

TOWN OF RYE – BOARD OF ADJUSTMENT

Wednesday, May 17, 2023

7:00 p.m. – Rye Town Hall

Members Present: Sandra Chororos, Gregg Mikolities, Chair Shawn Crapo, Patricia Weathersby, 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, led the Pledge of Allegiance, introduced Board members, and reviewed meeting procedures.

II. BUSINESS

Request for rehearing and reconsideration by Attorney Roy Tilsley on behalf of Aleph LLC: Ted and Pauline Simeonov, owners of 720 Brackett Road, Tax Map 17, Lot 65, per NHRSA 677:2 and the Rye Zoning Ordinance §190-7.3 of the Board of Adjustment's April 5, 2023 decision to "not take jurisdiction" of an Administrative Appeal of Building Department's Complaint for property owned by Christopher & Susan Reaney for property at 691 Brackett Road, Tax Map 17, Lot 34. Public hearing closed during Board discussion on the request.

Chair Crapo explained that the Board has the submittal from the applicant and that they consulted with the town's attorney, whose recommendation is similar to the board's previous decision: the Board does not have jurisdiction over the matter at hand.

Member Weathersby asked for clarification as to why the Board doesn't take jurisdiction over this matter. Chair Crapo explained that the applicant is trying to resurrect a matter from four years prior, but it's not timely to appeal that anymore. He commented that a reasonable time would have been within 30 days.

Motion by Gregg Mikolities that the board will not take jurisdiction over this request for rehearing and reconsideration. Seconded by Patricia Weathersby.

Vote 5-0-0 (S. Chororos, G. Mikolities, S. Crapo, P. Weathersby, J. Tuttle)

Continuations

Motion by Patricia Weathersby to continue the application of Anthony & Susan Farmer for property owned and located at 440 Sagamore Road, Tax Map 18, Lot 51 to the June 7, 2023 meeting. Seconded by Sandra Chororos.

Vote 5-0-0 (S. Chororos, G. Mikolities, S. Crapo, P. Weathersby, J. Tuttle)

Motion by Patricia Weathersby to continue applications seven and eight by Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 to the July meeting. Seconded by Sandra Chororos.

Vote 5-0-0 (S. Chororos, G. Mikolities, S. Crapo, P. Weathersby, J. Tuttle)

III. APPLICATIONS

1. 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) for a porous patio 50', grill area 50' and wash station 56' from the highest observable tide level where 100' is required; §190-2.4.C(2) for a generator 3', porous patio .5' (6"); grill area 1' and wash station 1.4' from the side yard boundary where 20' is required; from §190-3.4.E for 71.8% impervious surface coverage where 72% exists and 30% 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.

Attorney Monica Kieser of Hoefle, Phoenix, Gormley & Roberts introduced herself, **Attorney Tim Phoenix, Susan Mesiti, and Nick Loring** from Benchmark LLC. Attorney Kieser explained that she would be referencing Exhibit five, revised on April 25, 2023, and Exhibit A. She explained that this application was on the agenda a couple of months ago, but it was continued as it faced opposition from neighbors. Ms. Mesiti consulted those neighbors and significantly reduced the scope of the project. Attorney Kieser explained that the neighbors are represented by Attorney Darcy Peyser of Durbin Law and they are in agreement with the revised plan, as submitted.

Attorney Kieser described the structure as a 3-unit condo on the beach with a detached 3-bay garage. Referring to a plan depicting the existing conditions, she pointed out the patio and seawall. She explained that the patio in front of unit 2 is half-sized and the other side is a water feature. She noted that the constant freezing and thawing of the fish pond is damaging the seawall, which the RCC observed. Attorney Kieser explained that the applicant plans to remove the fish pond, extend the patio, which will be pervious, and reduce the size of the deck and stairs.

Chair Crapo noted that the Board previously had two sets of relief for buildings two and three. He clarified that the requested relief is only for unit two; Attorney Kieser confirmed.

Attorney Kieser pointed out the proposed generator which would serve unit two, and mirror the generator serving unit three. She also pointed out a “grill area” on the plan and clarified that it’s an indication of where a portable barbeque grill will be placed, not an additional structure. She also pointed out the location of a small foot-wash station.

Attorney Kieser noted that all dimensions are recorded in the relief chart submitted on 4/25/23 and she explained the reasoning for the requested relief. She clarified that they’re operating from the same denial letter even though the scope of the project is reduced and the proposed patio would be impervious. She explained that they were directed to get side-setback relief and relief from buffer restrictions for the patio, grill area, and wash station. She noted the generator is outside the 100’ setback. She questioned the need for expansion relief but included it because it was easier and suggested that the board make their own decision as to whether it’s required. She also expressed her opinion that there’s no need for coverage relief but requested it out of an abundance of caution. She explained that coverage is prior non-conforming and reduced overall. She explained that they met with RCC twice and did one site walk and noted that the board should have a revised letter dated 5/15 with recommendations. The RCC recommended native plantings be added to some of the existing plantings with 1-2’ as space allows. They’d also prefer to have a planting plan submitted before installation and want a minimum 85% survival rate of plantings after one year.

Member Mikolities discussed the submitted site plans and noted that there is no patio or stairs detailed in any of the three site plans. He asked for clarification.

Ms. Mesiti explained that the patio, stairs, and wash basin existed when she purchased unit two in 2022 and unit three in 2017.

Planning/Zoning Administrator Reed explained that the site plans came from the Building Inspector’s history file.

Member Mikolities noted that all three site plans are different.

Attorney Kieser explained that one plan is from 1988 and she doesn’t know that it includes any features other than deck stairs.

Chair Crapo wondered if the patio and coverage were ever approved. He pointed out that if they were not, then there would not be a reduction in coverage and we have an expansion that may not have been permeable.

Attorney Kieser responded that this would be an enforcement issue. She explained that the plan for 2021 is nearly the same as the plan from 1988 and added that she would assume that the Board or Building Inspector would have looked at the site when he supplied their request for relief.

Chair Crapo stated that the 2021 application would have only addressed the generator.

Ms. Mesiti explained that there was a full patio in front of both units when she purchased the properties in 2017 and 2022. She explained that the unit two patio was worn and over 30 years old, and the unit three patio was newer, but she purchased the property that way.

Connie Penacho of 1182 Ocean Boulevard, Unit 1 stated that both patios existed when she purchased her property in 2019.

Attorney Kieser referred to the declaration and minutes from 2021 and asked if anyone has the full building file.

Ms. Mesiti stated that she's looked through the building file and explained that there were multiple copies of the same plan, with no building plan. She explained that there is a file for the septic system, but the file is lacking.

