culvert drains under the street towards the ocean. He explained that the wetland depression is deep. He also discussed the wetland buffers and summarized the dimensions of the proposed home, which includes a 1,668 ft footprint that translates to 1,061 square feet of living space. He explained that the entire living space is 2,300 square feet, and it's not a particularly large home.

Attorney Phoenix addressed the neighbors' concerns regarding water flow. He explained that the property's proximity to the ocean and the low land make it an issue when it rains; water ponds in certain areas. He added that the applicant respects and shares their neighbors' concerns, that they want to be good neighbors, but ultimately this lot is not relieving the area of flooding issues, nor will it increase that problem in the future. He assured the board that water is not going to run off of this lot onto other properties causing flooding.

Mr. Sebert of Horizon's Engineering explained that he was responsible for the lot layout and design of the access, stormwater drainage, grading, drainage analysis, etc. He explained that they conducted a full pre and post-development analysis, which is included in the application. Referring to the plans, he summarized the overall watershed area on the westerly side of the property.

Attorney Kieser clarified that the most recent stormwater management plan is Exhibit H, dated 4/26/23.

Mr. Sebert explained that there's a significant amount of water flowing onto property and into the area from the westerly side of the property. He gave a detailed summary of the property analysis and stormwater management plan.

A member of the public asked for clarification of "closed drainage". Chair Crapo explained that there will be time for questions later in the meeting.

Mr. Sebert discussed the storm drainage. He explained that they designed a pre and post-development analysis to compare flows coming from their development. He noted that putting the house on the property generates more runoff, so they designed a stormwater treatment plan to collect water from the impervious surfaces created by the structure as well as water flowing from other properties. He discussed a bioretention pond which would treat and infiltrate the runoff. He also noted their efforts to mitigate runoff by choosing pervious materials.

Chair Crapo asked if they will be putting drainage from the driveway into the swale.

Mr. Sebert explained that once the area becomes saturated, the surface will run off into the wetland area, but there are no subsurface pipes except the drain leading to the bioretention pond. He explained that there is an outlet structure that will drain over time, and a stand pipe for larger storms. He explained that their plan improves the flow from the property to the flood storage area by better defining the swale area and mitigating some of the flow.

Chair Crapo asked a question regarding fill, noting that he witnessed bottles and a shovel on the property.

Mr. Sebert pointed to the contours on the map which slopes off into the wetland. He also explained that he did test pits on the property the day prior and didn't see any bottles or shovels. He added that they're not proposing any fill, but proposing a cut, utilizing the level of the land, which is high.

Chair Crapo asked if the ribboned trees will be removed. Mr. Sebert confirmed. Chair Crapo also asked about management of tree removal. Mr. Sebert explained that Ms. Woodburn has a robust planting plan, which she will discuss.

Referring to a table depicting pre and post development flows, Mr. Sebert discussed the numbers and noted that they are equal or slightly less at peak flow. He also explained that runoff volume is reduced by infiltration through the bioretention pond and the porous driveway, as noted in the chart. He added that the drainage report meets the requirements for the development of a vacant lot.

Attorney Kieser added that they meet the requirements for both water coming off the site and water entering the town's drainage system.

Crapo asked about the volume of water flowing into the culvert pipe and sealed system during peak events.

Referring to Table One, Mr. Sebert explained the analysis of a 1" storm on the whole watershed at peak flow and noted that .41 cubic feet per second will be leaving the site. Referring to Table Two, he explained that there would be zero flow off the back of the property in a 1" storm.

Chair Crapo pointed out that there's no outlet for a sealed system at high tide.

Mr. Sebert explained that they didn't analyze storm surge, but discussed smaller storms and pointed out sections of the property within and outside of the flood zone.

Vice-Chair Driscoll, speaking to Mr. Sebert, asked for clarification of how the drainage is improved. Mr. Sebert pointed to the collection and infiltration through the bioretention basin and the increased collection of water from Surf Lane. He also discussed the drip edge around the building.

Vice-Chair Driscoll asked for a brief summary of the excavation process.

Mr. Sebert described the elevations of the property and explained that there will be an excavator hole in order to build and incorporate media to help absorb stormwater, clean and infiltrate any sediments coming off the road, and drain offsite. He described the different types of media at the

excavation site, which will be filled in. He also discussed elevation, contour, and a small fill area. He described a large off-site watershed and explained their attempt to channel water to keep it from spreading onto neighboring properties. He explained that this is how they will have more storage. He explained that they haven't designed the foundation yet, but it's slab on grade, and there is no change in grade all the way around.

Vice-Chair Driscoll asked if, in digging test pits, Mr. Sebert ran into ledge anywhere on the property. Mr. Sebert explained that he did not.