Attorney Phoenix explained that Ms. Mesiti purchased the property innocently and would agree that if an impervious patio was never permitted, it should have been; but, the board could approve a set of the 71.8 impervious. He reiterated that this would be an enforcement issue.

Member Mikolities stated that he doesn't have a problem with it, but wanted it to be on the record.

Attorney Kieser explained that the Building Department would have had an opportunity to review this file at least four times. She explained the history of submittals regarding this property to the Building Department. She added that she's happy to review the building file, but it sounds like there's not a lot of information.

Planning/Zoning Administrator Reed explained that all files are by tax map and lot and should be in one file.

Member Chororos asked for an explanation of the proposed propane tanks.

Attorney Kieser explained that propane tanks are exempt from dimensional requirements and they're outside the 100' setback. She added that the plan will require DES permitting, and Benchmark is undertaking that process.

Member Weathersby asked if the stairs are being built in the same location with the same dimensions. Attorney Kieser responded no, they're being reduced in size. Referring to the plans, she clarified the dimensions of the new stair configuration.

Chair Crapo discussed the unit two denial letter and expressed that the Building Department doesn't specifically address the relief for the deck except that it's in the flood zone and shoreline protection area, but doesn't call it out as a violation. Attorney Kieser suggested a conclusion that the deck is not in violation.

Referring to the abutting neighbor's comments, the building department's letter, and his analysis as to whether the patio would be allowed if it were being proposed today, Chair Crapo asked if the Board is comfortable moving forward with the patio.

Member Weathersby commented that it's a logical place to sit out front and at least the applicant is removing impermeable surfaces and the fish pond, which was damaging the seawall. She noted that, environmentally, it's an improvement. She suggested an approval conditioned on the permeable pavers remaining permeable. She added that if the application is approved, the Board should clarify that they are not saying whether the patio in front of the other unit is legal or not, but approving a permeable patio in front of unit two.

Member Chororos agreed that the Board should condition approval on the RCC's recommendations as well.

The board discussed the RCC's recommendations for the property.

Ms. Mesiti discussed the strategic placement of propane tanks and explained that they're very cognizant of the environment and appearance.

Noting the RCC's recommendations for plantings, Attorney Kieser discussed the existing plantings with Ms. Mesiti and the RCC's recommended additions. Member Weathersby recommended a condition that includes native shoreland salt-tolerant plantings to the width of one to two feet. Ms. Mesiti agreed.

In response to Member Weathersby's comment regarding the existing pavers, Attorney Phoenix expressed his concern that Ms. Mesiti or a future owner would eventually face the same issue if

they ever needed to come before the board again. He requested that the board consider approving the coverage at 71.8% as a variance because the older patio is part of the impervious coverage.

Member Weathersby stated that she doesn't like that idea as she doesn't want to weigh in on the other patio. She stated her opinion that the board should either find out when the other patio was installed or approve this application with the current lot coverage.

Attorney Phoenix summarized that the board knows Ms. Mesiti did not install the patio, and there is testimony that it was there when she purchased the property, and when the abutters purchased their unit. He explained that he could use an equitable waiver since it's been over ten years.

The board speculated as to how old the patio could be.

Chair Crapo pointed out that it's being called a reduction in coverage, when it may never have been allowed in the first place.

Attorney Kieser spoke to the unusual nature of the situation and pointed out that the proposed change would make impervious surfaces pervious, which is an improvement. She argued that the issue of whether the current structure is legal or not is separate from the existing amount of impervious coverage on the lot, which will now be slightly reduced. She submitted to the board that there's significant hardship on this lot due to its size, the number of units, the amount of driveway, and the three-car garage. She noted that each of those is depicted in the 1988 plan which was approved by the Planning Board.

Member Weathersby wondered if the board could approve the plan with lot coverage over that required by the zoning regulation.

Chair Crapo wondered how the board would address the relief requested for §190-3.4.E for 71.8% impervious surface coverage.

Attorney Kieser spoke to each of the variance criteria as they relate to this application noting that the project is minimal, is an improvement over the existing structure, that the generator is not intrusive, and that the abutters are in support of the project. She also noted that special conditions exist regarding the side setback

Chair Crapo asked for the date of the associate's letter that gives support. Attorney Kieser explained that there was no letter, but there is a reduced scope proposal dated April 25, 2023. Chair Crapo asked if Attorney Kieser was authorized to represent the change in sentiment.

Attorney Kieser confirmed that she spoke with Attorney Peyser on the date of the April hearing, and she was copied on the revised plans.

Chair Crapo opened to the public at 7:53 p.m.

John Penacho of 1182 Ocean Boulevard, Unit 1 stated that he fully supports the applicant and her proposed plan. He emphasized that the proposed plan would be a drastic improvement and that the applicant put a lot of effort into doing it the right way.

Karen Oliver of the Rye Conservation Commission spoke to their recommendations for plantings.

Ms. Mesiti, the applicant, explained that Mr. Penacho has a picture of the plantings and noted the density of those plantings. She added that, in any event, they would comply with the RCC's recommendations. Attorney Kieser presented a photo of the plantings to the board. Ms. Mesiti also spoke about the removal of the fish pond that its positive impact on the seawall.

Colleen Penacho of 1182 Ocean Boulevard, Unit 1 also voiced her support of the project.

Ms. Mesiti explained that the former owners may have had an ill-functioning irrigation system at one time, which may have caused excess water at inappropriate times.

Hearing no further comments, Chair Crapo closed to the public at 7:58 p.m.

Member Weathersby discussed the proposed conditions:

- The patio in front of unit two is styled and maintained such that it remains permeable.
- Native shoreland salt-tolerant plants to be added, if necessary, to the existing plantings abutting the seawall in front of unit two such that the plantings are in width of 1-2'.
- That a plan is submitted and approved by the RCC before installation
- Plantings have a survival rate of 85%

Chair Crapo, discussing the neighbor's support, stated that he now feels comfortable. He discussed the placement of the generator and commented that it's the only place you could put it due to the layout of the land. He also discussed his discomfort with the issue of coverage.

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

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes

Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – 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
Gregg Mikolities – Yes
Patricia Weathersby – 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
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes

Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

Motion by Patricia Weathersby that the board grants the following variances for Summer at the Beach Trust, Susan Mesiti, Trustee, for property owned and located at 1182 Ocean Boulevard, Unit 2: §190-2.4.C(2) for a generator 3', porous patio .5' (6"); grill area 1' and wash station 1.4' from the side yard boundary where 20' is required; §190- 3.1.H(2)(a)(g) for a porous patio 50', and wash station 56' from the wetlands; §190-3.4.E for lot coverage over that required by our ordinance; and §190-6.3.A for expansion of a permeable patio with reconstructed stairs as shown on the site plan by Benchmark LLC dated March 28, 2023. Conditioned upon the following:

- Native shoreland salt-tolerant plants to be added, if necessary, to the existing plantings abutting the seawall in front of unit two such that the plantings are in width of 1-2' as space allows.
- A planting plan for unit two is submitted to and approved by the RCC before installation including ocean-side plantings and generator plantings.
- Plantings have a survival rate of 85% after one year.
- The board specifically makes no findings as to the lot coverage due to a lack of information regarding the legality of the deck in front of unit three.
- The patio in front of unit two is styled and maintained such that it remains permeable.

Seconded by John Tuttle with friendly amendments.

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

2. Jeffrey W. Keefe 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.

Attorney Monica Kieser introduced herself and **Attorney Tim Phoenix** from Hoefle, Phoenix, Gormley & Roberts, **John Chagnon** from Ambit Engineering, and the applicant, **Jeffrey Keefe**.

Mr. Chagnon presented an overview of the property and application. He described the property as a gem of a house, previously well-hidden by years of growth. He explained that it was initially two lots on the tax map, but the second undeveloped lot was sold to the Rye Conservation Commission. He explained that the applicant, Mr. Keefe, purchased the property and is requesting a modest update to the house. He described the proposed addition including living space, a garage, and a deck. He spoke about the location of the property, the structure of the home, the driveway, the septic, and the surrounding wetlands. He explained that the proposed septic system would bring it up to code as it's an advanced onsite solution system. He explained that a lot of thought went into the location of the septic, and they're asking for relief for the 100' line as there's no way to do it otherwise due to ledge, waterline, and the desire to preserve as much of the buffer as possible. He described the property dimensions and requested relief. He also noted the addition of impervious surface area with the addition of the garage; while they looked at alternatives, such as a detention facility, that would require cutting more of the buffer. He also directed the board to a full drainage analysis as a part of his submittal.

Mr. Chagnon addressed stormwater management and explained that an increase in runoff is not problematic as this project is in the downstream corner of Berry's Brook Watershed and a small increase in runoff before the change in tidal area doesn't impact any properties. He explained that under the town's ordinance, the town Public Works Director is allowed to permit increases in runoff for town infrastructure or waterways. He explained that the town's current Public Works Director was not comfortable discussing the matter at this point.

In response to Chair Crapo's question, Attorney Kieser explained that the DPW wasn't comfortable granting that waiver.

Speaking to Attorney Kieser, Chair Crapo asked if the presented plans were also presented to the Building Department. Chair Crapo explained that there is a request for relief for the garage, but there is no mention of a garage in the Building Department's denial letter. Attorney Kieser clarified that the current plans did not go to the Building Department, but an earlier septic plan

was filed by other people before she was involved, and the Building Department generated a denial letter referring to the septic. Mr. Chagnon explained that the garage had been overlooked as it's only a very small corner of the property, but he pointed it out specifically in the final application

Chair Crapo asked if the requested relief for the garage is based on Mr. Chagnon's assessment, not the building department's. Mr. Chagnon confirmed. Attorney Kieser also confirmed that the Building Inspector did see the deck.

Member Mikolities asked about the status of the septic system. Mr. Chagnon explained that it was approved. Member Mikolities also asked about the detached garage, depicted as a barn on the plan. He wanted to clarify that it would not be a livable space. Mr. Chagnon confirmed that it would remain a detached garage.

Member Weathersby asked if a member of the team could speak to the tree cuttings.

Mr. Keefe, property owner, and applicant, explained his plan for tree removal. He noted his aim to preserve the lot as best he can. He pointed out dead and dying trees near the marsh, spoke about the root structure and health of the forest, and explained his plan to eliminate problems to give healthy trees a chance to grow.

Mr. Chagnon spoke about what needs to be cut for construction. He pointed to a small band around the edge of the property where cutting would be needed to install the septic tank.

In response to Member Tuttle's question, Mr. Chagnon explained that the driveway would be paved; he explained that the subsurface conditions wouldn't make it a good candidate for a porous driveway. Member Tuttle referred to the RCC letter which states that the driveway would remain pervious. Mr. Chagnon suggested that maybe the RCC meant the drive would remain impervious.

Member Weathersby asked about the RCC's letter where they referenced monitoring wells. She asked for a member of the team to speak about who monitors those wells. Mr. Keefe explained that there was an oil tank below the ground which was removed. He explained that those wells were put in place to monitor the removal of the tank and eventually, they will also be removed. He added that there was no leakage. Member Weathersby clarified that there was a requirement and process to have those monitors, and a part of that process is to remove them after a certain time. Mr. Keefe confirmed.

In response to Member Mikolities' question, Mr. Keefe explained that it was a three-bedroom house, and it now is a two-bedroom house. He clarified that there will be a third bedroom above the garage.

Chair Crapo asked **Karen Oliver** of the Rye Conservation Commission about the condition listed in their letter regarding invasive plants.

Mr. Keefe explained that he's been working together with the RCC to remove invasive species as they're on both lots.

Chair Crapo clarified that the condition would not require the applicant to remove every invasive plant on the property. Ms. Oliver confirmed that that's not the intent.

Ms. Oliver asked for clarification on whether the driveway is currently pervious or not. Attorney Kieser clarified that it was a typo and the driveway is currently and would remain impervious.

Member Mikolities, reviewing the variance plan, noted the paved driveway would increase from 1197 to 2397.

Ms. Oliver stated that it wasn't apparent that it would increase the impervious area.

Mr. Keefe explained that there is a section of gravel that would be removed.

Chair Crapo noted that the removal of gravel wasn't depicted on the plan and that the paved part of the driveway will be larger.

Attorney Kieser explained that the gravel will go from 494 to zero. She also discussed the documents provided in Exhibit D. She explained that the existing septic is 35' to the wetland and not providing treatment.

Attorney Kieser summarized the proposed plan and spoke to each of the variance criteria as they relate to this application.

Chair Crapo asked if the existing septic would be removed or abandoned and filled in place.

Mr. Chagnon referenced a note on the septic plan which states if any portion of the septic system is encountered during its replacement, then it would be removed and disposed of in accordance with DES rules. In response to Chair Crapo's question, he confirmed that removal would happen only in areas that are needed to install the new system.

Attorney Kieser continued to address each of the variance criteria, noting the discussions of drainage and wastewater treatment.