Chair Crapo asked if recontouring would be done around the top of the property to create a swale. He also asked for clarification that there would be no regrading or resurfacing near the pipe. Mr. Sebert confirmed that there would be no regrading or resurfacing and explained the maintenance work required for that area.

Chair Crapo pointed out that there's not a lot of proposed lawn area. Mr. Sebert explained that Ms. Woodburn could describe the landscaping plan in detail.

Member Chororos discussed tree removal on the property and discussed whether a variance would be needed to clear trees and stumps. The board discussed ordinances related to tree removal in the wetlands and wetlands buffer.

Attorney Kieser summarized the town's ordinance regarding tree removal and explained that Ms. Woodburn could explain the plan in more detail.

Robbi Woodburn of Woodburn and Company Landscape and Architecture summarized the vegetation on the property and presented the landscaping plan. She explained that there are a variety of invasive species on the property which will be removed in addition to 16 trees, some of which are multi-stem trees. She explained that they would also be planting 25 trees. In the areas adjacent to the wetland, the plan includes a no-mow fescue; Ms. Woodburn discussed the benefits of using fescue in this area. She also discussed the benefits of the bioretention area as well as rain garden maintenance. In the wetland area, the plan proposes spot planting of 130 woodland perennials for ground cover.

Chair Crapo asked if these plantings would impede waterflow. Ms. Woodburn explained that it would not, and the plantings would be an improvement.

Ms. Woodburn described her process in figuring out a fair pre and post assessment with pine trees and vegetation. She explained how she compared existing canopy coverage with proposed canopy coverage and presented a Google aerial image of the site and canopy and described canopy development to the board.

Chair Crapo noted that analysis of pine uptake has been presented to the board before in other engineering reports. Ms. Woodburn explained that she was able to find information presented generalities, but no definitive, research-based information.

In response to Member Chororos' question, Ms. Woodburn described the uptake by the proposed tree plantings.

Chair Crapo acknowledged the presented square footage of canopy coverage, but explained that in other applications the board has seen a point system utilized.

Ms. Woodburn explained that the point system has nothing to do with evapotranspiration. She explained that leaf mass is doing the uptake. Chair Crapo, Ms. Woodburn, and Mr. Sebert discussed the basal area.

Ms. Woodburn explained that they could leave the stumps and the grading around it; it wouldn't impact the wetland given what's being done for construction.

Chair Crapo noted that the relief has been requested.

Ms. Woodburn explained that the reason for leaving the stumps in is erosion control.

Speaking to Ms. Woodburn, Vice-Chair Driscoll asked if she has a survival rate percentage on newly planted trees.

Ms. Woodburn explained that she would assume 100% survival. In response to Chair Crapo's question, she explained why the addition of more plantings wouldn't be beneficial as it may crowd the space, and she'd prefer if her client were required to replace a dead plant if needed.

Attorney Phoenix asked if in addition to the 25 trees, the shrubs will also help with evapotranspiration. Ms. Woodburn confirmed and explained. She also discussed the removal of invasive species and the proper removal of Knotweed.

Noting the late hour, the board discussed their plan for hearing the remainder of the application.

Steven Riker, a wetland scientist with Ambit Engineering, explained that his first delineation of the property was on April 27, 2021. When the project team reached out he conducted a second visit to the property to make sure his wetland flags were still there, which they were. He explained that he performed a functions and values assessment, which he commonly performs for DES wetland permitting.

Mr. Riker described the history of highway methodology and explained that it's a qualitative not quantitative way to assess wetland values. He explained that the wetlands perform 13 functions and values, which he listed. Mr. Riker described his process in assessing wetland values and shared his data sheet. He explained that this wetland is isolated and not associated with a water course and discussed the implications.

Chair Crapo asked if it has been determined whether this is a wetland that needs to be protected rather than a spillway.

Mr. Riker explained that this is a wetland, has been delineated as such, and meets the criteria.

Vice-Chair Driscoll, referring to the packet, asked about the delineated wetland and whether it's more than 100' away from that wetland. Mr. Riker explained that he doesn't believe so and explained that the wetland is not on the property.

Vice-Chair Driscoll asked when the package was submitted. Attorney Kieser explained that the variance application was filed on December 9, 2022, after the first notice of the proposed change; however, there was a building permit application filed in August.

Vice-Chair Driscoll and Attorneys Kieser and Phoenix discussed the 100' buffer, the requested variances, and the town's zoning ordinances.

Attorney Phoenix explained that there was a building permit application filed in August. He explained that there's case law referencing an RSA which states that the statute cited vests an applicant against changes to zoning ordinances if a building permit has been applied for. He explained that they filed for a building permit before the changes to zoning ordinances, therefore, it doesn't apply. He explained that out of an abundance of caution they applied for the variance anyway.