Member Tuttle asked if a hot tub would be installed; Mr. Keefe responded that a hot tub would be included on the deck. Attorney Kieser stated that the hot tub would be inside the tidal buffer. Chair Crapo asked if it would be a portable hot tub and Mr. Keefe confirmed that it would be inserted into the deck.

Chair Crapo opened to the public at 8:37 p.m.

Hugh Lee of 182 Pioneer Road spoke in support of Mr. Keefe's requested variances. He expressed that it would improve the existing property, the neighborhood, and the town as a whole.

Hearing no further comments, Chair Crapo closed the public session.

Member Tuttle explained that he's fine with most of the plan, but is struggling with the stormwater management. He commented that not retaining it onsite seems like it could be a slippery slope, especially as the property is near a sensitive wetland area. He added that the plan would add impervious surfaces where they are currently pervious and wondered if calculations for impervious surfaces would change. He added that the rest of the plan seems to be an improvement to the property.

Member Weathersby explained that she doesn't have a problem with any of the proposed plans. She comments that while the board never likes to see an increase in runoff from one property to another, with only 10.4% of the lot being impermeable, the amount of increase is minimal. She added that any additional runoff would just go into the brook and perhaps the board could discuss the use of fertilizers. She added that the house and septic will be much improved, and she is pleased that the applicant will keep the existing cottage.

In response to Member Tuttle's concern, Chair Crapo opened to the public to discuss with Mr. Chagnon what efforts could be made to create detention ponds, and why they may be ruled out.

Mr. Chagnon named tree removal and destruction to the buffer as two of the reasons detention ponds were not utilized. He also discussed the ability of the buffer to treat the runoff and the increase of .24 cfs of flow to the watershed.

Member Mikolities commented that sometimes if you're at the bottom of the watershed, you'd do more harm detaining the water. He noted that each lot is unique, and he's comfortable with the drainage on this lot.

Ms. Oliver commented that the RCC went to the lot in 2021 and based on their experience, having trees there to do water uptake is a lot more important. She also suggested the applicant replace the trees that come down. The applicant suggested that he leave the stumps in place; Ms. Oliver agreed that would be good.

Chair Crapo discussed drainage of the hot tub with Mr. Chagnon, who explained that the hot tub would be chlorinated and wouldn't be drained.

For the record, Attorney Kieser suggested that the deck be referred to as a deck/hot tub. Chair Crapo agreed. The applicant agreed he'd consider a saltwater hot tub.

Chair Crapo closed to the public at 8:48 p.m.

Member Mikolities stated that it's an improvement to the property and he's comfortable with the application. Member Chororos agreed and commented that she's encouraged by the developing relationship between the applicant and the Rye Conservation Commission.

Chair Crapo and Member Tuttle, who felt concerned regarding the drainage, discussed their reconsideration of the matter.

Member Chororos consulted Ms. Oliver about the use of fertilizers on the property. Ms. Oliver explained that she was surprised it wasn't listed in the RCC letter, as natural fertilizers would be recommended, but that it does present problems with monitoring and enforcement.

Chair Crapo discussed the use of fertilizer and pesticides and discussed a condition of best practices.

Attorney Kieser pointed out that the disrupted lawn area is very minimal as there is so much woodland buffer coverage.

Chair Crapo closed to the public at 8:52 p.m.

Chair Crapo discussed the proposed conditions of the Conservation Commission letter related to invasive plants being removed as needed and the use of best practices regarding fertilizer and pesticide use.

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

Sandra Chororos – Yes

Gregg Mikolities – Yes

Patricia Weathersby – Yes

John Tuttle – Yes
Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – 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
Gregg Mikolities – Yes
Patricia Weathersby – 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
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

7. The proposed use is a reasonable one.

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

Motion by John Tuttle to approve the application of Jeffrey W. Keefe for property owned and located at 3 Brackett Road, Tax Map 22, Lot 72 for variances from §190-3.1.H.2(a),(b),(e), and (g) for a deck/house/hot tub 57', a septic tank 49', a leach field 75', a garage 96.45' and removal of trees from the wetland where 100' is required and the rest as advertised, with the following conditions:

- Best practices for fertilizer and pesticide use
- RCC recommendations from their 2/22/23 letter

Seconded by Sandra Chororos.

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

3. Anthony & Susan Farmer for property owned and located at 440 Sagamore Road, Tax Map 18, Lot 51 request variance from §190-6.3.A for expansion of nonconforming structure; from §190-3.1.H.1 & H.2(a)(g) for a deck 44' and garage 48.8' from the wetland where 100' is required; from §190-2.3.C(3) for pervious pavers 24', 21' and 18' +/- from the front boundary where 40' is required; and §190- 2.3.C(1) for pervious pavers 29' from the rear boundary where 30' is required. Property is in the Single Residence District. Case #17-2023.

Application continued to the June 7, 2023 meeting, see motion above.

4. Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 request variances from §190-6.3.A for expansion of nonconforming structure; from §190- 2.3.C(3) for an addition 10+/- and 21.9' from the front Meadow Lane Boundary where 40' is required; from §190-5.0.C for parking in the front yard area. Property is in the Single Residence District. Case #18-2023.

Paul Treseder, the applicant, commented that the 10' dimension is the existing resource and the proposed resource is 20.9'. He asked if the board has a copy of the site plan, and they confirmed. He explained that the entire house sits within the required 40' setback, and any change to the home would require a variance. He explained that the house is 100 years old and likely predates Meadow Lane. He explained that they would like to add an addition to the back of the home to serve as an ADU, 1200 square feet in total with two stories. He explained that they've owned the house for twenty years and used it as a rental. They're hoping to use the home for themselves, and by building an ADU, would be able to afford to do so. Mr. Treseder discussed the requirements of an ADU, the design, and the spirit of the setback ordinance. He also discussed the requested variance for a parking area, a matter which the applicant will also bring before the Planning Board.

Mr. Treseder discussed their application for a second driveway, which is not in compliance, and explained that he's looking for feedback from the board.

Chair Crapo and the board discussed off-street parking, the existing driveway, the proposed parking pad, and required variances.

Planning/Zoning Administrator Reed explained that the application would need to go before the Planning Board for driveway regulations.

Member Chororos asked if the intention would be to have a parking pad leading to the ADU, as opposed to having to dig a walkway down. Mr. Treseder confirmed and explained that he doesn't mind altering the plan if necessary.

Member Weathersby explained that they are not an advisory board and encouraged the applicant to consider the placement of septic and other components when thinking of the design. Referring to §190-5.0.C, Member Weathersby discussed parking requirements.