Attorney Kieser and Vice-Chair Driscoll continued to discuss which variances would be required. Attorney Kieser clarified that they have requested relief for the little wetland, not anything else.

Attorneys Phoenix and Kieser referred to the town's definition of "Isolated Non-Bordering Wetlands".

Attorney Kieser commented that they were aware that the property is within 100' of the tiny wetland on the other side of the street, so they didn't bother to find out more. She added that this wetland provides some floodwater storage, so it might not be considered an Isolated

Non-Bordering Wetland. She explained that it's not considered an Isolated Non-Bordering Wetland under the town's new ordinance, so it would require a 75' buffer.

Attorney Kieser responded to Vice-Chair Driscoll and Chair Crapo's questions regarding requested variances and explained how the new ordinance and inclusion of a definition of "Isolated Non-Bordering Wetland" impacted their application. She also explained the color coding in a submitted relief chart in order to clarify what relief is being requested. Attorney Kieser also encouraged the board to look at a memorandum dated 3/29/23.

Chair Crapo, referring to the map, noted that the distance seems close. Speaking to Attorney Kieser, he asked if the distance could be ascertained between this meeting and the next. Mr. Riker explained the process in conducting a partial delineation.

Attorney Kieser commented that regardless of the measurement, if it's within 100' of the lot line, it wouldn't change the appropriate buffer. Chair Crapo responded that the measurement should be from wetland to wetland. Attorney Kieser explained that they are already within 100' of another wetland, which is what requires a 75' setback.

Vice-Chair Driscoll explained that nowhere in the packet was the wetland across the street delineated.

The board discussed what course of action to take in moving forward with this application, including consulting Attorney Maher.

Attorney Phoenix explained that he fully understands the confusion over whether H1 or H2 applies. He explained that the town has never required relief from the description of the buffers. He explained the differences between H1 and H2 and acknowledged that the submitted charts are unclear.

Mr. Riker continued his presentation and discussed the functional values of the wetland. He described the impact assessment and expressed that the proposed design, in terms of stormwater management, will allow this wetland to continue to function. He added that the planting plan is applicable due to the number of invasives on this property, and that it's fantastic to include native plantings. He also explained that his rationale is included in the packet for the board to review.

Chair Crapo suggested a need for peer review on the stormwater management plan.

Joe Melaldo of Surf Lane explained that abutting neighbors had considered hiring an independent wetlands expert to get an assessment. He asked whether that's feasible.

Chair Crapo explained that the abutting neighbors could gather funds and do that together if they would like. He also explained the board's process in having a peer review, which would be a cost placed upon the applicant. Chair Crapo suggested the need for a peer review analysis for stormwater, not for wetland.

Planning/Zoning Administrator Reed suggested communication with Attorney Maher. Chair Crapo noted that while it's a separate matter from the peer review, that would be helpful.

Attorney Kieser requested that Attorney Maher be provided with the memo including their analysis.

The board agreed that a peer review on stormwater management analysis should be conducted and that the board should consult Attorney Maher regarding the application.

Motion by Patrick Driscoll to continue the application of Leigh & Darren D'Andrea for property owned and located at 0 Jenness Avenue to the June 7, 2023 meeting with the provision that Sebago can complete a peer review prior to the meeting. Seconded by Chris Piela. All in favor.

Motion by Sandra Chororos to adjourn at 11:58 p.m. Seconded by Patrick Driscoll. All in favor.

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: May 3, 2023

Decision: The Board voted 3-2-0 to grant the following variances from the Rye Zoning Ordinance as presented:

- §190-2.11.C(2) for expansion of a second floor 12.9' from the side boundary;
- §190-6.2.A for expansion of nonconforming residential units; and §190-6.3.A for expansion on nonconforming structure to a two-story building with 3 residential units.

The Board voted 5-0-0 to grant the following waivers from the Rye Building Code as presented:

- RBC §35-14.C(1) and RBC §35-14.D.1(c) to permit an advanced septic system leachfield 2.5' from ledge.

The Board voted 3-2-0 to grant following the following special exception from the Rye Zoning Ordinance as presented:

- §190-6.4; from §190-7.1.A (3); and §190-5.3 for expansion of existing 2 unit dwelling to a 3 unit dwelling and conversion to condominium form of ownership

These variances, building code relief, and special exception were granted with the following conditions:

1. The property observe the deeded septic agreement referred to in their application.

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.

2. They keep clear site lines in the front yard setback 30' from the property line to keep fencing for landscaping 30 inches or lower to grade; and

3. Some type of notice(s) in the Declaration of Condominium Documents that notifies buyers that they are in the commercial zone, subject to abutters commercial use.