In response to Chair Crapo's question, Mr. Treseder explained that the ADU would have two bedrooms and the main house has three, with a total of five. He clarified that the septic system is designed for six people.

Member Chororos, looking at the denial letter from the Building Department, asked for clarification on item five where a single-story, one-bedroom cottage with a loft was described. She commented that item six described the proposed ADU.

Mr. Treseder explained that the Building Department's description in item five is incorrect; he clarified that if the variances are granted, he would go to the Planning Board next.

Planning/Zoning Administrator Reed explained that it's best if the applicant gets all required variances from the Zoning Board first, so the Planning Board can accept it as a complete application and vote on the driveway distance to the intersection, parking, etc.

Chair Crapo and Planning/Zoning Administrator Reed discussed the Planning Board's process, technical review, and the best procedure for the applicant to move forward with his application.

Mr. Treseder explained that he brought an alternative driveway plan and asked if the Board is in a position to guide him. The Board explained that his best course of action is either to carry forward the application as presented, or continue the application to another meeting in order to present the plan with his preferred driveway placement. The Board also suggested the applicant seek guidance from the Director of Public Works.

The applicant outlined his feedback from the DPW. He explained why the alternate driveway may be preferred and showed a copy of the alternate plan to the Board.

The Board agreed to continue the application to the July 5, 2023 meeting so the applicant can present his preferred driveway plan.

Motion by John Tuttle to continue the application of Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 to the July 5, 2023 meeting. Seconded by Patricia Weathersby.

Vote 5-0-0 (S. Chororos, G. Mikolities, P. Weathersby, J. Tuttle, S. Crapo in favor)

5. Marlene Veloso & Charles Fast for property owned and located at 850 Washington Road, Tax Map 11, Lot 130 request a variance from §190-2.3.C (6) to take one lot and divide into two lots with one of the lots having frontage of 101'40" where 200' is required. Property is in the Single Residence District. Case #19-2023.

Attorney Derek Durbin, speaking on behalf of the property owners, introduced himself, **Anthony Jones** of Jones and Beach Engineers, and **Charles Fast**, the applicant. He described the property, noting the home's large size and large amount of frontage compared to other

properties in the area. He explained that the property is a single-family home with an attached barn structure located within the front yard setback. He explained that the back yard is not currently being used, and the property is well-vegetated by the buffer.

Attorney Durbin explained that the applicant is proposing a two-lot subdivision, which would result in construction on acreage to the rear of the property, accessed by a 12-foot-wide private driveway on the right side of the property. He outlined the existing frontage and their need for a variance request. He explained that their previous proposal to the Board resulted in opposition from abutting neighbors. To appease those concerns, the applicants are proposing this two-lot subdivision, which addresses all concerns presented by the abutting neighbors. He noted that letters from abutting neighbors were included in the application package.

Chair Crapo asked Attorney Durbin if he's met with the Director of Public Works for the driveway. He noted the proposed location, which is on a hill with very little visibility.

Charles Fast, the applicant, explained that when they met with the Planning Board they determined that the highest and best line of sight was at the top of the hill where the road is being installed.

Attorney Durbin and Chair Crapo discussed the driveway and the Planning Board's assessment of its placement.

Member Weathersby asked for the distance between the driveway and the proposed new property line. Attorney Durbin explained that it's less than 10' and it was originally proposed to be closer to the abutter to the right, but was moved to create an additional buffer. Member Weathersby noted that this would be considered a driveway regulation, not a zoning ordinance. Attorney Durbin acknowledged this and explained the changes to the placement of the driveway.

In response to Chair Crapo's question, Planning/Zoning Administrator Reed explained this would be in the jurisdiction of the Planning Board under Appendix E. She explained that she'd pointed out the placement of the driveway to Attorney Durbin and the need to change it.

Attorney Durbin discussed the placement of the driveway with the Board. The Board reviewed previous plans depicting its placement.

Mr. Fast explained that the abutter nearest the driveway is in support of the proposal.

Member Weathersby asked if any board member feels as though the exact location of the roadway is needed prior to a vote on the frontage. She commented that her vote would not be affected by a small change to the placement of the driveway.

Chair Crapo agreed that the most important factor is the frontage and the overall width. He asked Attorney Durbin if the existing house is staying, which he confirmed.

Attorney Durbin addressed each of the variance criteria as they relate to this application.

Chair Crapo wondered why the applicant is choosing to sacrifice their original three-lot subdivision, noting that the town's ordinances are attempting to keep large lots large. Attorney Dubin explained that the only reason for the choice to minimize the proposed structure is to preserve a good relationship with the neighbors.

Mr. Fast explained the process he went through to plan the subdivision, at which point his family developed a close relationship to their neighbor; a relationship which is important for their family to preserve. He explained that this relationship is the reason for incurring the expenses of attorneys, engineers, etc. and sacrificing the original three-lot plan.

Chair Crapo opened to the public at 9:44 p.m. Hearing no comments, he closed the public session.

Member Mikolities explained that he's comfortable with the application if it remains a two-lot subdivision, without any further development. He stated his concern with opening the door to a driveway leading to the back of the property, and expressed the importance of stating the board's approval of the driveway specifically serves access to this lot.

Chair Crapo discussed his reservations and acknowledged the matter of frontage.

Member Weathersby suggested a condition to make the voluntary side-rear setback and no-cut buffers mandatory, which would further eliminate access going through those areas. She commented that she likes the renovation that's been done on the historical house and that the home is centered on the lot. She commented that the other lot is so large that the smaller amount of frontage is okay there.

Chair Crapo commented that saving the house isn't a guarantee. Member Weathersby agreed, but noted that if it were to be torn down, one house would replace it, as opposed to three or four on the entire parcel.

Member Tuttle commented that this plan looks much better than the four-lot subdivision.

Member Chororos agreed and noted that it is a particularly large frontage.

Chair Crapo called for a vote considering the conditions that the 90' frontage only provides access to a single-family home and that the voluntary side-rear setback and no-cut buffers become mandatory.

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

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

2. The spirit of the ordinance is observed:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

3. Substantial justice is done:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

4. The values of surrounding properties are not diminished:

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – 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
Gregg Mikolities – Yes
Patricia Weathersby – 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
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

- 7. The proposed use is a reasonable one.**

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

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

Sandra Chororos – Yes
Gregg Mikolities – Yes
Patricia Weathersby – Yes
John Tuttle – Yes
Shawn Crapo – Yes

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

Motion by John Tuttle to approve the application by Marlene Veloso & Charles Fast for property owned and located at 850 Washington Road as presented with the conditions that the 101.4' of frontage only provide access to one dwelling and that the voluntary setbacks and no-cut buffers presented on 5/17/23 are adhered. Seconded by Sandra Chororos.