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

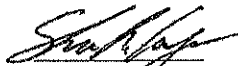
Applicant/Owner: Kathy & Timothy Keane

Property: 5 Cable Road, Tax Map 8.4, Lot 176
Property is in the Single Residence, Coastal Overlay, SFHA Zone VE (14)

Application case: Case #20-2023

Date of decision: May 3, 2023

Decision: The Board voted 5-0-0 to continue the application to the ~~June 7, 2023~~ ^{May 17, 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:

Frank Goguen

Property:

29 Gray Court, Tax Map 5.2, Lot 87
Property is in the General Residence, Coastal Overlay District.

Application case:

Case #22-203

Date of decision:

May 3, 2023

Decision:

The Board voted 5-0-0 to continue the application to the meeting. ^{may 17, 2023} ~~June 7, 2023~~


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: Marlene Veloso & Charles Fast

Property: 850 Washington Road, Tax Map 11, Lot 130
Property is in the Single Residence District

Application case: Case #19-2023

Date of decision: May 3, 2023

Decision: The Board voted 5-0-0 to continue the application to the ~~June 7, 2023~~ ^{May 17, 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:

Paul Treseder & Susan Vogelsang

Property:

59 Central Road, Tax Map 12, Lot 35
Property is in the Single Residence District

Application case:

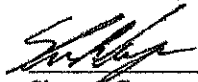
Case #18-2023

Date of decision:

May 3, 2023

Decision:

The Board voted 5-0-0 to continue the application to the meeting. ^{May 17, 2023}
~~June 7, 2023~~ fmk



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

Property:

Property is in the General Residence District, Coastal Overlay and SFHA
Zone VE (14)

Application case:


Cases# 13a

Date of decision:

May 3, 2023

Decision:

The Board voted 5-0 to continue the application to the May 17, 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: 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: May 3, 2023

Decision: The Board voted 5-0-0 to continue the application to the May 17, 2023 meeting.


Shawn Grapo, 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:

Anthony & Susan Farmer

Property:

440 Sagamore Road, Tax Map 18, Lot 51
Property is in the Single Residence District

Application case:

Case #17-2023

Date of decision:

May 3, 2023

Decision:

The Board voted 5-0-0 to continue the application to the meeting.

May 17, 2023
June 7, 2023


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: 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: May 3, 2023

Decision: The Board voted 5-0-0 to grant the following variances from the Rye Zoning Ordinance as presented:

- §190-5.0.C for a driveway 6' where 10' is required; and
- §190-2.3.C (2) for a shed 12' from the side boundary.

These variances were granted with the following condition:

1. The applicant receive a driveway permit from DPW.


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: May 3, 2023

Decision: The Board voted 5-0-0 to grant following variances from the Rye Zoning Ordinance as presented:

- §190-2.4.C(3) for second story building addition and deck 10' +/- from the front boundary, and
- §190-3.1.H(1)(b) for the work within 75; wetland buffer

These variances were granted with the following conditions including those from the Rye Conservation Commission letter dated 04/24/2023:

1. Silt fencing shall be used before and after the project for stabilization and protection of the resource.
2. A vegetated buffer of native plantings to be installed on the east side of the new fence creating an undulating planted buffer area averaging 8 feet to 10 feet from the property line. Note that the 8 foot to 10 foot buffer includes the plantings on the west side of the fence as well as those on the east side of the fence. The buffer plantings will wrap around on both the north side of the property and on the south side of the property, averaging 5 feet to 6 feet wide. On the south side plantings continue along the fence to the east end of the fence. On the north side plantings continue along the fence to the edge of the driveway. This buffer will help intercept runoff and contaminants such as fertilizer and pesticides before they can get to the marsh. The plant roots will bind and stabilize the soil along the fence and help inhibit erosion from the tidal currents of the marsh as well as uptake water through evapotranspiration.
3. A planting plan for all vegetated areas to be prepared and accepted by the RCC prior to installation.

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.

3. Mulch used shall be natural straw or equivalent non-toxic, non-seedbearing organic material, in accordance with EV-WT 307.12(d0

4. The RCC believes that an 85% or greater survival rate of the planted vegetation after one year is adequate.


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 & Cynthia Scarano

Property:

1481 Ocean Blvd, Tax Map 13, Lot 54
Property is in the General Residence, Coastal Overlay and SFHA Zone AO(3).

Application case:

Cases #21a-2023 and #21b-2023

Date of decision:

May 3, 2023

Decision:

The Board voted 5-0-0 to continue the application to the ~~June 7, 2023~~ ^{May 17, 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:

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:

May 3, 2023

Decision:

The Board voted 5-0-0 to continue the application to the June 7, 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.