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

Chair Crapo informed the public that they likely would not have time to hear application nine on the agenda. The applicant agreed.

Motion by Gregg Mikolities to continue the application of Frank Goguen for property owned and located at 29 Gray Court, Tax Map 5.2, Lot 87 to the June 7, 2023 meeting. Seconded by Patricia Weathersby.

Vote 5-0-0 (S. Chororos, G. Mikolities, P.Weathersby, J. Tuttle, S. Crapo in favor)

6. Kathy & Timothy Keane for property owned and located at 5 Cable Road, Tax Map 8.4, Lot 176 request §190-6.3.B for demolition of existing structure, replace with new; from §190-2.3.C(1) for a house 3.85'/4.58', pervious patio 6.84', pervious driveway -3.00' and a drainage area 0' from the rear boundary where 30' or ¼ depth is required; from §190-2.3.C(2) for a driveway -10' from the side boundary where 20' is required; from §190-2.3.C(3) for a house 4.61', a pervious walkway 1.52', steps 1.43' and pervious driveway 0' from the front boundary where 40' is required; from §190-2.4.C(5) & §190-3.4.E for dwelling coverage 27.2% where 15% is required and lot coverage 37.5% where 15% is required; from §190-3.1.h.2(a)(g) for a pervious patio 38.1', steps 46.4' and roof 50' within the 100' NHDES Tidal buffer zone; and from §190-3.4.D for height 29.80' where 28' is allowed. Property is in the Single Residence, Coastal Overlay, SFHA Zone VE (14). Case #20-2023.

Attorney Tim Phoenix introduced himself, Shannon Alther, and Tim Keane to the board. He explained that Henry Boyd from Millennium Engineering, while not present, did the technical work.

Attorney Phoenix summarized the property, a 5,789 square foot lot in a 1986 subdivision. He described the dimensions and specs of the property as well as dwelling and lot coverage. He explained that their proposal would reduce the overall lot coverage and they would be raising the existing home to build a new, four-bedroom home with a garage underneath. He also explained that the home has no direct frontage and discussed an updated easement agreement whereby Mr. Tierney, an abutter, granted the applicant the right to their beach access, which is entirely on the neighbor's lot. He added that the permeable paver driveway would service both the neighbors and the applicant.

Member Tuttle, Chair Crapo, and Attorney Phoenix discussed the abutter's recently granted request for relief regarding the driveway.

In response to Chair Crapo's comment that the board cannot grant a variance for somebody else's property, Attorney Phoenix clarified that the application should request approximately 10' not -10'.

Shannon Alther of TMS Architects, representing the applicants, discussed his and Henry Boyd's plan for water management and infiltration. He explained that they're attempting to keep the side setbacks as they are today. He also explained that they would be reducing overall impervious coverage considerably through the removal of gravel and impervious pavers. Mr. Alther discussed town ordinances and the footprint of the house and explained that they would not be increasing the footprint as much as it may seem.

Mr. Alther presented the proposed plan to the Board including the lot layout, the new pervious paving, and the footprint of the house, which would be moved back past the 50' line. He explained that he and Mr. Boyd created three drainage basins on the property, and one is underneath the proposed house to manage roof runoff. He explained that they've discussed and reviewed the property with the RCC who feels that it's important to reduce impervious coverage. He also agreed to installation of salt-tolerant, native plantings.

Mr. Alther explained that the property is in the DE14 zone and discussed the elevation, and their request for a 30' height limit restriction to make this house FEMA compliant. He added that there's no room for HVAC, so a lot of components will go underneath the house. He also explained that the existing house doesn't have a garage, so the addition of the new garage is what causes the proposed home to be longer. He also emphasized that the impervious coverage would be greatly reduced compared to what is there today.

Chair Crapo and Planning/Zoning Administrator Reed discussed FEMA requirements and the town's Flood Plane Warning Requirements and determined that 30' is the cap, anything over 30' would require a variance.

Attorney Phoenix referred to §190-3.4.D and discussed the requested relief.

Chair Crapo asked for clarification of the combination of rough and specific dimensions listed for requested relief.

Mr. Alther explained that the proposed plan includes a walkway and that the measurement of 1.52' is the distance from property line to the pervious walkway.

Chair Crapo clarified that he'd like to know why the approximate 10' measurement can't be more exact.

Mr. Alther explained that an easement adjustment was considered in the presentation of the numbers.

Attorney Phoenix explained that Alex Ross did the technical work for the abutting neighbor, Mr. Tierney, and Mr. Boyd worked alongside him. He discussed the process in planning the driveway and the associated dimensions. He described the dwelling coverage as being increased from 18.4% to 27.2% and explained that it's attributed to the installation of a garage with living space above it. He explained that lot coverage would be reduced from 46.4% to 37.5%. He continued by explaining that what Mr. Alther was trying to address is the way the town measures dwelling coverage separate from open porches. He explained that the porch is a part of the whole perimeter and it's a factor in the reduction of overall impervious coverage. He added that most of

the reduction is created by the change from a gravel drive to a pervious substance. He also discussed the 100' setback and mentioned that the base elevation is roughly 12', that they will get to 19' and the ordinance says you can go to 30'. He explained that while they don't need a variance, the request is related to a need for headroom in the garage.

Attorney Phoenix spoke to each of the variance criteria as they relate to this application, noting that they agree with the RCC's letter and will accept those recommendations as a condition of approval. He also distributed a draft of the Tierney Easement.

Member Mikolities explained that while he's okay with the project, he's insulted by the suggestion of the pervious paver maintenance. He expressed that it's an unrealistic expectation that the property owner would measure infiltration rates, install blades in a storm, and vacuum beachside pavers annually. He also acknowledged that the applicant is making a good effort to address drainage on the site.

Member Tuttle noted that the proposed permeable pavers are large.

Attorney Phoenix and the applicant, Mr. Keane, explained that the intention is to install pervious pavers, but they haven't selected the exact pavers yet. Member Mikolities explained the best course of action is to go with smaller pavers. He also explained his experiences with porous pavement, which was not effective.

In response to Member Weathersby's questions, Mr. Alther explained that the existing house is 1065 square feet with four bedrooms. He explained that it will remain a four-bedroom home with interior living space going from 2200 square feet to 2700 square feet. He also explained that fill will not be brought in as the existing foundation has a block and flood vents, per the requirements of FEMA. He also explained that utilities will be suspended from the foundation below the first floor and above the FEMA line as well as the attic.

Chair Crapo asked if the neighbor towards Ocean Boulevard has seen these plans.

Mr. Alther explained that he's attempted to reach the abutter, Tracy Banks, three times.

Chair Crapo and Attorney Phoenix discussed the matter of sight lines for abutters. Chair Crapo expressed his concern that the proposed design would eclipse the neighbor's view. Attorney Phoenix expressed that he doesn't agree with that analysis.

Chair Weathersby asked for the distance between the proposed home and the Tierney home.

After some discussion, Mr. Alther determined that it's less than 10' to the Tierney home. It's 14.5' from the property line to the house. In response to Member Tuttle's question, he also discussed the dimensions as they relate to the contour of the property.

Member Weathersby expressed her issue with the application. She pointed out that the home is non-conforming with a very small lot that couldn't be built on if it existed today. She noted that the applicant, instead of trying to make the structure more conforming, has made it significantly less conforming and the only benefit seems to be the reduction in lot coverage, which is reliant on the use of pervious substances instead of the existing gravel. She asked if there's anything else about the house that's beneficial.

Attorney Phoenix explained that the applicant is not required to make something more conforming, and if he were, he might not need a variance. He confirmed that the lot is small and narrow which is why they need a variance. He continued that they're making the lot more conforming with respect to overall impervious surface and FEMA requirements.

Chair Crapo commented that the last renovation on the existing house was not long ago and steps were taken to expand but not maximize.

Chair Crapo and Attorney Phoenix discussed the variance criteria concerning the, "spirit of the ordinance".

Chair Crapo opened to the public at 10:38 p.m.

Chair Crapo informed a member of the public, who was participating via Zoom, that the application they were waiting to hear had been continued to the June 7, 2023 meeting.

Attorney Phoenix noted that there are no objections to the proposal.

Member Weathersby explained that in looking at the plans and what was closest to the ocean, she saw that the only thing that crossed the 50' buffer line was set of stair and pavers. Now, with the proposed conditions, the house is closer to that line and there are stairs and pavers over the line. She noted that no efforts have been made to move the house back.

Mr. Alther explained that they played with the architecture to bring the front wall inward, but the design of the porch allowed the view line of the neighbors' to look through that porch a bit better. Explained that this plan has less house mass closer to the ocean.

Attorney Phoenix noted that the house is pretty close to where it was.

Hearing no further comments, Chair Crapo closed the public session at 10:43 p.m.

Member Chororos discussed her concern regarding dwelling coverage, which is only supposed to be 15% and is going up to 27%. The board discussed dwelling coverage and Chair Crapo noted the garage in the consideration of dwelling coverage.

Chair Crapo discussed his concerns regarding the height and architecture of the home and its negative impact on the neighboring properties. He noted that there was no effort to conform and it was designed to maximize volume of the home. He added that he can't see how it's in the spirit of what relief is intended for.

Member Weathersby expressed her concern that the house is non-conforming, increasing in size, and the offsets are considerably reliant on pervious pavers in an area where sand is constantly blowing. She explained her struggle with the gain of square footage relying on pavers.

Chair Crapo recalled the Tierney's application and noted it's approval was conditioned on maintenance of the pervious driveway; he wondered if it could carry through to this property.

Member Weathersby commented that a four-bedroom home with 2,700 square feet of living space on a lot that's 5,700 square feet is too much. She added that it's a strain on the lot in an area that's already congested.

Member Mikolities commented that he's struggling with the same thoughts. He noted that the proposed structure is 24' and 22' wide so he understands it's narrow, but he's struggling with the increase from 1,065' to 1,572', which is a 50% increase.

Attorney Phoenix explained that Mr. Keane would be willing to have a yearly maintenance program that is undertaken and submitted to the town to maintain the permeability of the described surfaces.

Chair Crapo explained his concern with the proposed maintenance program, noting that vacuuming may end up removing pebbles in the process, and his lack of clarity regarding available testing methods for permeability.

Mr. Alther explained that he's addressed a similar issue in Hampton where a program was put in place for annual vacuuming of a driveway, which is then submitted to the town. He explained that the person doing the vacuuming also does testing, and any granules that have been removed are then replaced. Mr. Alther commented that that may be something they could offer as a solution.

Member Tuttle discussed his concerns with the project, including the snow load.

Member Chororos explained that she's still struggling with the near doubling of lot coverage.

Member Weathersby suggested that if anyone were to vote in favor of the project, it should be conditioned on the RCC's recommendations and that the pervious pavers be installed, maintained annually with a letter submitted to the town.

The board agreed that the height variance is not needed and agreed to vote on the rest of the application as one package.

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

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – Yes
Shawn Crapo – No

2. The spirit of the ordinance is observed:

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – No
Shawn Crapo – No

3. Substantial justice is done:

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – No
Shawn Crapo – No

4. The values of surrounding properties are not diminished:

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – No
Shawn Crapo – No

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

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – 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 – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – No
Shawn Crapo – No

- 7. The proposed use is a reasonable one.**

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – No
Shawn Crapo – No

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

Sandra Chororos – No
Gregg Mikolities – Yes
Patricia Weathersby – No
John Tuttle – No
Shawn Crapo – No

Attorney Phoenix discussed the vote in favor of criteria five.

Vote 4-1-0 (G. Mikolities in favor, S. Chororos, P. Weathersby, J. Tuttle, S. Crapo opposed)

Motion by John Tuttle to deny the requests for relief by Kathy & Timothy Keane for property owned and located at 5 Cable Road, Tax Map 8.4, Lot 176. Seconded by Patricia Weathersby.

Vote 4-1-0 (S. Chororos, S. Crapo, P. Weathersby, J. Tuttle in favor, G. Mikolities opposed)

7. Robert & Cynthia Scarano property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 request an equitable waiver of dimensional requirements per RSA674:33-a from §190-6.3.B for an approved bunkhouse which became a studio; from §190-2.4.C(1) for

patio approved 12' +/- which became 5.31' +/- from the rear boundary where 30' is required; and from §190-2.4.C(2) for addition of a bulkhead 14.39' and the studio is 14.42' and patio approved 9.67' and became 13.35' from the side boundary where 20' is required. Property is in the General Residence, Coastal Overlay and SFHA Zone AO(3). Case #21a-2023.

Application continued to the June 7, 2023 meeting, see motion above.

8. Robert & Cynthia Scarano for property owned and located at 1481 Ocean Blvd, Tax Map 13, Lot 54 request variances from §190-6.3.B for rebuild of a studio; from §190-2.4.C(1) for patio 5.31' +/- and a hot tub 7.02' from the rear boundary where 30' is required; from §190-2.4.C(2) a studio 14.42', a patio 13.35' and a hot tub 6.85' from the left side boundary where 20 is required. Property is in the General Residence, Coastal Overlay and SFHA Zone AO(3). Case #21a-2023.

Application continued to the June 7, 2023 meeting, see motion above.

9. Frank Goguen for property owned and located at 29 Gray Court, Tax Map 5.2, Lot 87 requests variances from §190-6.3.A for expansion of existing non-conforming structure; from §190-2.6.C(5) & 1903.4.E for dwelling coverage 21.30% is proposed and 15% is allowed, and lot coverage 34.18% where 30% is allowed. Property is in the General Residence, Coastal Overlay District. Case #22-2023.

Application continued to the June 7, 2023 meeting, see motion above.

Motion by John Tuttle to adjourn at 11:03 p.m. Seconded by Gregg Mikolities. All in favor.

Respectfully Submitted,
Emilie Durgin

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

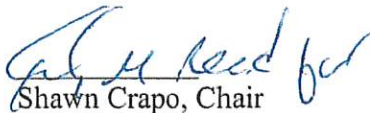
Applicant: Tudor & Pauline Simeonov, Aleph LLC owners of 720 Brackett Road, Tax Map 17, Lot 65

Property: For address 691 Brackett Rd, Tax Map 17, Lot 34

Properties are in the Single Residence Districts

Date of decision: May 17, 2023

Decision: The Board voted 5-0-0 to not take jurisdiction for the request for rehearing and reconsideration by Attorney Roy Tilsley on behalf of Aleph LLC: Ted and Pauline Simeonov, owners of 720 Brackett Road, Tax Map 17, Lot 65.


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

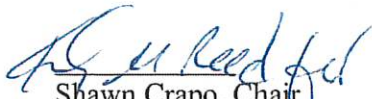
Applicant/Owner: Anthony & Susan Farmer

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 17, 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.

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 - 2023

Date of decision:

May 17, 2023

Decision:

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

- § 190-2.4.C(2) for a generator 3' from the side boundary.
- § 190-2.4.C(2) for porous patio .5' (6") from the side boundary.
- § 190-2.4.C(2) for a grill area 1' from the side boundary.
- § 190-2.4.C(2) for a wash station 1.4' from the side boundary. from highest observable tide.
- § 190-3.1.H(1)(a) and § 190-3.1.H(2)(a)(g) for a porous patio 50' from highest observable tide.
- § 190-3.1.H(1)(a) and § 190-3.1.H(2)(a)(g) for a grill area 50' from highest observable tide.
- § 190-3.1.H(1)(a) and § 190-3.1.H(2)(a)(g) for a wash station 56' from highest observable tide.
- § 190-3.4.E for expansion of impervious coverage.
- § 190-6.3.A for expansion of a nonconforming structure.

The variances were granted with the following conditions based on the Rye Conservation 1-23-23 letter:

1. Native shoreland plantings should be installed in addition to the existing plantings abutting the sea wall to a depth of one (1) to two (2) ft. as the area allows.
2. A complete planting plan for the property to be submitted to and approved by the RCC prior to installation including buffer plantings and generator plantings.
3. The RCC believes that an 85% or greater survival rate of the planted vegetation after (1) year is sufficient.
4. No finding existing lot coverage for patio unit 3.
5. As shown on site plan dated March 28, 2023, post development shoreland plan, Exhibit A-2.


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

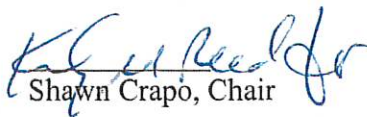
Date of decision: May 17, 2023

Decision: The Board voted 5-0-0 to grant the variance to the Rye Zoning Ordinance

- §190-3.1,H(2)(b)(e) & (g) for a deck/house 57' from wetland.
- §190-3.1,H(2)(b)(e) & (g) for a septic tank 49' from wetland.
- §190-3.1,H(2)(b)(e) & (g) for a leachfield 75' from wetland.
- §190-3.1,H(2)(b)(e) & (g) for a garage 96.45' from wetland.
- §190-3.1,H(2)(b)(e) & (g) for removal of trees from wetland.
- §190-5.7.C for stormwater management plan 5.43 CFS 2 year (+0.24), 9.75 CFS 10-year (+.30); and 16. CFS 50-year (+0.35).
- §190-6.3.A for expansion for nonconforming structure.

The variances were granted with the following conditions:

1. Best Management Practices with fertilizers and pesticide use.
2. RCC recommendations from their 2/22/23 letter.


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 17, 2023

Decision: The Board voted 5-0-0 to continue the application to the July 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.

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 17, 2023


Decision:

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

- §190-2.3.C(6) for a two lot subdivision with one of the lots having frontage of 101'40".

The following variance is granted with the following conditions:

1. The lot with the 101'40" frontage only provides access to one dwelling.
2. The voluntary setback & no cut buffer on the 5-17-2023 plans be adhered to.



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

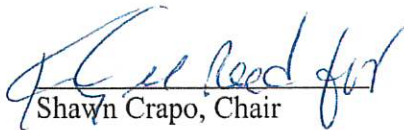
Applicant/Owner: Frank Goguen

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 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.

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 17, 2023 – Revised NOD June 7, 2023

Decision: The Board voted 4-1-0 to deny the relief from the following sections of the Rye Zoning Ordinance:

- §190-6.3.B for demolition of existing structure, replace with new.
- §190-2.3.C(1) for a house 3.85'/4.58', pervious patio 6.84', pervious driveway ~3.0' and a drainage area 0' from the rear boundary.
- §190-2.3.C(2) for a driveway ~10' from the side boundary.
- §190-2.3.C(3) for a house 4.61', a pervious walkway 1.52', steps 1.43' and pervious driveway 0' from the front boundary.
- §190-2.4.C(5) & §190-3.4.E for dwelling coverage 27.2% where 15% is required and lot coverage 37.5% where 15% is required.
- §190-3.1.h.2(a)(g) for a pervious patio 38.1', steps 46.4' and roof 50' within the 100' NHDES Tidal buffer zone.

The reasons the variances were denied include:

1. Due to the size of the home, it strains the property and too much relief being asked for on this lot.
2. The relief is not in alignment with what the spirit of granting relief is for.
3. The elimination of site lines to tax map 8.4, lot 175, the rear lot will be impacted negatively.
4. The property is a small coastal lot and there are several small coastal properties in the area.
5. Zoning for the neighborhood also pertains to this lot.
6. It is too much relief for that particular property.


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 17, 2023

Decision: The Board voted 5-0-0 to continue the application to the July 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.